

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Wednesday, January 11, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|---------|--|----------------|
| | Organizational Meeting Assignment of Subcommittees on Administrative Rules | Chairman Black |

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

COMMITTEE MEMBERS

| | | |
|-------------------------|----------------|----------------|
| Chairman Black | Rep Bayer | Rep Smith (30) |
| Vice Chairman Henderson | Rep Palmer | Rep Rusche |
| Rep Collins | Rep Thompson | Rep Cronin |
| Rep Bilbao | Rep Barbieri | |
| Rep Chadderdon | Rep DeMordaunt | |
| Rep Crane | Rep Guthrie | |
| Rep Patrick | Rep Batt | |

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, January 11, 2012
TIME: 1:30 P.M.
PLACE: Room EW41
MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin
**ABSENT/
EXCUSED:** Rep. Crane
GUESTS: Kellie MacClellan and Heather Hert, WICAP Headstart

Chairman Black called the meeting to order at 1:35 p.m. and welcomed committee members back for the 2012 session. The Chairman introduced **Benjamin Ovard**, who will serve as Business Committee Page. Ben attends Mountain View High School in Meridian.

Chairman Black noted that two agencies had requested time to make presentations in the coming weeks, the Idaho Business Council and the Idaho Fraud Awareness Coalition.

Chairman Black appointed the following subcommittees, who will be responsible for reviewing Administrative Rules and making recommendations to the full committee:

Subcommittee on Administrative Rules from the Division of Building Safety: Rep. Gayle Batt, Chairman; Rep. Brent Crane, Rep. Joe Palmer, Rep. Reed DeMordaunt, Rep. Brian Cronin.

Subcommittee on Administrative Rules from the Board of Professional Engineers & Land Surveyors, the Department of Finance, the Department of Insurance, and the Bureau of Occupational Licenses: Rep. Jeff Thompson, Chairman; Rep. Marge Chadderdon, Rep. Vito Barbieri, Rep. Elaine Smith.

Chairman Black recognized **Rep. Frank Henderson** to distribute copies of an informational brochure, developed by District 5 legislators, which contains information that businesses want to know as they consider a corporate relocation to the area. Rep. Henderson said he gathered the information and wrote the brochure in response to the need for a business publication specific to north Idaho.

Rep. Henderson pointed out some contents of the brochure, including the message from the Governor, which stresses that Idaho has balanced its budget without raising taxes. Governor Otter emphasizes that Idaho provides tax and regulatory certainty for businesses and then gets out of their way so they can prosper. The brochure also contains a chart which compares the cost of doing business in Idaho and three surrounding states, Washington, Oregon and California.

Another important feature of the brochure is its list of public officials, along with full contact information, who can be contacted for specific information. **Rep. Henderson** stated that corporate executives often say access to elected officials is more important than a low tax rate when they are making relocation decisions. The brochure contains a list of north Idaho educational institutions, a message from the Mayor of Post Falls, and pictures illustrating the quality of life and recreational activities in the region.

Rep. Henderson stated that the initial print run was 1,500 brochures, the cost of which was shared among the three District 5 Legislators. He said the art work and pre-print production work were donated, and two north Idaho companies have each provided \$500 to help with postage. Local industries were asked to supply names of vendors or business associates who have expressed interest in relocating to Idaho, and brochures will be mailed out to them.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:55 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Tuesday, January 17, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------|--|--|
| RS20851 | Successor Corporation; Asbestos Remediation | Rep. Brent Crane |
| RS20788 | Engineers & Land Surveyors; Certification and Licensing Qualifications | Dave Curtis, Board of Engineers & Land Surveyors |
| RS20816 | Plats/Vacations, Interior Monuments | Dave Curtis |
| | Idaho Business Council Presentation | Jared Bauer Jenni Herberg |

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

COMMITTEE MEMBERS

| | | |
|-------------------------|----------------|----------------|
| Chairman Black | Rep Bayer | Rep Smith (30) |
| Vice Chairman Henderson | Rep Palmer | Rep Rusche |
| Rep Collins | Rep Thompson | Rep Cronin |
| Rep Bilbao | Rep Barbieri | |
| Rep Chadderdon | Rep DeMordaunt | |
| Rep Crane | Rep Guthrie | |
| Rep Patrick | Rep Batt | |

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MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Tuesday, January 17, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin
- ABSENT/
EXCUSED:** None.
- GUESTS:** Jared Bauer and Jenni Herberg, Idaho Business Council; Joie McGarvin, Westerberg & Associates; Jesse Taylor, Crown Cork & Seal; John Eaton, Idaho Association of Realtors; Kurt Stenbridge, Glaxo Smith Klein Pharmaceuticals
- Chairman Black** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Bilbao** moved to approve the minutes of January 11, 2012. **Motion carried by voice vote.**
- RS 20851:** **Rep. Brent Crane** presented **RS 20851**, legislation dealing with the problem of companies that are liable, as successor corporations, for asbestos abatement. Rep. Crane explained that a company bought out one of its competitors, with a purchase price of \$7 million. The purchasing company was later faced with claims over asbestos abatement, although at the time of purchase the company had no idea there was a division of the business that previously manufactured asbestos. The company has thus far paid out \$700,000 in settlement of the claims. This legislation will limit damages in such asbestos cases to the total price paid by the purchasing company, adjusted for inflation.
- Responding to committee questions, **Rep. Crane** said the legislation addresses only asbestos-related problems, and the upper cap on damage claims is per suit filed, not a total for all claims. Asked whether a purchasing company should do better due diligence in order to anticipate such claims, Rep. Crane said the asbestos division of the company being purchased was not even on their books because it was an inactive division. He also stated he does not believe this legislation will offer protection to a company that might decide to form a shell company in order to buy their asbestos-producing company. It is specifically limited to asbestos damages and will not apply to other chemicals that may be determined to be hazardous in the future.
- MOTION:** **Rep. Patrick** made a motion to introduce **RS 20851**. **Motion carried by voice vote.** **Rep. Rusche** requested that he be recorded as voting **NAY**.
- RS 20788:** **Dave Curtis**, Executive Secretary of the Board of Professional Engineers and Professional Land Surveyors, presented **RS 20788**. Mr. Curtis explained the three objectives of the RS, namely: 1) It restricts assignment for initial licensure or certification exams to residents of Idaho or students at Idaho universities. 2) It gives the Board authority to postpone action on an application if the applicant has unresolved disciplinary charges in another jurisdiction. 3) It modifies the application process to allow applications to be made digitally, by removing the requirement that an application be made under oath. Mr. Curtis said the legislation is supported by the Idaho Society of Professional Engineers, the Idaho Society of Professional Land Surveyors, and the American Council of Engineering Companies-Idaho.

Answering questions from the committee, **Mr. Curtis** said the legislation does provide the Board with some latitude in addressing the case of residents who may live in bordering states such as Washington or Oregon but work full-time in Idaho. He said the legislation is aimed at curbing unethical practices such as acquiring an initial license in Idaho with no intention of ever practicing here. Mr. Curtis said he would bring further information about reciprocity when he presents the bill to the committee.

A concern was raised about the use of the term "may" instead of the term "shall" on page 3, lines 36-43. **Mr. Curtis** said he would probably have no objection if the term "may" was changed to "shall" in this section of the bill, and noted that the number of these cases is small.

MOTION: **Rep. Collins** made a motion to introduce **RS 20788**. **Motion carried by voice vote.**

RS 20816: **Mr. Curtis** then presented **RS 20816**. He explained that under current law a subdivision can be platted with only exterior boundary monuments placed; if this takes place, a bond or a cash deposit to the city or county is required to assure that the interior monuments will be set by a time certain. If the original surveyor is not able to set the interior monuments later, this legislation will allow a substitute surveyor employed by the same business entity to set the monuments. The substitute surveyor would also be required to file a Record of Survey. This legislation has the support of the Idaho Society of Professional Engineers, the Idaho Society of Professional Land Surveyors, and the American Council of Engineering Companies-Idaho.

MOTION: **Rep. Rusche** made a motion to introduce **RS 20816**. **Motion carried by voice vote.**

PRESENTATION: **Jared Bauer**, Founder and Executive Director of the Idaho Business Council, appeared before the committee to present information on the Council's formation and its work. Mr. Bauer introduced **Jenny Herbert**, CEO of the Idaho Business Council, and several members of the Board of Directors who were in attendance.

Mr. Bauer testified that the Idaho Business Council is unique because this kind of effort has not been tried in other states. It provides a new way of doing research on topics that are business and economic-related and creates a partnership among the Legislature, Idaho's three major universities, and the business community. Business and economic issues affecting job creation and economic growth can be identified and researched. Mr. Bauer stated that the Council is different from other business organizations in a number of ways. First, it is research-oriented and will not serve as a lobbying organization. Second, it doesn't represent a single industry but rather provides a statewide approach to all businesses. Third, it requires the involvement of members of the Legislature. Fourth, it is closely tied to Idaho's major universities and requires their involvement.

Mr. Bauer said that, as Utah's, Oregon's, and Washington's median incomes have continued to rise, Idaho's median income has not. While many believe that not much action can be taken to affect this condition, the Idaho Business Council aims to take a proactive approach to increase jobs and help bolster Idaho's economy. The Council is unbiased, nonpartisan, and nonprofit, and will require equal representation by region and industry.

Jenni Herbert, CEO of the Idaho Business Council, outlined the process that will be used by the Council to identify business topics for research each year. She said legislators will be asked to appoint two members from their districts to become part of the Council, and will have an opportunity to identify the top economic issues for

the year. These will be narrowed down to the top three issues. The universities will then design research projects for both faculty and graduate students to develop solutions. Ms. Herbert said the university deans are excited about the potential for this project to create research in Idaho, for Idaho.

Ms. Herbert listed the members of the Executive Board, who represent many types of businesses and industries in Idaho. She encouraged members of the committee to visit the website, www.idahobusinesscouncil.org, which contains complete information about the Council. She said the Council is asking for a three-year commitment from legislators, and is asking each of them to pick two delegates from their districts. These selections would ideally be made by late spring of 2012.

In response to questions from the committee, **Ms. Herbert** and **Mr. Bauer** said the community colleges were not included in the initial plan but could be in the future, after the program is well established. All funding for this project will be from private sources; there are no tax dollars involved. However, the project needs the Legislature's support in order to engage in further fund-raising efforts.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
BATT SUBCOMMITTEE
 Division of Building Safety Administrative Rules
 1:30 P.M.
 Room EW41
 Thursday, January 19, 2012

| DOCKET NO. | DESCRIPTION | PRESENTER |
|------------------------------|---|--|
| | Rules from the Division of Building Safety: | |
| 07-0103-1101 | Rules of Electrical Licensing & Registration; Apprentices | Steve Keys, Admin. Division of Bldg Safety |
| 07-0104-1101 | Rules Governing Electrical Specialty Licensing; Apprentices | |
| 07-0104-1102 | Rules Governing Electrical Specialty Licensing; Photovoltaic Installations | |
| 07-0105-1101 | Rules Governing Examinations; Elimination of 30-day Waiting Period | |
| 07-0106-1101 | Rules Governing the Use of National Electrical Code; Adoption of 2011 Code | |
| 07-0107-1101 | Rules Governing Continuing Education Requirements; Fees | |
| 07-0205-1101 | Rules Governing Plumbing Safety Licensing; Continuing Education | |
| 07-0205-1102 | Rules Governing Plumbing Safety Licensing; Disclosure of Licensure History | |
| 07-0205-1103 | Rules Governing Plumbing Safety Licensing; Journeyman Examination | |
| 07-0207-1101 | Rules Governing Civil Penalties; Disclosure of Required Information | |
| 07-0402-1101 | Safety Rules for Elevators, Escalators, and Moving Walks | |
| 07-0501-1101 | Rules of the Public Works Contractors License Board | |
| 07-0701-1101 | Rules Governing Installation of HVAC Systems; Compliance Bond | |
| 07-0701-1102 | Rules Governing Installation of HVAC Systems; Gas Piping, Regulators, & Meters | |

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

COMMITTEE MEMBERS
 Chairman Batt
 Rep.Crane

Rep.Palmer
 Rep.DeMordaunt
 Rep.Cronin

COMMITTEE SECRETARY
 MaryLou Molitor Phone: (208) 332-1139
 Room: EW58 mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE
BATT SUBCOMMITTEE
Rules Review

DATE: Thursday, January 19, 2012
TIME: 1:30 P.M.
PLACE: Room EW41
MEMBERS: Chairman Batt, Representatives Crane, Palmer, DeMordaunt, Cronin
**ABSENT/
EXCUSED:** None.
GUESTS: Mike Liegert, Schneider Electric; Jeff Fitzloff, Underwriters Laboratories; Benjamin Davenport, Risch Pisca; Steve Keys and John Nielsen, Division of Building Safety; Bob Scott, State Electrical Board; Tom K. Brown, B&B Electric; Mark Larson, State Fire Marshal; Ed Hawley, Office of Administrative Rules; Cindy Hedge, Idaho AFL-CIO; John Eaton and Miguel Legarreta, Idaho Association of Realtors; Steve Martinez, Tradewinds General Contractors; Jane Wittmeyer, Associated Builders & Contractors

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

Steve Keys, Deputy Administrator of the Division of Building Safety (DBS), appeared before the committee to present Rules from the Division. Mr. Keys testified that all proposed rules were developed utilizing open meetings, with significant involvement by interested and affected parties. He also said that, with one exception, the rule changes are widely supported by affected parties.

DOCKET NO. 07-0103-1101: **Mr. Keys** presented **Docket No. 07-0103-1101**. This rule will allow only one renewal of an apprentice registration after demonstration that the applicant has made at least some progress toward the requirements for a journeyman license. Currently apprentices can renew multiple times. Mr. Keys said it is the consensus of the board and the industry that an apprentice should be able to complete the required training within the term of the base five-year registration and the additional five-year extension. He also said there are provisions in the rules for handling exceptions or unusual circumstances, at the discretion of the board.

Responding to a question, **Mr. Keys** said the 8,000 hours of on-the-job experience should be easily completed within the five-year registration period.

MOTION: **Rep. DeMordaunt** made a motion to recommend approval of **Docket No. 07-0103-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0104-1101: **Mr. Keys** presented **Docket No. 07-0104-1101**, which is similar to the previous docket except that it pertains to registration requirements for specialty trainees. Under this rule, a specialty trainee will be allowed two three-year registration terms to complete his required 4,000 hours of on-the-job training. The Board will have discretion to grant additional time in extenuating circumstances.

MOTION: **Rep. DeMordaunt** made a motion to recommend approval of **Docket No. 07-0104-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0104-1102: **Mr. Keys** presented **Docket No. 07-0104-1102**, saying that this docket establishes a new specialty electrical license category for solar photovoltaic practitioners. Because these systems are becoming more common in Idaho, this specialty license will recognize the experience and expertise that exists in the industry.

Responding to committee questions, **Mr. Keys** said the Division will put out notices on its website as well as on Facebook and other social communication sites in order to educate the public about these new requirements. He said under current rules, a solar installer brings in an electrical contractor to take out necessary permits and be responsible for the installation.

MOTION: **Rep. DeMordaunt** made a motion to recommend approval of **Docket No. 07-0104-1102** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0105-1101: **Mr. Keys** presented **Docket No. 07-0105-1101**. This change will eliminate the 30-day waiting period after a failed journeyman exam before an applicant can re-take the test. Tests are now offered on a continuous basis, and the board thinks each individual applicant can decide whether he should do additional remedial work before re-testing. The one-year waiting period to re-test after a third failed attempt remains in place.

Asked whether the entire paragraph should be deleted, **Mr. Keys** said situations can change and the requirements may become necessary in the future.

MOTION: **Rep. DeMordaunt** made a motion to recommend approval of **Docket No. 07-0105-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0106-1101: **Mr. Keys** presented **Docket No. 07-0106-1101**, noting that this docket is the exception to his previous statement that all dockets were a result of consensus and agreement among parties. This docket references adoption of the 2011 National Electrical Code by the Idaho Electrical Board. It also reflects the statutory division of authority between the administrator of the Division of Building Safety and the Electrical Board. The Board is given rulemaking authority and exercised that authority, even though the agency administration and many affected parties would have rather seen the board take a different approach. The board has decided to remove the limitation on the requirement for Arc Fault Circuit Interrupters (AFCIs) throughout a residence. When the board adopted the 2008 National Electrical Code, it restricted the requirement for AFCIs to bedrooms only. The proposed rule would require AFCIs on all circuits supplying outlets throughout the dwelling. **Mr. Keys** said it is estimated that this change will add \$500 to the cost of an average new home.

Bob Scott, Chairman of the Electrical Board, testified on **Docket No. 07-0106-1101**. **Mr. Scott** said he has worked continuously in the electrical field since 1970, as a journeyman, a foreman, a project manager, and general manager of Quality Electric, a large electrical contractor. He is active in local and national electrical contractors associations. **Mr. Scott** testified that the Board does not think the current exception from the AFCI requirement in the 2008 Code should be allowed to continue. He said the requirement does not apply to any existing structures, and said the cost could be higher or lower than the \$500 figure offered by **Mr. Keys**. **Mr. Scott** said he would be willing to accept adoption of the 2011 Code with the same exception, if it cannot be adopted in full.

Responding to committee questions, **Mr. Scott** said a regular electrical breaker costs around \$3 to \$4, whereas an AFCI breaker costs between \$35 and \$40. He said in an older home undergoing remodeling, arc fault protection would be required, and this could require changing the electrical panel in order to accommodate the change. If a new electrical panel is required, the cost would be about \$1,000.

Mike Leigert, Schneider Electric, testified in support of adoption of the 2011 National Electrical Code. **Mr. Leigert** presented written testimony from **Alan Manche**, Director of Industry Standards for Schneider Electric. **Mr. Leigert** said all current electrical design is done according to 2011 NEC standards, and all education in the electrical industry currently uses 2011 standards. He urged the adoption of the 2011 Code in order to realize broad safety and economic benefits.

In response to questions from the committee, **Mr. Leigert** said his home state of Utah has adopted the 2011 Code, as have Colorado, California, and Montana. He does not know the other states that may have adopted the new code. Asked whether there is anything preventing a person from installing the AFCI breakers, Mr. Leigert said homeowners could choose to do that. He said buildings built to the new code would provide greater safety, but no energy saving. Mr. Leigert said his company will benefit financially if this docket is approved. He also said documentation is available to support the claim of greater fire safety with the use of AFCI breakers, although he did not have such documentation with him.

Jeff Fitzloff, a licensed electrician who works for Underwriters Laboratories, testified in favor of adopting the 2011 National Electrical Code. Mr. Fitzloff said he bought a home built to the 2008 Code, and then purchased and installed AFCI breakers throughout the home. He has not had any problems with tripping, as others have reported. Mr. Fitzloff said his cost for each breaker was \$36.

Steve Martinez, owner of Tradewinds General Contracting, testified in opposition to adoption of the 2011 Code. Mr. Martinez said he often hears complaints from clients after they move into new homes equipped with AFCI circuits. He said homeowners can install AFCI circuits if they wish. Mr. Martinez stated that if a home is remodeled it has to be brought up to current code; the cost of this could easily exceed \$1,000, and would probably cost closer to \$1,500 or \$2,000. He said in one 2008 study, it was found that for every \$1,000 increase in the price of a home, another 350 people are taken out of the housing market because they can no longer afford to buy a home.

Asked whether the problems experienced with AFCI circuits cause greater expense to a homeowner, **Mr. Martinez** said it could do so if the homeowner hires another electrician to alter the home's electrical installations. There is also a safety concern when a homeowner retrofits a home with electrical installations that do not comply with applicable codes.

Tom Brown, an electrician licensed in Idaho for 40 years, testified that he is not in favor of adopting the 2011 Code. Mr. Brown's primary concern is the added cost to the construction of homes, especially in the current economic climate, with its depressed construction industry. Mr. Brown works on home remodeling, and meeting the requirements of the 2011 Code will add costs to such projects. He is currently working on a remodeling job which would require over 60 breakers at \$35 apiece. Mr. Brown also testified that manufacturers of the breakers do not have a device to test them and cannot say what the life of the product should be.

MOTION:

Rep. Crane made a motion to recommend approval of **Docket No. 07-0106-1101** to the full committee, and requested that the full committee introduce and send to the Second Reading Calendar a concurrent resolution stating that the docket is being rejected. Rep. Crane explained it is his understanding that if a non-fee rule is rejected in the House and Senate, it needs to be done by concurrent resolution.
Motion carried by voice vote.

**DOCKET NO.
07-0107-1101:**

Mr. Keys presented **Docket No. 07-0107-1101**, which will impose fees on providers of continuing education courses for electricians. The proposed fees, \$50 fee for instructors and \$50 fee for each proffered course, are designed to cover the costs incurred by the Division in reviewing the qualifications of instructors and the content of the courses. Mr. Keys said the Division is often asked to review and approve courses offered throughout the country, some of which may never be offered in Idaho. He believes this proposal will serve to lessen the number of such courses.

Responding to questions from the committee, **Mr. Keys** said the quality of courses does vary; in fact, one vendor was actually selling the answers to the test. He said

the majority of providers are outside the state of Idaho. The \$50 fee would be for each course and for each instructor.

MOTION: **Rep. DeMordaunt** made a motion to recommend approval of **Docket No. 07-0107-1101** to the full committee. He said he thinks this rule will impose additional costs which will be passed on to consumers.

Rep. Cronin argued against the motion, saying the \$50 fee would be spread across a large number of people and would be a small price to pay in order to ensure quality education for electricians. **Rep. Crane** argued in support of the motion, saying he does not think a fee guarantees that the quality of continuing education providers will be any better.

VOTE ON MOTION: **Chairman Batt** called for a vote on the motion to recommend rejection of **Docket No. 07-0107-1101** to the full committee. **Motion carried by voice vote.** **Rep. Cronin** requested that he be recorded as voting **NAY**.

DOCKET NO. 07-0205-1101: **Mr. Keys** presented **Docket No. 07-0205-1101**, which imposes a continuing education requirement on journeyman plumbers and plumbing contractors. In every three-year licensing cycle, the requirements are eight hours for journeymen and sixteen hours for contractors. The requirements are similar to those in place for electrical licensees, and the fees for approval of courses and instructors mimic those contained in the previous docket.

Answering questions from the committee, **Mr. Keys** said if these dockets do not receive approval, it will probably take longer for courses and instructors to be reviewed and approved, since the Division does not have adequate staff to handle the work.

Mr. Scott testified that all Idaho providers of continuing education courses are in favor of the fee, as are the universities that provide apprenticeship training, namely, College of Western Idaho, Northwest Nazarene University, and others.

Jeff Fitzloff, who serves as secretary for the Idaho chapter of the National Association of Electrical Contractors, stated Idaho would not be alone in charging a fee for this purpose. He said this fee may add about \$1 to the cost paid by tradesmen to take these courses.

MOTION: **Rep. Crane** made a motion to recommend approval of **Docket No. 07-0205-1101** to the full committee. **Motion carried by voice vote.** **Rep. Cronin** asked to be recorded as voting **NAY**.

DOCKET NO. 07-0205-1102: **Mr. Keys** presented **Docket No. 07-0205-1102**, a docket from the Plumbing Board to address the problem of out-of-state plumbers taking advantage of a loophole in existing regulations to work in Idaho without a license. This will require all plumbers who have been licensed as journeymen or master plumbers in other jurisdictions to disclose that information. They will then be required to apply for licensure at the journeyman level and will not be allowed to register as an apprentice.

MOTION: **Rep. Cronin** made a motion to recommend approval of **Docket No. 07-0205-1102** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0205-1103: **Mr. Keys** presented **Docket No. 07-0205-1103**, which will allow apprentices to take the written portion of their journeyman plumber exam upon completion of the classroom portion of their training. They would need to complete the practical portion of the exam later, after having accumulated the required 8,000 hours of on-the-job training.

MOTION: **Rep. Palmer** made a motion to recommend approval of **Docket No. 07-0205-1103** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0207-1101: **Mr. Keys** presented **Docket No. 07-0207-1101**, which builds on the previous docket to allow for civil penalties in those cases where an applicant has failed to disclose previous licensure as a journeyman or master plumber when applying for registration as an apprentice. **Mr. Keys** explained that the Division wants to stop people who have been licensed in one jurisdiction from coming in and registering as an apprentice in Idaho.

ORIGINAL MOTION: **Rep. Cronin** made a motion to recommend approval of **Docket No. 07-0207-1101** to the full committee.

SUBSTITUTE MOTION: **Rep. Palmer** offered a substitute motion, to recommend that **Docket No. 07-0207-1101** be sent to the full Committee **without recommendation**, for their consideration. This will allow further study to determine whether the Division has proper authority to issue civil penalties.

Responding to questions from the committee, **Patrick Grace**, Office of the Attorney General, said the Division has the statutory authority to issue civil penalties, and their rules enumerate the acts that would subject someone to such a penalty. Typically they would be imposed for things like performing unlicensed plumbing. There is no authority to issue a penalty for not disclosing information on an application.

WITHDRAWAL OF MOTION: After further discussion, **Rep. Palmer** asked that his substitute motion be withdrawn.

VOTE ON ORIGINAL MOTION: **Chairman Batt** called for a vote on the original motion, to recommend approval of **Docket No. 07-0207-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0402-1101: **Mr. Keys** presented **Docket No. 07-0402-1101**, which adopts the 2010 version of the elevator code. The 2010 version addresses new developments and technologies and codifies the approval process for them. The rule also adopts updated versions of the standard for elevator suspension and governor systems as well as the performance-based safety code for elevators and escalators.

MOTION: **Rep. Palmer** made a motion to recommend approval of **Docket No. 07-0402-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0501-1101: **Mr. Keys** presented **Docket No. 07-0501-1101**. This docket will impose a fee to be submitted with a request for an extension of time in which to renew a Public Works Contractor license. The fee would be the pro-rated portion of the annual license fee, with a minimum of \$50. The most common reason for an extension is the unavailability of updated financial information. **Mr. Keys** said many contractors file extension requests on a recurring basis, since the underlying renewal date is unaffected by the extension request. This proposal allows a contractor to request an extension, pay a pro-rated fee for the time covered by the extension, and change his annual renewal date, all in one process. The docket also incorporates a \$100 fee for expedited processing of a license application.

MOTION: **Rep. Cronin** made a motion to recommend approval of **Docket No. 07-0501-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0701-1101: **Mr. Keys** presented **Docket No. 07-0701-1101**, saying this docket clarifies the current compliance bond requirement from applicants for an HVAC contractor license. This docket replaces references to a performance bond. It also requires that a Notice of Correction must be issued to identify deficiencies uncovered as a result of an inspection and makes minor changes eliminating specific colors for inspection tags.

MOTION: **Rep. Palmer** made a motion to recommend approval of **Docket No. 07-0701-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 07-0701-1102: **Mr. Keys** presented **Docket No. 07-0701-1102**, which will remove requirements for the protection of meters and regulating equipment owned by the utility or fuel provider. The owners of this equipment already have requirements for the protection of these devices, which are generally more rigorous and specific than the language in the current rule.

MOTION: **Rep. Crane** made a motion to recommend approval of **Docket No. 07-0701-1102** to the full committee. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:03 p.m.

Representative Gayle Batt
Chairman

MaryLou Molitor
Secretary

AGENDA
**HOUSE BUSINESS COMMITTEE
THOMPSON SUBCOMMITTEE**
Administrative Rules of the Board of Professional Engineers,
the Department of Finance, & the Department of Insurance
3:00 P.M.
Room EW41
Thursday, January 19, 2012

| DOCKET NO. | DESCRIPTION | PRESENTER |
|------------------------------|--|------------------------------------|
| | <u>Rules of the Board of Professional Engineers and Professional Land Surveyors:</u> | Dave Curtis, Executive Director |
| 10-0101-1101 | Rules of Procedure | |
| 10-0102-1102 | Rules of Professional Responsibility | |
| 10-0104-1101 | Rules of Continuing Professional Development | |
| | <u>Rules of the Department of Finance:</u> | Mike Larsen, Deputy Director |
| 12-0110-1101 | Idaho Residential Mortgage Practices Act | |
| | <u>Rules of the Department of Insurance:</u> | Tom Donovan, Deputy Director |
| 18-0105-1101 | Health Carrier External Review | |
| 18-0146-1101 | New Mortality Tables: Minimum Standard of Valuation | |
| 18-0150-1101 | Adoption of International Fire Code | |

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

COMMITTEE MEMBERS

Chairman Thompson
Rep.Chadderdon
Rep.Barbieri
Rep.Smith(30)

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE
THOMPSON SUBCOMMITTEE
Rules Review

DATE: Thursday, January 19, 2012
TIME: 3:00 P.M.
PLACE: Room EW41
MEMBERS: Chairman Thompson, Representatives Chadderdon, Barbieri, Smith(30)

**ABSENT/
EXCUSED:** None.

GUESTS: Dave Curtis, Professional Engineers; Max Greenlee, Risch Pisca; Tom Donovan, Georgia Diehl, Eileen Mundorff, and Mark Larson, Department of Insurance; Dennis Stevenson and Brad Hunt, Department of Administration, Office of the Administrative Rules Coordinator

Chairman Thompson called the meeting to order at 3:08 p.m.

DOCKET NO. 10-0101-1101: **Dave Curtis**, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, presented **Docket No. 10-0101-1101**, explaining the numerous objectives of the rule changes. First, the new rule will allow individuals to select retired status at any time upon request. Second, it amends the examination application submittal deadlines to accommodate the conversion of some examinations to computer-based format. Third, it will eliminate the need for engineer intern and land surveyor intern applicants to provide references on their examination applications. This requirement was eliminated by the Legislature last year, so this rule needs to be brought into alignment with the statute. Finally, the docket will adopt national standards for evaluating non-accredited engineering programs. Mr. Curtis said these pending rules are supported by the Idaho Society of Professional Engineers, the American Council of Engineering Companies-Idaho, and the Idaho Society of Professional Land Surveyors.

MOTION: **Rep. Barbieri** made a motion to recommend approval of **Docket No. 10-0101-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 10-0102-1101: **Mr. Curtis**, Executive Director of the Board of Professional Engineers & Professional Land Surveyors, presented **Docket No. 10-0102-1101**. This docket also has numerous purposes. First, it provides an exception to the rule requiring license holders to notify other license holders of the discovery of material discrepancy if the licensee is working in the employ of an attorney as an expert witness. Second, it provides for a two-stage process of notification of discovery of material discrepancy, first informally and then in writing, and makes notification to the Board optional rather than mandatory if the response given does not answer the concerns of the discoverer. Third, it reduces from 60 to 20 the number of days which a license holder has to respond to notification of discovery of a material discrepancy by another license holder.

Responding to a question about the two-year limitation on discovery, **Mr. Curtis** said this two-year time period is following discovery. He said the Board had been advised by legal counsel that they needed to establish a reasonable statute of limitations following discovery.

MOTION: **Rep. Smith** made a motion to recommend approval of **Docket No. 10-0102-1101** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.
10-0104-1101:**

Mr. Curtis, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, presented **Docket No. 10-0104-1101**, again explaining the numerous purposes of this docket. First, the new rule will clarify that routine job assignments are not considered qualified activities for continuing professional development purposes. Second, it will allow newly-licensed persons to carry forward professional development hours earned during the two years prior to the first renewal following the issuance of the license. Third, it will allow continuing professional development credit for authoring each chapter of a book. Fourth, it allows professional development hours for peer review of published technical or professional papers, articles or book chapters. Fifth, it extends the same exemption from compliance to civilians deployed with the military as is extended to military personnel. Finally, it allows license holders who are residing outside the United States to earn the required professional development hours upon return to the U.S.

Responding to questions from the committee, **Mr. Curtis** said the determination of what constitutes a "routine job assignment" may vary. The purpose of the rule change is to provide a clarification for licensees who are licensed in other jurisdictions, some of whom allow up to a third or a half of continuing education to be satisfied simply by being employed. This rule will clarify that "continuing education" needs to be something beyond what one does in the regular course of employment, such as a workshop or seminar. With regard to the exemption for civilians deployed with the military, **Mr. Curtis** said this problem was brought to the Board by a civilian who was deployed in Afghanistan and who could not access continuing ed classes.

MOTION:

Rep. Chadderdon made a motion to recommend approval of **Docket No. 10-0104-1101** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.
12-0110-1101:**

Michael Larsen, Consumer Finance Bureau Chief at the Department of Finance, presented **Docket No. 12-0110-1101**, changes to the Idaho Residential Mortgage Practices Act. **Mr. Larsen** said the rules incorporate current federal statutes regarding truth in lending, updating Idaho's rules to January 1, 2011. Another change deals with a 2006 rule from the Department stating that mortgage licensees could use a nationwide mortgage licensing system to get a license. Formerly, they could obtain a license through an alternate method if they didn't have access to the internet. Since then, however, Congress has required all states to license mortgage loan originators through the nationwide system. This amendment removes the language about an optional process, since that method is no longer allowed.

MOTION:

Rep. Barbieri made a motion to recommend approval of **Docket No. 12-0110-1101** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.
18-0105-1101:**

Tom Donovan, Deputy Director of the Department of Insurance, presented **Docket No. 18-0105-1101** dealing with the external review process. **Mr. Donovan** explained that a person covered by a major medical policy, who has a medical claim denied, may seek a second review through his or her insurance carrier. If that is not allowed, he or she can ask for review by an independent review organization. This pending rule implements 2011 legislation dealing with external review. The docket includes sample forms, although companies can also use forms that are substantially identical to the samples.

Mr. Donovan pointed out the slight changes dealing with notification requirements and with the qualifying reasons to request an external review. He said a person can also make an urgent appeal for review at the same time as the request for external review. **Mr. Donovan** testified that in 2010 the Department received 13 requests for external review, and in 2011 the number increased to 30. Of those 30, there were about six that were ineligible; approximately 10 of the 30 denied claim decisions were overturned after review.

Mr. Donovan also testified that the annual reporting requirement for independent review organizations is being removed, since the Department realized this is not information that they need to track.

In answer to questions from the committee, **Mr. Donovan** said independent review organizations must be nationally accredited by a recognized accrediting body, and must have medical staff competent to review cases. He also said the fees associated with an external review are not borne by the customer, but rather by the health carrier. He suggested that the increase in independent review requests could be due to a greater awareness of their availability. The law requiring independent review was effective in January 2010.

MOTION: **Rep. Smith** made a motion to recommend approval of **Docket No. 18-0105-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 18-0146-1101: **Mr. Donovan**, Deputy Director of the Department of Insurance, then presented **Docket No. 18-0146-1101**, stating that this will update Idaho's rules by incorporating 1996 mortality tables. Idaho has been one of seven states using old tables; Idaho was previously using 1984 tables from the National Association of Insurance Commissioners. **Mr. Donovan** said the rule was published after consultation with Idaho's only domestic life insurer, United Heritage Insurance, who supports the change. He said this change is generally more favorable to consumers and noted there have been no objections to this rule.

Responding to a question about how current the 1996 mortality tables are, **Mr. Donovan** stated this is the most current available table. He said the 1996 mortality tables are used nationwide for purposes of minimum valuation.

MOTION: **Rep. Chadderdon** made a motion to recommend approval of **Docket No. 18-0146-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 18-0150-1101: **Mark Larson**, State Fire Marshal, presented **Docket No. 18-0150-1101**, adoption of the International Fire Code. **Mr. Larson** said there are only minor changes to the 2009 version of the Code. He said some of the language dealing with appointment of fire code officials is deleted, and an exemption dealing with portable fire extinguishers in schools, previously deleted, is reinstated. There are also changes in the section of the fire code dealing with fire sprinklers required for businesses selling upholstered furniture. **Mr. Larson** explained that in the 2012 edition of the International Fire Code, sprinklers will now be required only in buildings larger than 5,000 square feet.

MOTION: **Rep. Chadderdon** made a motion to recommend approval of **Docket No. 18-0150-1101** to the full committee. **Motion carried by voice vote.**

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

Representative Jeff Thompson
Chairman

MaryLou Molitor
Secretary

**AMENDED #1 AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Monday, January 23, 2012**

| SUBJECT | DESCRIPTION | PRESENTER |
|--------------------------------|--|--|
| <u>RS20772</u> | Building Safety; Building Code Board | Steve Keys, Deputy Administrator Division of Bldg Safety |
| <u>RS20778</u> | Electrical Board, Presiding Officials | Steve Keys |
| <u>RS20820</u> | Building Safety Division, Board Member Compensation | Steve Keys |
| <u>RS20962</u> | Idaho Video Service Act; Amendments | Ed Lodge, CenturyLink |
| | Presentation: Idaho Fraud Awareness Coalition | Bill Deal, Director Department of Insurance |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick

Rep Bayer
Rep Palmer
Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt

Rep Smith (30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Monday, January 23, 2012

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** Reps. Palmer and Rusche

GUESTS: Steve Keys, Division of Building Safety; Max Greenlee, Risch Pisca; Anne Lorenz & Terry Carney, Idaho Fraud Awareness Coalition; Skip Smyser, Connolly & Smyser; Zach Hauge, Capitol West; Ed Lodge and Sarah Guhriman, CenturyLink

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

MOTION: **Rep. Bilbao** made a motion to approve the minutes of January 17. **Motion carried by voice vote.**

RS 20772: **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **RS 20772**. Mr. Keys testified that this legislation recognizes and accommodates the reorganization of the Division of Building Safety. He said the size of the Division has been reduced as a result of the downturn in construction activity, and old definitions and job descriptions have become obsolete. Many specific bureaus within the agency have been eliminated and the Division has moved to a regional management structure. Thus, references to "bureau chief" in the Code need to be eliminated, and provision needs to be made for regional managers.

MOTION: **Rep. Thompson** made a motion to introduce **RS 20772**. **Motion carried by voice vote.**

RS 20778: **Mr. Keys**, Deputy Administrator of the Division of Building Safety, presented **RS 20778**, saying it will codify provisions for the election of a vice chairman by the Electrical Board. Present law stipulates that the Board will elect a temporary acting chairman when the chairman is not able to attend a meeting. This new provision simplifies the process and allows the vice chairman to be better prepared to conduct a meeting.

MOTION: **Rep. Cronin** made a motion to introduce **RS 20778**. **Motion carried by voice vote.**

RS 20820: **Mr. Keys**, Deputy Administrator of the Division of Building Safety, presented **RS 20820**. This legislation is being brought forward at the request of members of the Building Code Board and the Public Works Contractor Licensing Board. It changes the basis of their remuneration for attendance at meetings from a \$50-per-day salary to a \$50-per-day honorarium. This change addresses an issue where PERSI participation has adversely affected individual retirement programs.

MOTION: **Rep. Henderson** made a motion to introduce **RS 20820**. **Motion carried by voice vote.**

RS 20962: **Ed Lodge**, representing CenturyLink Communications, presented **RS 20962**. Mr. Lodge gave a historical overview of evolving telecommunications regulation, beginning with the 1984 Cable Communications Act. He noted that Idaho's television providers are governed by federal rules under the 1984 act. Under this act, cable providers are required to pay franchise fees of 5% of gross revenues to cities. Because broadband providers who provide a similar service are not defined

as a cable service, there is the potential that they may not be subject to the same regulations. Mr. Lodge said without a change in federal law, or the creation of a public policy standard in Idaho law, this ambiguity may adversely affect Idaho communities and citizens. He said the legislation contained in RS 20962 is the result of a collaborative effort among stakeholders, and is intended to treat broadband providers and cable providers equally. Mr. Lodge said the legislation will provide a standard of certainty for CenturyLink. It is also supported by the Idaho Cable Association, although for different reasons.

Mr. Lodge explained that previous versions of this legislation were not successful because different parties held different interpretations and could not come to an agreement. This RS is the result of negotiation that took place over the interim. He stated it will create a level playing field for all involved.

Responding to a question from the committee, **Mr. Lodge** said last year's bill included advertising and home shopping revenues, but this was not widely supported. Therefore, he decided to not include that provision in the current RS. With regard to PEG channels, Mr. Lodge said if a city wants PEG channels, his company would provide PEG content. He said federal law allows for a PEG fee but does not mandate it. Similarly, this legislation neither prohibits nor mandates such a fee. Mr. Lodge stated that a broadband provider is not subject to the fee unless it provides video service as defined in this legislation.

MOTION:

Rep. Patrick made a motion to introduce **RS 20962**. **Motion carried by voice vote.** **Rep. Smith (30)** requested that she be recorded as voting **NAY**.

Bill Deal, Director of the Department of Insurance, appeared before the committee to present information on the Idaho Fraud Awareness Coalition. Mr. Deal introduced Tricia Carney, Public Information Officer for the Department and Chairman of the Coalition committee. He explained that the Coalition is a separate and distinct entity but is sponsored by the Department of Insurance. Their goal is to increase awareness about fraud in Idaho. Mr. Deal noted that the Coalition sponsors an essay contest each year to help with that goal. They also have a new website, www.fightfraudidaho.com, with information about their work.

Lonny Tutco, Consumer Specialist with the Attorney General's Consumer Protection Division, was recognized to provide additional information about the Fraud Awareness Coalition. Mr. Tutco testified that the Coalition obtained over \$8 million in restitution for Idaho citizens last year. He said swindlers employ a variety of tactics, including fake names and rented post office boxes, to stay ahead of law enforcement. He said many citizens are unaware of the varied ways their personal information can be stolen, but expanded knowledge helps them avoid being victimized. Mr. Tutco said the Coalition's consumer education efforts are funded by lawsuits and settlements, not by taxpayer funds.

Responding to committee questions, **Mr. Tutco** said the Coalition's funding comes from settlements and fines for all types of fraud. He said he would make the annual report available to committee members who are interested in the Coalition's total funding. Asked whether Coalition speakers are available in north Idaho, Mr. Tutco said they have made presentations as far north as Coeur d'Alene and Sandpoint, and they sponsored an elder summit in Worley. Mr. Tutco stated there are 13 employees in the Consumer Protection Division of the Attorney General's Office.

Michael Mulconery, Fraud Claim Specialist for the Department of Insurance and a Special Investigator for State Farm Insurance, described the Fraud Awareness Coalition as an information gathering and distribution system, and discussed the advantages of having the public and private sectors come together to form the Coalition. He encouraged legislators to remember the Coalition and its resources when they become aware of fraudulent activities. Mr. Mulconery said Idaho citizens

lose millions of dollars annually to fraud, due in large part to being naïve, apathetic, or unaware. The goal of the coalition is to change apathy into righteous indignation and to raise awareness among all of Idaho's citizens.

Answering questions from the committee, **Mr. Mulconery** said a very common type of fraud in Idaho is insurance fraud. Internet scams are also becoming more common, with many of them originating in Nigeria. He said senior citizens are often vulnerable because of their naivete, and he noted that the Coalition does make presentations at senior citizen centers.

Les Lake, Regional Forensic Manager for Eddie Bailey and a Special Investigator for the Attorney General's Office and the Medicaid Bureau, testified that Medicaid fraud in the state of Idaho is responsible for approximately 10% of Medicaid's annual budget. Citing a report from the Association of Certified Fraud Examiners, Mr. Lake said in general the fraud losses total 9.8% of government budgets. Mr. Lake said nine out of ten businesses will be victimized at some point, and it often takes one to two years before fraudulent activity is discovered. He stated about 90% of startup businesses fail, one-third of them because of fraud, and suggested businesses should budget 5% of their revenues to cover fraud.

Mr. Lake said the average loss to fraud is \$197,000 per event. The most common frauds are billing schemes, corruption in management, check tampering or skimming. He gave a profile of a typical employee who may be defrauding his employer: a dedicated, loyal, trusted staff person in the mid-40s to mid-60s age range. In the United States \$994 billion is lost to fraud each year, and Mr. Lake stressed the importance of employers developing a plan to deal with fraud.

Asked to give some warning signs that employers might notice as indicators of fraud, **Mr. Lake** said the single biggest indicator of possible fraud is a person living a lavish lifestyle who otherwise would not be expected to do so, based on his or her income. Other red flags to watch for are persons with drug or alcohol problem or those with a large debt load, or an employee who is taking longer than normal to produce documents or information when requested to do so. Mr. Lake said in general one out of three persons will steal, another third will do so if under some financial pressure, and the final third will not do so under any circumstances.

Mr. Lake was asked how he arrived at the 10% figure for Medicaid fraud. He responded that he helped set up the Medicaid Fraud Bureau in 1978, and the 10% figure has remained fairly constant since that time. It also represents a national figure. Medicaid fraud consists of billing provider fraud as well as fraud committed by people receiving Medicaid payments.

Bill Deal concluded the Coalition's presentation, stating that speakers are available by calling Tricia Carney at the Insurance Department for scheduling. He testified that the Idaho Fraud Awareness Coalition is also funded by annual membership fees, which are about \$25 per member. Mr. Deal pointed out that the Attorney General's Office has a Consumer Fraud Unit and the Finance Department has a fraud unit that deals with bank and financial institution fraud. He said the Department of Insurance, which has five fraud investigators, recovers an average of \$3 million to \$4 million per year on insurance fraud issues. If an individual has been defrauded, the funds are used for restitution to the individual. Otherwise, the restitution funds go into the General Fund.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
**HOUSE BUSINESS COMMITTEE
THOMPSON SUBCOMMITTEE**
Administrative Rules of the Bureau of Occupational Licenses
Upon Adjournment of the Full Committee
Room EW41
Monday, January 23, 2012

| DOCKET NO. | DESCRIPTION | PRESENTER |
|------------------------------|--|---|
| | <u>Rules of the Bureau of Occupational Licenses:</u> | Roger Hales, Bureau of Occup. Licenses |
| 24-0101-1101 | Architectural Examiners | |
| 24-0401-1101 | Idaho Board of Cosmetology | |
| 24-1801-1101 | Real Estate Appraiser Board | |
| 24-2201-1101 | State Liquefied Petroleum Gas Board | |
| 24-2501-1101 | Idaho Driving Businesses Licensure Board | |

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

COMMITTEE MEMBERS

Chairman Thompson
Rep.Chadderdon
Rep.Barbieri
Rep.Smith(30)

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE
THOMPSON SUBCOMMITTEE
Rules Review

DATE: Monday, January 23, 2012
TIME: Upon Adjournment of the Business Committee
PLACE: Room EW41
MEMBERS: Chairman Thompson, Representatives Chadderdon, Smith(30), Barbieri
**ABSENT/
EXCUSED:** None.
GUESTS: Jesse Taylor, Westerberg & Associates; Matthew Kaiserman, Gallatin Public Affairs; Jack Lyman, Idaho Housing Alliance; Jack Van Wyk; Roger Hales, Bureau of Occupational Licenses

Chairman Thompson called the meeting to order at 2:50 p.m.

DOCKET NO. 24-0101-1101: **Roger Hales**, an attorney representing the Bureau of Occupational Licenses, presented **Docket No. 24-0101-1101**, from the Board of Architectural Examiners. Mr. Hales testified that many of the 1,656 licensed architects in Idaho hold licenses in multiple states. He said the Board is trying to make licensing requirements consistent with other states. Under the new rules continuing education requirements will be based on a calendar year and the required hours will increase from eight to twelve, effective January 1, 2014. Also, the requirements for reinstatement will be clarified and the number of hours of continuing education that can be carried over to future years is reduced from eight hours to six hours. The rule incorporates by reference the 2011 Handbook for Interns and Architects. The Board is also revising the classification of courses to be consistent with most other states and the Model Law. Finally, the Board is eliminating an exemption for architects who hold licenses in other states. Previously, a person licensed in another state would need to meet only that state's continuing education requirements in order to maintain an Idaho license. Now, if a person holds an Idaho license, he or she will need to meet Idaho's continuing education requirements. Mr. Hales said there has been no objection to these proposed changes.

In answer to committee questions, **Mr. Hales** said there can be substantial differences in requirements from state to state. The national trend in most states is to require 12 CE credits per year, on a calendar year basis. Asked whether increasing the CE requirements simply creates more jobs for continuing education providers, Mr. Hales said the primary goal of continuing education is to protect the public safety by allowing licensees to keep up with current trends and new laws. Mr. Hales said out-of-state persons holding Idaho licenses would not have to take separate Idaho CE courses to comply with this new rule.

MOTION: **Rep. Chadderdon** made a motion to recommend approval of **Docket No. 24-0101-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 24-0401-1101: **Roger Hales**, an attorney representing the Bureau of Occupational Licenses, presented **Docket No. 24-0401-1101**, from the Idaho Board of Cosmetology. This rule will reduce the fees for cosmetology licensing. Mr. Hales explained that all Boards within the Bureau are required to be self-sufficient, although at certain times a Board may be in a deficit position. In that case, a rule change is proposed that will make that Board ultimately self-sufficient. All fees collected from all Boards are accounted for separately but are deposited into the Bureau's general fund;

therefore, surpluses from one agency subsidize other agencies that may be running a deficit. The Cosmetology Board currently has a surplus, and Mr. Hales said the Bureau tried to balance the fees so the Boards do not accumulate more than 1.5 years of funds. Mr. Hales said in the case of the Board of Cosmetology, under which a wide variety of professions is licensed, this rule change will decrease the Board's budget by \$124,000.

Responding to committee questions, **Mr. Hales** said the Bureau of Occupational Licenses provides investigative support, administrative staff, and also inspectors for its various Boards. The administrative support also includes financial and legal expertise when needed. Mr. Hales said the Cosmetology Board sets sanitation standards for its licensed establishments throughout the state.

MOTION: **Rep. Chadderdon** made a motion to recommend approval of **Docket No. 24-0401-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 24-1801-1101: **Roger Hales**, an attorney representing the Bureau of Occupational Licenses, presented **Docket No. 24-1801-1101**, from the Real Estate Appraiser Board. Mr. Hales introduced **Jack Van Wyck**, a Certified Residential Appraiser, and **Brad Janus**, a Certified General Appraiser and Chairman of the Real Estate Appraiser Board.

Mr. Hales testified that H 82, legislation from 2011, allowed the Board to set and require a fee of up to \$100 for the purpose of approving programs offered by continuing education providers. Mr. Hales said most surrounding states already charge a fee for this approval process, and Idaho is obligated to review and approve these programs, a process that can be a significant task. He said the new fee will generate approximately \$15,000. The Uniform Standards of Professional Appraisal Practice are being updated to the 2013 edition, the definition of classroom hours is being revised, and online work will now be allowed. Mr. Hales noted that real estate appraisers have federal oversight and must be in compliance with federal laws.

Mr. Hales gave further details of this rule change, explaining that some of the increased fees are basically pass-through amounts to deal with the increased fees required by the federal government. Continuing education requirements will move to a two-year cycle; the number of hours will increase from 15 hours annually to 30 hours biannually. Also, certain changes relating to temporary licensing are being made.

Asked whether the Board is currently charging for continuing education provider applications, **Mr. Hales** said it is not. This is a new fee necessitated by new federal requirements. He said this Board currently has a negative balance, although it is working its way toward self-sufficiency. Mr. Hales pointed out that much of the Board's activity is reviewing CE provider applications, and charging CE providers a fee is somewhat akin to a user fee.

MOTION: **Rep. Barbieri** made a motion to recommend approval of **Docket No. 24-1801-1101** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 24-2201-1101: **Roger Hales**, an attorney representing the Bureau of Occupational Licenses, presented **Docket No. 24-2201-1101**, from the Liquefied Petroleum Gas Board. Mr. Hales explained this Board governs liquefied petroleum gas dealers and storage facilities in Idaho. The standard used to judge these bulk facilities and practices is the Liquefied Petroleum Gas Code. This rule will update that code to the 2011 edition.

MOTION: **Rep. Smith** made a motion to recommend approval of **Docket No. 24-2201-1101** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.
24-2501-1101:**

Roger Hales, an attorney representing the Bureau of Occupational Licenses, presented **Docket No. 24-2501-1101**, from the Idaho Driving Businesses Licensure Board. This board was new as of 2009, and Mr. Hales stated it is always difficult to determine an initial fee amount that will be sufficient to fund the Board's operations. At this point the Board's expenses are exceeding its revenue, so a fee increase is necessary. Mr. Hales testified that the President of the Association of Driving Businesses was present during discussions of the fees, and the Bureau has received no objection from licensees. The new annual fee for driver training businesses, which is increasing from \$500 to \$600, will raise approximately \$9,700 in additional revenue. This Board is currently \$19,000 in the red, a reduction from the \$23,000 deficit at the end of the last fiscal year. However, the current balance may not be representative, since a large number of businesses have already renewed their licenses.

In answer to committee questions, **Mr. Hales** said this Board was established in 2009; prior to that time, these driving businesses were under the Department of Education. He stated the Board's revenue as of December 31, 2011, was \$21,000, and their expenditures were \$17,000. They do have a positive revenue stream, but they started out \$23,000 in the red. Mr. Hales said the Board does realize it needs to charge its members more in order to move to a positive financial position.

Asked whether these rules were developed using negotiated rulemaking, **Mr. Hales** said the Bureau does not involve itself in negotiated rulemaking because all meetings are open and everyone is invited to participate. Negotiated rulemaking is an expensive process, and since the Bureau's website contains all agendas, minutes and proposed rules, it does provide a high level of transparency. He said there has been no opposition to these changes, and noted that the Association's president was present during the discussions.

Mr. Hales reiterated that the Bureau oversees 28 different occupational boards, and all revenue is deposited into one fund, although each Board's financing is accounted for separately. This allows the Bureau to subsidize boards that may from time to time find themselves in a deficit position. He reminded the committee that this Board was newly established in 2009, and that it had to develop rules, create application forms, and incur other startup costs. These initial startup costs are difficult to estimate when setting the initial license fees. Mr. Hales said the new fees will generate an additional \$9,700, which could bring the Board into self-sufficiency in two years.

MOTION:

Rep. Smith made a motion to recommend that **Docket No. 24-2501-1101** be approved by the full committee.

Rep. Barbieri expressed his opinion that the higher fees will make it more difficult and more expensive for new businesses to start up, which works against open competition in the industry. He said the Bureau of Occupational Licenses should have some way of holding the Board accountable for running at a deficit, and he said he would not support the motion.

**WITHDRAWAL
OF MOTION:**

After committee discussion, Rep. Smith withdrew her original motion.

MOTION:

Rep. Smith made a motion to send **Docket No. 24-2501-1101** to the full committee without recommendation, for its further consideration. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:43 p.m.

Representative Jeff Thompson
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Wednesday, January 25, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|--------------------------------|--|---------------------------------------|
| <u>RS20773</u> | Real Estate Appraisers, Amendments | Roger Hales, Bureau of Occup Licenses |
| <u>RS20776</u> | Insurance Administrators, Financial Statements | Bill Deal, Director Dept of Insurance |
| <u>RS20812</u> | Insurance, Director's Orders & Notices | Bill Deal |
| <u>RS20813</u> | Insurance, Certified Report Requirement | Bill Deal |
| <u>RS20857</u> | Insurance, Immunizations; Standards/Rates | 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 Black | Rep Bayer | Rep Smith(30) |
| Vice Chairman Henderson | Rep Palmer | Rep Rusche |
| Rep Collins | Rep Thompson | Rep Cronin |
| Rep Bilbao | Rep Barbieri | |
| Rep Chadderdon | Rep DeMordaunt | |
| Rep Crane | Rep Guthrie | |
| Rep Patrick | Rep Batt | |

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, January 25, 2012

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** None.

GUESTS:

Chairman Black called the meeting to order at 1:35 p.m.

MOTION: **Rep. Bilbao** made a motion to approve the minutes of January 23. **Motion carried by voice vote.**

MOTION: **Rep. Chadderdon** made a motion to approve the minutes of the Thompson Subcommittee for January 19, 2012. **Motion carried by voice vote.**

MOTION: **Rep. Palmer** made a motion to approve the minutes of the Batt Subcommittee for January 19, 2012. **Motion carried by voice vote.**

RS 20773: **Roger Hales**, an attorney representing the Idaho Real Estate Appraisers Board, Bureau of Occupational Licenses, presented **RS 20773**. Mr. Hales said this legislation amends the grounds upon which the Board can base an action against a licensee who violates a disciplinary order. Currently the Board does not have authority to take any further action in these cases. The legislation also deletes language referring to reciprocity. Mr. Hales explained that the Board will now look at individual applications for licensing to see whether they meet Idaho's requirements but will not require a reciprocity agreement.

Responding to committee questions, **Mr. Hales** said if a licensee violates the Board's rules, he or she can be disciplined following an investigation and hearing. The Board may fine the licensee or mandate additional education, but if the licensee does not comply with the disciplinary action, the Board has no way of enforcing the order. This will add language to authorize them to take further action. This in no way compromises a person's right to appeal, however. Mr. Hales said under the Administrative Procedures Act a licensee can ask the Board to reconsider any action taken, and after that they would still have recourse to a judge for further appeal.

Clarifying the reciprocity portion of the legislation, **Mr. Hales** said out-of-state licensees were not able to be licensed in Idaho if this state did not have a reciprocity agreement with their home state. Under the new provision, Idaho will be able to license applicants based on their qualifications rather than on the existence of a reciprocity agreement. This will actually increase the ability of out-of-state licensees to come into Idaho and be licensed.

MOTION: **Rep. Cronin** made a motion to introduce **RS 20773**. **Motion carried by voice vote.**

RS 20776: **Bill Deal**, Director of the Department of Insurance, presented **RS 20776**. Mr. Deal explained that third party administrators (TPAs) are entities who collect premiums and pay claims for self-funded insurance plans. Current law states that in order for a TPA to list Idaho as its home state, it has to provide two audited financial statements on its initial application, and one audited statement with renewal applications.

This has proven to be a hardship on smaller TPAs because the cost of an audited financial statement can be thousands of dollars. This legislation creates a hardship clause for small TPAs so they can submit unaudited financial statements and post a bond prescribed by the amount of cash they are required to have. Mr. Deal said there is no opposition to this proposal.

Responding to committee questions, **Mr. Deal** said the cost of a \$20,000 surety bond would be less than \$500, whereas the cost of an audit could be several thousand dollars. He said this new provision applies only to small TPAs dealing with private companies but would not apply to school districts who want to be self-insured. Asked whether a TPA's inability to pay for an audited financial statement might be an indication of their not being sound enough to take care of their insured members, Mr. Deal said the financial stability of the plan itself is regulated under a different section of Code; this bill has to do only with the administrator portion.

MOTION: **Rep. Thompson** made a motion to introduce **RS 20776**. **Motion carried by voice vote.**

RS 20812: **Bill Deal**, Director of the Department of Insurance, presented **RS 20812**. He explained that current code requires the Director to send orders and notices by mail or by facsimile transmission. This legislation will allow electronic service of notices, if the parties agree to receive such notices by electronic means.

In response to a committee question, **Mr. Deal** said an example of an "order" that might be issued by the Department is one dealing with the suspension of an insurance agent.

MOTION: **Rep. Collins** made a motion to introduce **RS 20812**. **Motion carried by voice vote.**

RS 20813: **Bill Deal**, Director of the Department of Insurance, presented **RS 20813**. He explained that the Department of Insurance collects various licensing and other fees from insurance companies and agents. Funds collected are deposited and updated daily with the Treasurer's Office through an electronic accounting system. Currently there is a requirement that the Department file a certified report with the State Treasurer on funds collected and submitted. During the Department's audit last year, the auditors suggested this requirement could be eliminated since the funds are tracked electronically. Mr. Deal said the Treasurer's Office has agreed that this is a good change because it will eliminate filing a report that is no longer needed.

MOTION: **Rep. Cronin** made a motion to introduce **RS 20813**. **Motion carried by voice vote.**

RS 20857: **Bill Deal**, Director of the Department of Insurance, presented **RS 20857**. He explained that the Department of Insurance has regulatory authority to administer and review health insurance rates. This legislation will incorporate language containing definitions and standards that are already in the property/casualty section of Idaho Code, namely, to specify that "rates shall not be excessive, inadequate or unfairly discriminatory." The legislation also grants rulemaking authority to the Department. Mr. Deal said insurance companies have granted the Department authority to make certain information available that was previously thought to be proprietary, such as the explanation given for premium rates rising in excess of 10%.

Asked how the Department determines what is "excessive" in terms of premium increases, **Mr. Deal** said companies file a rate book with the Department. Then, as they move to increased rates, the rate book information can be used to determine whether the increases are adequate or inadequate, based on profit/loss statements; another factor they consider is whether they are taking enough money

to pay claims. Mr. Deal said the Department does follow up on complaints from consumers about premium increases. Mr. Deal said the Department does not establish an acceptable operating profit for insurance carriers, relying instead on open competition. If rates do go up more than 10%, the Department is obligated to analyze them to see if the increase is excessive.

In response to committee questions, **Mr. Deal** said the disclosure language on page 6 will bring Idaho into conformity with the Patient Protection and Affordable Care Act. He said the Department needs to maintain its regulatory authority to administer its plans, or the regulation will be turned over to Health & Human Services. He said he does not know at this point whether the Department will retain any authority to regulate rates if Idaho chooses to move to a federal exchange. Some of the information about what a federal exchange will look like and how it will be administered is not known at this time.

Asked whether the Department's regulation of premium increases makes it similar to the Public Utilities Commission, **Mr. Deal** said the Department does not operate like the PUC. He said the Department has been regulating according to its rules and statutes for many years. What is different is that the Affordable Care Act stipulates that any premium increase greater than 10% must be scrutinized to determine whether it is excessive. The analysis may show that the premium increase is necessary in order for the company to remain solvent. Mr. Deal said the Department has an obligation to make sure companies have adequate reserves, adequate rates, good market conduct, and so forth.

Asked whether the Department should have more clearly defined "unreasonably high or inadequate" in the legislation, **Mr. Deal** said the Department implements legislation by administrative rules subject to the approval of the Legislature. He said if any clarifications need to be put in place, they can be effected through the rules process.

MOTION: **Rep. Rusche** made a motion to introduce **RS 20857**.

Rep. Barbieri asked why the Department of Insurance continues to enact rules to comply with the Affordable Care Act (ACA) when it is being challenged in a case currently before the Supreme Court. He also said an attempt to regulate rates is somewhat superfluous since rates will be federally controlled.

Rep. Rusche pointed out that the Appellate Court review in Florida found that most of the ACA, including the ability to set rates, is likely constitutional. He noted that the Legislature is enacting provisions of the Students Come First plan even though it may be overturned later through the initiative process.

VOTE ON MOTION: Chairman Black called for a vote on the motion to introduce **RS 20857**. **Motion carried by voice vote. Reps. Barbieri, Palmer and Bayer** requested that they be recorded as voting **NAY**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:17 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
 1:30 P.M.
 Room EW41
 Tuesday, January 31, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|--|---|---|
| | <u>Report from Thompson Subcommittee</u> | Rep. Thompson |
| | Rules of the Board of Professional Engineers and Professional Land Surveyors: | |
| Docket Nos: | 10-0101-1101 , 10-0102-1101 , 10-0104-1101 | |
| | Rules of the Department of Finance: | |
| Docket No: | 12-0110-1101 | |
| | Rules of the Bureau of Occupational Licenses: | |
| Docket Nos: | 24-0101-1101 , 24-0401-1101 , 24-1801-1101 , 24-2201-1101 | |
| | <u>Report from Batt Subcommittee</u> | Rep. Batt |
| | Rules of the Division of Building Safety: | |
| Docket Nos: | 07-0103-1101 , 07-0104-1101 , 07-0104-1102 , 07-0105-1101 , 07-0106-1101 , 07-0107-1101 , 07-0205-1101 , 07-0205-1102 , 07-0205-1103 , 07-0207-1101 , 07-0402-1101 , 07-0501-1101 , 07-0701-1101 , 07-0701-1102 | |
| | <u>For Full Committee Discussion:</u> | |
| Docket No. 24-2501-1101 | Rules Governing the Idaho Driving Businesses Licensure Board | Roger Hales, Bureau of Occup. Licensing |
| RS21007 | National Electric Code/Rejection of Rule | Rep. Black |
| RS20808 | Recreational Park Trailers; Exemptions | Steve Keys |

COMMITTEE MEMBERS

| | |
|-------------------------|----------------|
| Chairman Black | Rep Bayer |
| Vice Chairman Henderson | Rep Palmer |
| Rep Collins | Rep Thompson |
| Rep Bilbao | Rep Barbieri |
| Rep Chadderdon | Rep DeMordaunt |
| Rep Crane | Rep Guthrie |
| Rep Patrick | Rep Batt |

COMMITTEE SECRETARY

MaryLou Molitor
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 Phone: (208) 332-1139
 email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Tuesday, January 31, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin
- ABSENT/
EXCUSED:** Rep. Collins
- GUESTS:** Steve Keys and John Nielsen, Division of Building Safety; Jeff Fitzloff, Underwriters Laboratories; Kent Wells, International Association of Electrical Inspectors; Joe Andre, National Electrical Manufacturers Association; Bob Scott, State Electrical Board; Tom K. Brown, B&B Electric; Roger Hales, Driving Businesses Board, Bureau of Occupational Licenses; Steve Martinez, Tradewinds Building; Kurt Stembridge, Glaxo Smith Kline Pharmaceuticals; Benjamin Davenport, Risch Pisca
- Chairman Black** called the meeting to order at 1:35 p.m.
- MOTION:** **Rep Bilbao** made a motion to approve the minutes of January 25. **Motion carried by voice vote.**
- MOTION:** **Rep. Smith (30)** made a motion to approve the minutes of the Thompson Subcommittee meeting of January 23. **Motion carried by voice vote.**
- Rep. Thompson** reported on his subcommittee's consideration of Administrative Rules. The subcommittee recommended approval of **Docket Nos. 10-0101-1101, 10-0102-1101, and 10-0104-1101** from the Board of Professional Engineers and Professional Land Surveyors; **Docket No. 12-0110-1101** from the Department of Finance; **Docket Nos. 18-0105-1101, 18-0146-1101, and 18-0150-1101** from the Department of Insurance, and **Docket Nos. 24-0101-1101, 24-0401-1101, 24-1801-1101, and 24-2201-1101** from the Bureau of Occupational Licenses.
- With regard to **Docket No. 24-2501-1101**, Rules Governing the Idaho Driving Businesses Licensure Board, **Rep. Thompson** reported that the subcommittee referred this docket to the full committee for its consideration.
- MOTION:** **Rep. Patrick** made a motion to accept the recommendation of the Thompson Subcommittee. **Motion carried by voice vote.**
- DOCKET NO. 24-2501-1101** **Chairman Black** recognized **Roger Hales**, an attorney representing the Idaho Driving Businesses Licensure Board of the Bureau of Occupational Licenses, to present **Docket No. 24-2501-1101**. Mr. Hales testified that, taken as a whole, the Bureau of Occupational Licenses is requesting \$50,000 in overall fee decreases this year.
- The Driving Businesses Licensure Board was established in 2009. **Mr. Hales** stated it always takes some amount of time for a new Board to recover its startup expenditures and stabilize its financial status. This Board needs to increase its fees in order to become self-sufficient. Mr. Hales said their financing is trending in the right direction, and they should be able to get rid of their deficit in the next few years. The Board licenses 215 businesses or instructors. In 2010 these licenses generated \$42,000, and expenses were \$56,000. The figures for 2011 were \$56,000 in revenues and \$45,000 in expenses. In the current fiscal year, after six months, the Board's income has been \$21,000 and their expenses have been \$17,000.

In answer to committee questions, **Mr. Hales** said the Board's expenses derive from startup costs associated with promulgating rules, setting up the Board, producing forms and putting them on the website, and other initial expenses. In addition, the Board inspects the classroom setting of private driving businesses. Mr. Hales said it is these startup costs that have moved the Board's finances into the red. He reminded the committee that self-governing agencies receive no General Fund money, and said it is typical for new boards to take some time to mature and stabilize their fees and expenditures.

Asked how a board covers its expenditures when it is in a deficit position, **Mr. Hales** stated that all Occupational License boards are placed under the Bureau's umbrella and all funds collected are deposited into a single account, although they are accounted for separately. Since some boards are in the black, they typically assist other boards when financial assistance is needed.

Mr. Hales clarified that Board members have been involved in the discussion about a fee increase and had no objection to it. He testified that the Bureau attempts to have each of its Boards maintain a fund balance of approximately one year's operating expenses; if their funds build up an excess over that amount, a fee decrease is generally requested to stabilize their fund balances.

Responding to questions about the Driving Businesses Board's income and expenditures, **Mr. Hales** said it is difficult to state exactly what the Board's expenses will be, since their expenses can ebb and flow. He testified this is typical of self-governing boards; it is also typical that a new board will begin operation in the red, since they have no immediate funding source. The Board has been in existence for only a couple of years, spending \$56,000 in fiscal year 2010, \$45,000 in fiscal year 2011, and \$17,000 for the first six months of this fiscal year. Based on the \$17,000 figure, Mr. Hales said the Board could spend approximately \$34,000 this year. He noted they have reduced their expenses each year by about \$10,000, and said if revenues and expenses continue at the current rate, the Board could be in the black by approximately \$2,000 by the end of this year.

Mr. Hales further explained that the Board is obligated to follow up on complaints they may receive, and this follow-up often involves an investigation and/or disciplinary action, both of which can be expensive. Responding to the question of how the Board got into a deficit position, Mr. Hales explained again that this Board was formed in response to an act passed by the Legislature to regulate private independent driving businesses. There is no startup funding provided to the Board and no independent funding for ongoing operations, so they rely on fees charged to licensees. Mr. Hales testified that when a new board is created, it is instantly in the red. It takes at least one year for a new board to promulgate rules before they can charge license fees, and during that time there is no revenue flowing into the board. Since the Driving Businesses Board is required to be self-sufficient, the only source of income to make up their deficit is higher fees for licensees.

In response to further committee questions, **Mr. Hales** said licensees are required to serve an apprenticeship before they receive full licensure. He said if this Board is disbanded by the Legislature, the other boards within the Bureau of Occupational Licenses would have to absorb the current debt. Mr. Hales said the Board is currently \$19,000 in the red. The proposed fee increases will generate approximately \$9,750 in additional income next year, leaving \$9,250 of debt. If the Board's income remains at the same level, that remaining debt would be paid off in a couple of years.

MOTION:

Rep. Crane made a motion to reject **Docket No. 24-2501-1101**. In support of his motion, Rep. Crane said he had opposed the formation of this Board in 2009 because he did not think it would be self-sustaining. Rep. Crane said he is opposed to the fee increases proposed in this rule.

Asked to give a brief history of the Driving Businesses Board, **Mr. Hales** explained that private driving instructors were previously supervised under the Department of Education, and this function was paid for with the Department's general funds. It was the request of the private driving businesses to move out from the Department of Education and to form a separate self-governing board. This was done by legislative action in 2009.

Rep. Rusche stated his opposition to the motion, noting that licensees are trying to be responsible for their own expenses. **Rep. Bayer** expressed appreciation for the self-sustaining aspect of the Driving Businesses Board, but said he is uncomfortable with their current debt situation and the request for higher fees. He will not be supportive of this rule docket. **Rep. Barbieri** stated that higher fees may preclude new applicants from entering this business, and his main concern is the anti-competitive nature of the fee increases.

Mr. Hales further testified that the total number of licenses in 2010 was 210, in 2011 the number was 229, and so far this year the number is 215. This represents a 9% increase from 2010 to 2011, and a 6% decrease for the first half of fiscal year 2012. There are, however, still six months to allow for license renewals this year. Mr. Hales said this rule is being considered today in the Senate. He also clarified that individual boards within the Bureau do not vote on whether or not their excess funds are expended to cover the shortfall of other boards.

**VOTE ON
MOTION:**

Chairman Black called for a vote on the motion to reject **Docket No. 24-2501-1101**. By a show of hands, **motion carried**.

Rep. Batt reported on her subcommittee's consideration of Administrative Rules from the Division of Building Safety. The subcommittee recommended approval of Docket Nos. **07-0103-1101, 07-0104-1101, 07-0104-1102, 07-0105-1101, 07-0205-1102, 07-0205-1103, 07-0207-1101, 07-0402-1101, 07-0501-1101, 07-0701-1101**, and **07-0701-1102**.

With regard to **Docket No. 07-0106-1101**, the subcommittee recommended rejection of this docket and adoption of a concurrent resolution, to be sent directly to the Second Reading Calendar, stating that the rule is being rejected.

With regard to **Docket Nos. 07-0107-1101** and **07-0205-1101**, the subcommittee recommends rejection of these two dockets.

MOTION:

Rep. Crane made a motion to accept the recommendations of the Batt Subcommittee.

In response to a request for further explanation of the reasons behind rejection of **Docket No. 07-0106-1101**, **Rep. Batt** stated that when the 2008 National Electrical Code was adopted there was an exception that would allow ARC fault circuits to be installed in bedrooms only. The 2011 Code does not contain that same exception, and the ARC fault requirement would apply to an entire house. Rep. Batt said these circuits cost between \$35 and \$37 each, and the requirement would increase the cost of a home by about \$500 for every 1,200 square feet. In remodeling projects, it may be necessary to replace an entire electrical panel, at a potential cost of thousands of dollars. She noted the subcommittee had received testimony on both sides of the issue, and heard conflicting testimony about possible safety issues.

**VOTE ON
MOTION:**

Chairman Black called for a vote on the motion to accept the recommendations of the Batt Subcommittee on Administrative Rules. **Motion carried by voice vote**.

RS 21007:

Rep. Black presented **RS 21007**, a concurrent resolution stating that Docket No. 07-0106-1101 is being rejected. He noted that a number of people had signed up to testify on this rule but said they had already testified at the subcommittee meeting dealing with this rule.

MOTION: **Rep. Crane** made a motion to introduce **RS 21007** and send it directly to the Second Reading Calendar. **Motion carried by voice vote. Reps. Rusche and Smith** requested that they be recorded as voting **NAY**.

RS 20808: **Steve Keys**, Deputy Administrator of the Division of Building Safety (DBS), presented **RS 20808**, dealing with requirements for modular buildings. This legislation institutes a statewide installation permitting and inspection requirement for modular buildings. Presently, only modular buildings being installed in jurisdictions that enforce building codes are subject to installation inspections. This legislation will require DBS to perform installation inspections in those areas of the state not covered by local programs. Permit fees for inspections would be set by administrative rule. Mr. Keys said mobile job site facilities would qualify for an exemption from the installation permitting and inspection requirements. He noted that these provisions are brought forward by the modular board and manufacturers of modular buildings. The legislation also clarifies that recreational park trailers do not fall within the definition of a modular building. Without this clarification, these homes as currently constructed would not be legal for use in Idaho.

MOTION: **Rep Rusche** made a motion to introduce **RS 20808**. **Motion carried by voice vote.**

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Wednesday, February 01, 2012

| DESCRIPTION | PRESENTER |
|--|---|
| Presentation from the Idaho Nonprofit Center: Economic Impact of the Nonprofit Sector in Idaho | Lynn Hoffmann, Ex Dir Id Nonprofit Center |
| Report from Thompson Subcommittee Rules of the Department of Insurance: | |
| Docket Nos: 18-0105-1101 , 18-0146-1101 , 18-0150-1101 | |
| RS20923 Payday and Title Loans | Rep. Smith (30) |
| RS21052 Insurance, Portable Electronics | Roy Eiguren, Asurion Insurance |
| RS20836 Uniform Securities Act | Marilyn Chastain, Department of Finance |
| RS20818 Public Works Contractors Licenses | Steve Keys, Division of Building Safety |
| RS20821 Uniform Plumbing Code; Enforcement | Steve Keys |
| RS20825 Definition of HVAC Contractors | Steve Keys |
| RS20826C1 Mobile/Manufactured Homes; Installation Tags | Steve Keys |
| RS20894C1 Elevator Safety Codes; Revisions | Rep. Guthrie |
| H 374 Engineers & Surveyors; Licensing | Dave Curtis, Board of Engrs/Land Surveyors |
| H 375 Plats/Vacations, Interior Monuments | Dave Curtis |

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

COMMITTEE MEMBERS

| | | |
|-------------------------|----------------|---------------|
| Chairman Black | Rep Bayer | Rep Smith(30) |
| Vice Chairman Henderson | Rep Palmer | Rep Rusche |
| Rep Collins | Rep Thompson | Rep Cronin |
| Rep Bilbao | Rep Barbieri | |
| Rep Chadderdon | Rep DeMordaunt | |
| Rep Crane | Rep Guthrie | |
| Rep Patrick | Rep Batt | |

COMMITTEE SECRETARY

MaryLou Molitor
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email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, February 01, 2012
TIME: 1:30 P.M.
PLACE: Room EW41
MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin
**ABSENT/
EXCUSED:** None
GUESTS: Steve Keys and John Nielsen, Division of Building Safety; Mike Brassey, Idaho Financial Services Association; Dave Curtis, Board of Professional Engineers and Professional Land Surveyors; Tom Donovan and Mark Larson, Department of Insurance; Colby Cameron, Asurion Insurance; Dawn Justice, Idaho Bankers Association; Skip Smyser, Connolly & Smyser; Marilyn Chastain, Department of Finance; Landis Rossi, Catholic Charities of Idaho; Ben Davenport and Max Greenlee, Risch Pisca; Ed Hawley, Department of Administration, Administrative Rules Office

Chairman Black called the meeting to order at 1:33 p.m.

Lynn Hoffmann, Executive Director of the Idaho Nonprofit Center, appeared before the committee to present information on the impact of nonprofits in Idaho. Ms. Hoffman explained that the Nonprofit Center is a statewide organization dedicated to helping nonprofit organizations be more successful in realizing their missions. She said the Center commissioned Steve Peterson, an economist at the University of Idaho, to produce a report on the economic impact of the nonprofit sector.

Steve Peterson, an economist from the University of Idaho, presented a brief summary of his findings on Idaho's nonprofit sector. One factor which makes assessment somewhat difficult is that nonprofits span all other industries and exist within all of them. Thus, their economic impact can be measured only by pulling them out and measuring them separately. A second factor that must be considered is the range of contributions to nonprofits, which include tangible assets, in-kind contributions, and contributions of time by volunteers.

Mr. Peterson testified that total employment in the sector is almost 45,000 jobs. If this figure is compared to county employment, it would rank as the fourth largest county in Idaho, behind only Ada, Canyon and Kootenai. Compared to industries, it would be the sixth largest industry, larger than the scientific and technical sector, the professional sector, and even the finance and insurance sector. Nonprofits contribute 8.9% of the total private jobs in Idaho.

Mr. Peterson stated the total spending of the nonprofit sector is \$3.3 billion; of that, just under half is new money coming into the state. The impact of volunteer contributions is likewise considerable. About 400,000 people volunteer time to various organizations; this contributed time totals about 60.2 million labor hours each year, the equivalent of nearly 28,000 jobs. Mr. Peterson said the value of this volunteer time is about \$1.2 billion.

Measured another way, nonprofits contribute to the economy by spending money on goods and services which total \$2.4 billion in sales. **Mr. Peterson** said if all nonprofit organizations were to leave the state, it is estimated that 27,000 jobs would be lost. The contribution of nonprofits to the state's gross domestic product is about 5%.

Responding to committee questions, **Ms. Hoffmann** said even with the entire health care sector taken out, the nonprofit sector still accounts for 14,000 employees in Idaho. After health care, the second largest category is private education, with 9% of the total. The third largest segment is categorized as social services. Asked what the major source of funding is for nonprofit entities, Ms. Hoffmann said nonprofit organizations receive money from foundation grants as well as state and federal grants, from individual donations, from Medicaid and Medicare, and from their own operating receipts. She said 75% of contributed dollars come from individuals.

Chairman Black thanked Ms. Hoffman and Mr. Peterson for their presentation on the economic impact of the nonprofit sector in Idaho.

Chairman Black explained that the Department of Insurance representatives were not present at yesterday's meeting when the Thompson Subcommittee reported its recommendations for approval of the Department's rule dockets.

MOTION: **Rep. Thompson** made a motion to approve **Docket Nos. 18-0105-1101, 18-0146-1101, and 18-0150-1101. Motion carried by voice vote.**

H 374: **Dave Curtis**, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, presented **H 374**, explaining the three objectives of the bill. First, it restricts assignment for initial licensure or certification exams to residents of Idaho or students at Idaho universities, with exceptions for certain military personnel. Mr. Curtis said the Board believes residents of other states and countries have tried to register for Idaho examinations because they do not qualify for assignment to exams in their own states or countries of residence. He said they may be seeking certification or licensure to gain prestige or to use the license as leverage to gain licensure in their location. Second, the legislation gives the Board authority to postpone action on an application if the applicant has unresolved disciplinary charges in another jurisdiction. Third, the bill modifies the application process to allow applications to be made digitally, by removing the requirement that an application be made under oath. Mr. Curtis said the legislation is supported by the Idaho Society of Professional Engineers, the Idaho Society of Professional Land Surveyors, and the American Council of Engineering Companies-Idaho.

Responding to questions from the committee, **Mr. Curtis** said an out-of-state engineer who wins a contract within Idaho would fall under the "license by comity" provisions. Under these reciprocity provisions, the engineer would have to meet the licensing requirements in effect in Idaho at the time he or she was licensed elsewhere. If those requirements are met, and barring any pending disciplinary action in another jurisdiction, the person is entitled to an Idaho license.

Mr. Curtis was asked about the definition of a "resident" for purposes of this legislation. He conceded that there are multiple definitions in Code and said the intent of the Board is to promulgate rules to define residency. He said they are considering using voter registration, utility bills, or a job offer to work in the state. Asked why Idaho should care about out-of-state people testing in Idaho, Mr. Curtis said the Board thinks it could be participating in a sham when applicants want to take Idaho's test but say they have no intention of practicing in Idaho. He said licensure is not to be used solely for prestige.

MOTION: **Rep. Thompson** made a motion to send **H 374** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Patrick** will sponsor the bill on the floor.

H 375: **Dave Curtis**, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, presented **H 375**. He explained that under current law a subdivision can be platted with only exterior boundary monuments placed; if this takes place, a bond or a cash deposit to the city or county is required to assure that the interior monuments will be set by a time certain. If the original surveyor is not able to set the interior monuments later, this legislation will allow a substitute surveyor employed by the same business entity to set the monuments. The substitute surveyor would be required to file a Record of Survey to show which monuments were set by which professional land surveyor. Mr. Curtis testified that H 375 is supported by the Idaho Society of Professional Engineers, the Idaho Society of Professional Land Surveyors, and the American Council of Engineering Companies-Idaho.

Asked how much time can elapse before setting the interior monuments, **Mr. Curtis** said typically no more than a year, but that time frame is negotiated between the governing body and the surveyor.

MOTION: **Rep. Patrick** made a motion to send **H 375** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Patrick** will sponsor the bill on the floor.

RS 21052: **Colby Cameron**, representing Asurion Insurance, presented **RS 21052**. Mr. Cameron testified that Asurion is an insurance company that offers coverage for cell phones, PDAs, and other similar electronic devices. He said this is an attempt to regulate and standardize, on a statewide basis, insurance for portable electronics.

Responding to questions from the committee, **Mr. Cameron** said Asurion Insurance would be regulated by the Department of Insurance. He said the Director of the Department is aware of the proposed legislation and has seen it.

MOTION: **Rep Collins** made a motion to introduce **RS 21052.** **Motion carried by voice vote.**

RS 20836: **Marilyn Chastain**, Securities Bureau Chief of the Department of Finance, presented **RS 20836**. Ms. Chastain said the legislation does three things. First, it makes technical corrections such as punctuation and citation changes, as well as striking unnecessary language. Second, it provides specific language that states it is unlawful for a securities dealer or financial adviser to misappropriate or misuse client funds. New language will also prohibit someone who collects a client's money from using it to make Ponzi payments. Ms. Chastain explained that, although these crimes are able to be prosecuted under language in the current securities law, the new language will make prosecution easier. Finally, the legislation establishes a specific statute of limitations on the length of time allowed for the Department of Finance to bring enforcement actions to pursue fraud cases. The time allowed is ten years from the date of the last action that was part of the alleged fraud. She acknowledged this is a fairly long statute of limitation, but said that many times people make long-term investments and don't expect a return for five years or more. In these cases, clients may be receiving phony statements for a number of years before they suspect any illegal activity in their accounts.

Ms. Chastain was asked about the language being stricken on page 13; she said this language conflicts with federal law and is therefore being removed. Asked whether management fees might fall under the definition of money diverted for personal use, she said to "divert" money is to take it away from its intended purpose. If an investor understands he will be paying a management fee, this will not be a problem.

In response to a suggestion that the statute of limitations should be from the date of discovery, rather than from the "last action," **Ms. Chastain** said she would have no problem making that change and agreed that it might be a better approach. She said many states have no statute of limitations for these crimes. She also clarified that the language specifying Ponzi schemes as crimes will simply make it easier to prosecute; it is not a new acknowledgement that such activities are illegal. She said that, with the new language, the Department could move for summary judgment on most cases instead of having to take each element of existing statute and explain how the facts of a case fit under those statutes.

MOTION: **Rep. Cronin** made a motion to introduce **RS 20836**. **Rep. Barbieri** asked whether the motion should include changing the language dealing with the statute of limitations. Following a brief discussion, the suggestion was made to return the RS to its sponsor for revision.

UNANIMOUS CONSENT REQUEST: **Rep. Cronin** requested unanimous consent to return **RS 20836** to sponsor. There being no objection, the request was granted.

RS 20818: **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **RS 20818**, stating this legislation is brought in response to input from licensees and affected government entities. This will expand the current Public Works Contractor classifications by establishing a new "CC" class of license between the existing "C" and "B" classes. Currently a "C" contractor is allowed to bid on contracts up to \$200,000 while a "B" contractor is allowed to bid on contracts up to \$600,000. This legislation allows the "CC" class to bid work up to \$400,000 and establishes minimum financial requirements of \$25,000 in working capital and \$75,000 in net worth. Applicants for a "CC" license must have undertaken projects of at least \$280,000 to fulfill the experience requirements. Mr. Keys said this new license classification will engender additional bidder participation on projects between \$200,000 and \$400,000.

Asked to define "working capital" in this section of law, **Mr. Keys** said it is the standard accounting definition, current assets less current liabilities. He said the new \$200 fee for a Class B license fee is a natural progression since the new Class CC license fee is now set at \$150.

MOTION: **Rep. Collins** made a motion to introduce **RS 20818**. **Motion carried by voice vote.**

Steve Keys, Deputy Administrator of the Division of Building Safety, presented **RS 20821**. Mr. Keys said this legislation adopts the Idaho State Plumbing Code as the minimum requirement for plumbing installations in Idaho. He said the core of this bill is the same as that approved last year by this committee, but it does incorporate some revisions necessary to gain the endorsement of the Association of Idaho Cities and the Idaho Association of Building Officials.

Responding to a committee question, **Mr. Keys** said agreement was reached after it was decided that amendments will remain in administrative rules and will not be reflected in the body of the Code.

MOTION: **Rep. Batt** made a motion to introduce **RS 20821**. **Motion carried by voice vote.**

RS 20825: **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **RS 20825**, which is brought forward from the HVAC Board to address an area that has been problematic since the original implementation of the program. This legislation modifies the definition of a heating, ventilation and air conditioning contractor by changing the term "solid-fuel burning furnaces" to "solid-fuel burning appliances." The Board believes the installation of solid-fuel stoves and factory-built fireplaces is a legitimate public safety concern and should be included in the HVAC program.

In response to questions from the committee, **Mr. Keys** said there had been some question about whether solid-fuel burning appliances would be defined as a mechanical system, and this legislation will clear up any confusion. He said this change applies only to solid-fuel devices such as those that burn wood or coal.

MOTION: **Rep. Guthrie** made a motion to introduce **RS 20825**. **Motion carried by voice vote.**

RS 20826C1: **Steve Keys**, Deputy Administrator of the Division of Building Safety (DBS), presented **RS 20826C1**, saying this legislation modifies existing law to satisfy new HUD requirements requiring inspections of all new manufactured home installations. He said the Division has accepted responsibility for assuring that the mandatory inspections are conducted. DBS is working with local jurisdictions to leverage their existing programs in meeting the federal requirement. Mr. Keys explained the primary changes in this proposal, namely: First, owners or installers of new manufactured homes are required to purchase a \$50 installation tag from DBS. The tag will enable DBS to track the locations of all new installations per the HUD requirement and will produce the revenue necessary to train inspectors and support quality assurance activities required of the Division. Second, DBS will issue permits and conduct inspections of new manufactured home installations in those areas of the state not covered under other inspection programs.

MOTION: **Rep. Palmer** made a motion to introduce **RS 20826C1**. **Motion carried by voice vote.**

RS 20894C1: **Rep. Guthrie** presented **RS 20894C1**, noting that when the Elevator Safety Code was instituted in July 2004 it did not contain any grandfathering provisions for existing elevators. He testified that retrofitting existing elevators to meet the provisions of the 2004 law can be prohibitively expensive, given the electronics and technology involved. Rep. Guthrie said he worked with the Division of Building Safety to arrive at acceptable language for this legislation. This new provision will establish that any safety requirements in place when an elevator was first commissioned will still apply; additionally, if retrofitting an existing elevator to meet the new requirements costs less than \$5,000, those updates should be done. Rep. Guthrie clarified that this legislation does not seek to escape doing the work in the case of significant renovations or those made to meet the Americans with Disabilities Act (ADA) requirements. He said this legislation is in response to a situation in Pocatello where updating an elevator to current requirements, including a device to detect the presence of smoke and force the elevator to return to the ground floor, would cost \$50,000.

MOTION: **Rep. Rusche** made a motion to introduce **RS 20894C1**. **Motion carried by voice vote.**

RS 20923

Rep. Elaine Smith presented **RS 20923**. Rep. Smith provided information about the proliferation of payday lenders in this country, stating that there were only a handful in the early 20th century but there are now more than 19,000 in the U.S. By comparison, McDonald's restaurants number only about 14,000. She explained the process used to get a payday loan, stating that a customer writes a postdated check, with the date coinciding with the customer's next paycheck. For each \$100 borrowed, the fee is \$10 to \$15 for a ten-day loan, which translates to an annual interest rate of 400%. If the borrower cannot pay off the loan when due, and "flips" to a longer-term loan, the interest rate can be even higher. Rep. Smith said Congress recently enacted a cap of 36% for the interest rates on small loans to military families, and a recent referendum in Montana capped interest rates on payday loans at 36%. She said the same limitation should apply to all Idahoans who utilize payday loan services.

Rep. Smith yielded to **Sen. Heider**, who testified in support of **RS 20923**, saying payday loan businesses serve a segment of society that can least afford to pay the highest interest rates to borrow money. He said this legislation is not an attempt to shut down payday loan businesses, but it is an effort to place minimum regulations on lenders, including full disclosure of interest and fees.

During committee discussion, the point was made that if a payday loan business is allowed to charge a maximum annual interest rate of 36%, that could equate to less than one dollar on a \$100 loan for a two-week period. This could be a small enough fee that no business would be willing to make these short-term loans, thus making them virtually unavailable to the people who need to utilize such loans. It was also noted that with the proliferation of these businesses, it would seem that competition would drive the rates and fees they are able to charge, given the highly risky nature of these short-term loans. Committee members also asked to hear from representatives of the payday loan businesses at the time the bill is scheduled for a hearing.

Responding to committee questions, **Sen. Heider** said these loan companies are not federally regulated but instead are regulated by the state. **Rep. Smith** added that their regulatory agency is the Department of Finance. She also mentioned the newly-formed federal Consumer Finance Protection Bureau, but said that Bureau is not yet fully operative.

MOTION: **Rep. Rusche** made a motion to introduce **RS 20923**. **Motion carried on voice vote.** **Reps. Thompson** and **Barbieri** requested that they be recorded as voting **NAY**.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

**AMENDED #1 AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Tuesday, February 07, 2012**

| SUBJECT | DESCRIPTION | PRESENTER |
|---------------------------|------------------------------------|---|
| RS20836C2 | Uniform Securities Act; Amendments | Marilyn Chastain Department of Finance |
| RS20981C2 | Product Liability; Amendments | Rep. Thompson |
| RS21069C1 | Bridge Loan Program Authority | Rep. Rusche |
| H 471 | Insurance; Portable Electronics | Roy Eiguren Asurion Insurance |

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

COMMITTEE MEMBERS

| | | |
|-------------------------|----------------|----------------|
| Chairman Black | Rep Bayer | Rep Smith (30) |
| Vice Chairman Henderson | Rep Palmer | Rep Rusche |
| Rep Collins | Rep Thompson | Rep Cronin |
| Rep Bilbao | Rep Barbieri | |
| Rep Chadderdon | Rep DeMordaunt | |
| Rep Crane | Rep Guthrie | |
| Rep Patrick | Rep Batt | |

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Tuesday, February 07, 2012

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Kurt Stembridge, Glaxo Smith Kline; Marilyn Chastain, Department of Finance; Erik Makrush, Idaho Freedom Foundation; Max Greenlee, Risch Pisca

Chairman Black called the meeting to order at 1:35 p.m.

MOTION: **Rep. Bilbao** made a motion to approve the minutes of January 31 and the minutes of February 1. **Motion carried by voice vote.**

RS 20836C2: **Marilyn Chastain**, Securities Bureau Chief of the Department of Finance, presented **RS 20836C2**, a revised version of the RS she previously presented to the committee. She pointed out the one change made to the legislation, namely, the proposed three-year statute of limitation for the Department to bring enforcement action in the case of misappropriation or mishandling of money. The three-year time period begins from the date of discovery. Ms. Chastain said this time period is consistent with the fraud statute of limitation.

Responding to a question from the committee, **Ms. Chastain** said the legislation deals with both public and private companies, although some private companies are exempt.

MOTION: **Rep. Barbieri** made a motion to introduce **RS 20836C2**. **Motion carried by voice vote.**

RS 20981C2: **Rep. Thompson** presented **RS 20981C2**. He explained that this legislation amends the Product Liability Code to provide that in any civil action against a manufacturer for harm caused by a product, the claimant must prove that the defendant was the manufacturer of the actual product that caused the harm for which compensation is sought, in order for the defendant to be held liable. Rep. Thompson gave an example of brand name drug companies who can be held liable for the harm done by generic versions of their drugs. He said companies should not have to defend themselves against claims for products they did not produce, sell, or receive income from.

A question was asked about whether the legislation would hold a drug company harmless in a situation where the company licensed one of their drug formulas to a generic manufacturer and later one of the chemicals in the drug is found to cause harm. **Rep. Thompson** said the actual manufacturer of the generic drug would be held responsible. He noted that manufacturers of generic drugs often use different filler ingredients than name-brand drug companies use, and therefore the generic is a different product. He said the company who creates the generic should be held accountable. Asked why the bill was broadly drawn to cover all products and not just pharmaceuticals, Rep. Thompson cited the case of Chrysler being sued for defective seat belts installed in their vehicles, even though Chrysler had not manufactured the seat belts. He said the company producing the seat belts should bear the responsibility for the defect and any harm done because of the defect.

MOTION: **Rep. Patrick** made a motion to introduce **RS 20981C2**. **Motion carried by voice vote.** **Reps. Rusche and Cronin** requested that they be recorded as voting **NAY**.

RS 21069C1: **Rep. Rusche** presented **RS 21069C1**, legislation setting up a micro enterprise bridge loan program to encourage small business growth in Idaho. Rep. Rusche stated that in the initial stages of a new business, owners often use their personal assets, credit cards, or 401K assets to fund the startup. Before new businesses are developed enough to be attractive to capital lenders, they sometimes reach the end of their own resources and enter into a period of time known as the "valley of death." He acknowledged there are other loan programs, but often they require some capital buy-in from either the new company, a municipality or the state. Rep. Rusche noted this new program would be funded by bonds guaranteed by the state. Each individual loan has a limit of \$35,000, capitalized by bonds backed by state sales tax revenue, up to 1% of state sales tax revenue.

Rep. Rusche briefly reviewed some provisions of the legislation, noting that it creates a bridge loan authority, sets up a board and delineates its limited powers, spells out the duties and powers of the commission and provides for a staff to administer the program. It spells out the conditions for loans, the size of loans, and other details of the bridge loan program. It also allows the commission to receive other monies such as gifts and grants. The bonding provisions are specified, including the fact that the bonds will be backed by the state's sales tax reserve. Rep. Rusche expressed the hope that this new program will be able to provide additional capital for entrepreneurs when they cannot acquire traditional loans.

In response to committee questions, **Rep. Rusche** said these loans to new businesses are, by definition, high risk, and the state would be the backup guarantor. He said the lending authority would try to cover any defaults out of their loan proceeds, and the Authority would charge interest rates commensurate with the riskiness of the loans. Asked whether this legislation is part of the Department of Commerce's total package of financial incentives, Rep. Rusche said he has talked with the Director of the Department of Commerce, who thought this program would play some role in the total package. Rep. Rusche said an appropriation of \$75,000 would be needed from the state to start the program, but the goal is to have it be self-sustaining, with proceeds from loans covering its costs.

During further committee discussion and questions, **Rep. Rusche** said he does not have figures about operating costs, but stated the loans will be made at a margin sufficient to cover them. He noted that the actual rates and rules will be developed by the Board, and said he assumed that rates will be considerably higher than the best commercial rates available, since some of these startup businesses will fail. He agreed that this program may be duplicative of some other programs already available, but he said it is a response to concerns from those in the entrepreneurial community that early-stage financing remains an issue.

Asked how this program differs from the Small Business Administration loan program, **Rep. Rusche** said this would be more liberal in making loans available. He said these bridge loans should be made available because entrepreneurs cannot get loans from traditional lenders. He noted that regulatory rules are different for banks than they would be for a state loan program, and testified that some other states have bonded for business development in their states. It was pointed out that Idaho does have a micro loan program available that makes high-risk loans up to \$15,000; these loans are decided upon by a special board of elected officials and private sector people.

Responding to further questions from the committee, **Rep. Rusche** said he does not know whether the \$75,000 startup money will reduce or increase the Department of Commerce's JFAC appropriation. Rep. Rusche said although

economic development agencies do have micro loan programs, the biggest issue is getting the local matching money that is often required. This new program could provide that.

ORIGINAL MOTION:

Rep. Palmer made a motion to return **RS 21069C1** to sponsor. In support of the motion, he said the state should not be in competition with other businesses who are already providing this kind of financing. In addition, the state would be on the hook for these high-risk loans. **Rep. Crane** stated this program will put taxpayer money at risk for the loans that default, and said the state should not be loaning to businesses that are considered by banks to be too risky. He also said there are existing programs in place that could provide this type of financing.

SUBSTITUTE MOTION:

Rep. Cronin made a substitute motion to introduce **RS 21069C1**, stating they do hear from businesses about the difficulty in getting startup capital. He noted that banks are subject to a higher degree of regulation, and said capital is not flowing as it should be. With regard to the state taking on risk, Rep. Cronin pointed out that a similar program in the state of Utah, which uses general fund dollars, has been responsible for creating new businesses and growing existing ones. He said the legislation will not grow a larger bureaucracy, since it sets up an independent entity that covers its own costs. He asked that the committee introduce the RS so it can receive a full hearing.

Rep. Henderson spoke in support of the original motion, saying he would be more comfortable if this loan program was part of the total Department of Commerce program. He noted there is a new effort being made to achieve continuity among all incentive programs, which until now have had no coherence. He said the lack of coherence causes confusion even among the people who need to borrow money. He suggested **Rep. Rusche** should further share this legislation with the Department of Commerce and return with a more elaborate, integrated proposal.

Rep. Patrick raised a concern about the \$35,000 loan limitation, stating that this amount may be too low to help most borrowers. He said he applauds the attempt to get the problem of lack of startup capital resolved, but he would prefer to use the current structure and fund it more adequately.

VOTE ON SUBSTITUTE MOTION:

Chairman Black called for a vote on the substitute motion to introduce **RS 21069C1**. **Substitute motion failed by a voice vote.**

VOTE ON ORIGINAL MOTION:

A roll call vote was requested on the original motion to return **RS 21069C1** to sponsor. **Motion carried by a vote of 13 AYE and 4 NAY. Voting in favor of the motion: Reps. Henderson, Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, and Batt. Voting in opposition to the motion: Reps. Black, Smith, Rusche, and Cronin.**

H 471:

Chairman Black announced that the sponsor of **H 471** has requested this bill be moved to a later date for a hearing. Therefore, it will not be considered at this meeting.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:10 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Thursday, February 09, 2012

| <u>SUBJECT</u> | <u>DESCRIPTION</u> | <u>PRESENTER</u> |
|-------------------------|--------------------------------------|---|
| RS20932 | Public Depository; Amendments | Rep. Nielsen |
| RS21207 | Video Service Act | Ed Lodge, CenturyLink |
| H 469 | Conveyances in Buildings | Rep. Guthrie |
| H 407 | Building Code Board; Personnel | Steve Keys, Division of Building Safety |
| H 408 | Electrical Board, Presiding Officers | Steve Keys |
| H 409 | Building Code Board; Compensation | 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 Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick

Rep Bayer
Rep Palmer
Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt

Rep Smith (30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
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Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Thursday, February 09, 2012

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** Rep. Cronin

GUESTS: Justin Lee, National Elevator Industry, Inc.; Steve Keys, Division of Building Safety; Cindy Hedge, Idaho AFL-CIO; John Eaton, Idaho Association of Realtors; Pam Eaton, Idaho Retailers Association and Idaho Lodging & Restaurant Association; Miguel Legarreta, Ada County Association of Realtors

Chairman Black called the meeting to order at 1:35 p.m.

MOTION: **Rep. Bilbao** made a motion to approve the minutes of February 7. **Motion carried by voice vote.**

S 20932: **Rep. Pete Nielsen** presented **RS 20932**. He explained that current law requires a taxing district to deposit its funds at a financial institution within the boundaries of the district. Sometimes small districts, such as a recreational district, build up enough funds that the total exceeds the \$250,000 amount that will be guaranteed by FDIC insurance. This legislation will allow a district in that situation to deposit funds in any institution within its county. Further, if the county is limited in its choice of financial institutions, the district can deposit funds in an institution within the state of Idaho.

MOTION: **Rep. DeMordaunt** made a motion to print **RS 20932**. **Motion carried by voice vote.**

Brett DeLange, Chief of the Consumer Protection Division, Attorney General's Office, presented information on the \$25 billion National Mortgage Foreclosure Settlement announced earlier today. This settlement, which follows an 18-month investigation, involves five large banks, Bank of America, Ally, J.P. Morgan Chase, Wells Fargo and Citibank. Together these five banks service half of all mortgages in the United States.

Mr. DeLange said Idaho has been dealing with the mortgage crisis for a number of years. He said the most frequent complaints lodged with the AG's office since he started working there in 1990 involved telemarketers. This, however, changed in 2009, when for the first time mortgage complaints took over the number one spot. These complaints first started because of the practice of "robo-signing" which involves an affidavit being signed but not properly witnessed. Soon, those investigations grew to involve other complaints as well, usually from people who were having great difficulty saving their homes because they were given conflicting, inadequate, or inaccurate information by the lending institutions. Mr. DeLange said consumers can generally make good, informed decisions if they are given the facts.

The multi-state settlement consists of two parts, namely: 1) It will dramatically change how mortgage foreclosures are handled in the United States and Idaho because important new standards will be in place. Consumers will get timely and accurate information and will know their best options. 2) The settlement provides significant financial benefits. Idaho will receive \$113,000,000, providing financial compensation to both homeowners and the state. Eligible borrowers will receive

\$74,000,000 in loan modifications and other direct relief. **Mr. DeLange** said there are about 5,000 Idaho families who have lost their homes because they were foreclosed upon inappropriately; each of them will receive a check for about \$2,000. An estimated \$15,000,000 will allow underwater borrowers to refinance to lower interest rates. Mr. DeLange said the State of Idaho will receive \$13,000,000, which will arrive in the current fiscal year. The Legislature will decide how this money will be spent.

Mr. DeLange said financial benefits will not be available to every homeowner in Idaho, but only those whose mortgages are owned by one of the five banks. The settlement does not prevent homeowners or investors from pursuing individual, institutional or class action civil cases and does not grant the banks immunity from criminal prosecution. He provided the committee with copies of the Attorney General's news release, a summary of the settlement terms, and a chart illustrating the amounts being paid out under the settlement. He said the AG's website will have information available online to assist borrowers in determining whether they are eligible for relief, and said his department has retained a housing specialist to help Idaho's citizens navigate through the process. He credited the banks for their attempt to solve some of the problems underlying the mortgage crisis.

Responding to committee questions, **Mr. DeLange** said homeowners who are upside down on their mortgages may have an opportunity to get an interest rate reduction. He said the Attorney General is still in communication with other lenders besides these five banks. Asked about the Mortgage Electronic Registration System (MERS) issue, Mr. DeLange said the use of MERS often makes it difficult for homeowners to learn who the actual note holder is. He said although the banks wanted this issue dismissed, the states decided not to do so. Therefore, further challenges or further action on the MERS issue is not precluded.

During further committee discussion and questions, **Mr. DeLange** said an estimated 20% of mortgage loans in Idaho are owned by the five banks involved in the settlement. He said the settlement does not affect the banks' requirement to pay back any bailout dollars they may have received. He also noted that no taxpayer funds are being used to fund the settlement. He confirmed that most foreclosure problems dealt with by his office are deeds of trust, because the majority of mortgages are actually deeds of trust.

In conclusion, **Mr. DeLange** said his office is ready to make suggestions to the Legislature on possible ways to use the settlement money to aid Idahoans during these difficult economic times. He stated there are good financial counseling programs that work well, and some of them are losing federal funding so they could benefit from state funds.

Chairman Black thanked Mr. DeLange for the informational presentation. He also noted the additional handouts provided by Mike Larsen, Department of Finance, who is available to answer any further questions from the committee.

RS 21207: **Ed Lodge**, representing CenturyLink, stated with regard to **RS 21207**, scheduled for an introduction hearing on today's agenda, that he was exploring the possibility of meeting with the Idaho Association of Cities and representatives of the cable television industry to work out compromise legislation. Therefore, he asked that **RS 21207**, or its replacement, be scheduled for the committee's next meeting. Hearing no objection, **Chairman Black** agreed to reschedule the hearing on Mr. Lodge's legislation.

H 469: **Rep. Guthrie** presented **H 469**. He testified that when the Elevator Safety Code Act was passed in 2004, it may have been an oversight to leave out grandfathering provisions for older elevators. As a result, building owners face expensive upgrades in order to bring their elevators up to the standards contained in the safety code.

Rep. Guthrie mentioned that he had worked with Steve Keys, Division of Building Safety, in developing this legislation.

Rep. Guthrie briefly reviewed the provisions of **H 469**, which specifies that elevators will be required to meet the safety standards applicable when the car was commissioned. He noted that the exemptions listed in the bill are not all-inclusive; for instance, no exemption is made for non-privately-owned businesses. If the building is undergoing extensive remodeling to meet requirements of the Americans with Disabilities Act, it is not exempt. Rep. Guthrie noted this legislation could help with economic development in older downtown areas where buildings often have older elevators that would be too expensive to upgrade.

Austin Lee, representing the National Elevator Industry, Inc., testified in **opposition to H 469**. He said that, although on the surface the bill appears to save building owners a lot of money, 90% of all elevators in the state of Idaho have already been certified by the state. Of the remaining 10%, only a small number of them would fall under the criteria of this bill. Mr. Lee said the majority of all elevators already have the fire service operation, which sends the elevator to the first floor and renders it inoperable. Without this safety feature, the elevator occupants could go to any floor and be endangered by fire on that floor. Mr. Lee also said the \$5,000 limitation will not affect very many elevators.

Asked how much it would cost to retrofit an elevator with the fire service operation, **Mr. Lee** said it depends upon a number of factors. If installed in a 1940s-era elevator, the cost would be about \$25,000; if in a more modern elevator, the cost would be about half of that. He said he is fairly certain that all downtown elevators already have the fire service operation. Mr. Lee said in the case of a fire on the first floor, the fire service operation would send the elevator up to the second or third floor and would allow passengers to get out. Elevators in taller buildings are required to have Phase 2 safety equipment, which allows fire personnel to use the elevator to evacuate the building.

In response to further questions from the committee, **Mr. Lee** said this is the first he has heard of a state trying to adopt this kind of legislation. He said it is his opinion that if the bill passes, building owners should be required to put signs up telling them about the lack of safety features. Asked how often such a fire safety feature may have been called upon to function in Idaho in the last five years, Mr. Lee said he does not have those figures. He noted a recent incident of a death in Chicago on January 9, 2012, which was directly related to the elevator not having fire service operation. It was pointed out that this bill does not preclude a building owner from installing this safety equipment if they so choose. Mr. Lee agreed but said it also does not require signage alerting passengers if the building owner chooses not to install it. Mr. Lee reiterated that 90% of elevators already have been certified and already have the safety feature. He said of the remaining 10%, only a small number would be affected by this bill, based on their height and the year of installation.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, testified in **support of H 469**. He said he had reviewed the legislation and discussed it with the Association's members. Mr. Eaton noted that some members expressed real excitement about this bill, since often economic development projects are stalled because the expense of upgrading buildings with old elevators makes it difficult to attract investment in the properties.

Asked whether there was any concern on the part of landlords in terms of either insurance or resale, due to having conveyances that are not up to code, **Mr. Eaton** said as they exist now, the elevators are meeting current code; H 469 will allow them to continue doing so.

Pam Eaton, President of the Idaho Retailers Association and the Idaho Restaurant and Lodging Association, testified that both groups support **H 469**. She agreed that this bill will provide economic support for businesses and said there are just a few older buildings that are not already up to code.

Rep. Guthrie was asked whether there are other entities besides the Merrill & Merrill law firm that will be affected by this bill. He said there are several other buildings that would fall within the exemption. He said he did contact them and they are supportive of the legislation.

Rep. Guthrie was recognized to close his testimony on **H 469**. With regard to Mr. Lee's comments about the fire service operation returning the elevator to the first or second floors, Rep. Guthrie pointed out that those floors could still be on fire. He noted that federally-owned buildings are already exempted; the federal standards may be more or less than Idaho's standards. Schools will not receive this exemption; it is intended only for private entities. Rep. Guthrie repeated his thought that older elevators should be grandfathered, which would recognize the difficulty and expense of retrofitting older elevators in older buildings.

MOTION: **Rep. Palmer** made a motion to send **H 469** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Rusche** requested that he be recorded as voting **NAY**. **Rep. Guthrie** will sponsor the bill on the floor.

H 407: **Steve Keys**, Deputy Director of the Division of Building Safety, presented **H 407**. Mr. Keys said this legislation recognizes the reorganization of the operating structure within the Division of Building Safety. First, it replaces language designating a bureau chief as the executive director of the Idaho Building Code Board, stipulating instead that the Division will designate a non-classified employee to serve in that role. Also, the reference to bureau chiefs is changed to regional managers.

MOTION: **Rep. Rusche** made a motion to send **H 407** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Rusche** will sponsor the bill on the floor.

H 408: **Steve Keys**, Deputy Director of the Division of Building Safety, presented **H 408**. He said this bill adds a statutory provision requiring the members of the Idaho Electrical Board to elect a vice-chairman in addition to the previously required chairman. The intent is that the vice-chairman will be able to act as chairman when the chairman is not able to attend a meeting.

MOTION: **Rep. Chadderdon** made a motion to send **H 408** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Chadderdon** will sponsor the bill on the floor.

H 409: **Steve Keys**, Deputy Director of the Division of Building Safety, presented **H 409**. He said this legislation changes the basis of remuneration for attendance at meetings of the Building Code Board and the Public Works Contractor License Board. It changes the remuneration from a \$50 per day salary to a \$50 per day honorarium. This addresses an issue where PERSI participation has restricted board members' ability to participate in individual retirement programs and has resulted in unintended tax liability for some board members when their contributions to retirement accounts were disallowed.

Asked how many remaining boards are faced with this same issue, **Mr. Keys** said the Plumbing Board still pays its members a salary, but they have opted not to change their method of remuneration.

MOTION: **Rep. Smith** made a motion to send **H 409** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Smith** will sponsor the bill on the floor.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

**AMENDED #1 AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Monday, February 13, 2012**

| SUBJECT | DESCRIPTION | PRESENTER |
|---------------------------|---|---|
| RS21207C1 | Video Service Act | Ed Lodge CenturyLink |
| RS21254 | Online Insurance Verification Program | Rep. Thompson Paul Jackson, Farmers Insurance |
| RS21169 | Legal Notices in Newspapers | Kris Ellis Realty in Motion |
| RS21265 | Economic Credentialing of Health Care Organizations | Ken McClure, Idaho Medical Association |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick

Rep Bayer
Rep Palmer
Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt

Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Monday, February 13, 2012

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon (Malek), Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Phil Barber, American Insurance Association; Allan Frew, Idaho Transportation Department; Bill Roden, CenturyLink; Paul Jackson, Farmers Insurance; Woody Richards, attorney; JoAn Condie, Idaho Cable Telecommunicaitons Association; Ed Lodge and Sarah Fuhriman, CenturyLink; Kris Ellis and Tony Smith, Benton Ellis; Kathie Garrett, Idaho Academy of Family Physicians; Jeremy Pisca, Saint Alphonsus Health System; Miguel Legarreta, Realtors; Angela Richards, citizen; Dawn Justice, Idaho Bankers Association

Chairman Black called the meeting to order at 1:32 p.m. and welcomed **Rep. Luke Malek**, who is substituting for Rep. Chadderdon this week.

MOTION: **Rep. Bilbao** made a motion to approve the minutes of February 9. **Motion carried by voice vote.**

Chairman Black announced that the five bills previously listed on today's agenda, **H 420, 421, 422, 423 and 469**, will be held for hearing at a future date. He explained that because the committee agenda was not on the internet over the weekend, some may think that proper notice had not been given before the bills were considered. The RSs on the agenda will be heard, however, since there is usually no additional testimony taken during an introduction hearing.

RS 21207C1: **Ed Lodge**, representing CenturyLink, presented **RS 21207C1** Mr. Lodge explained that he had met with the Idaho Association of Cities and the Idaho Cable Association to develop some common ground language that could be included in the legislation. He indicated there is also language included to satisfy the highway districts and electrical co-ops. Mr. Lodge said the Idaho Cable Association supports the proposed legislation, although for different reasons than CenturyLink.

Mr. Lodge testified this legislation will create a simplified procedure by which land-based video service providers will be able to enter the marketplace. The legislation preserves local control and continues the right of cities and counties to receive up to a five percent franchise fee based on gross revenues.

In response to a question about PEG channels, **Mr. Lodge** said he has not yet found a way to accommodate all the needs and concerns of the PEG people. He said he did get a new definition of gross revenues. He also said of the five percent franchise fee, any or all of it can be used for PEG channels. Mr. Lodge said this bill does not require or mandate PEG fees but does allow PEG channel capacity and does require all video service providers to provide PEG channels on their networks. Asked why the PEGs were not satisfied with this legislation, Mr. Lodge said they wanted additional PEG funding delineated in the legislation.

During further committee discussion, **Rep. Barbieri** stated he is not sure the PEGs are adequately protected. **Rep. Cronin** pointed out there is no obligation and no incentive on the part of a provider to enter into negotiations. **Mr. Lodge** said under current federal law providers have to pay five percent of revenues to the city,

and have to provide PEG capacity to the city. He said providers are allowed, but not mandated, to provide PEG fees; this is negotiated at the local level. He said cities cannot mandate PEG fees.

In response to further questions, **Mr. Lodge** said passage of this legislation will not negate the agreement between Pocatello or other local communities and Cable One. He said until Cable One opts into a state franchise, those agreements are still in place. He affirmed that once Cable One becomes a state franchisee, it could unilaterally cancel contracts, although he was not sure whether they would have to buy out of their existing contracts. **Rep. Smith** clarified that, in the case of the Pocatello renegotiated agreement, the change from 1/2 percent to 30 cents represented a decrease.

Rep. Guthrie clarified that the PEG fee is a pass-through fee and does not represent an additional burden on the provider. He said it is charged to the customers and then passed through, and he noted that the customer does not have a say in whether or not to incur that fee. Rather, it is the city and the provider who agree on the PEG fees.

MOTION: **Rep. Patrick** made a motion to introduce **RS 21207C1**. **Motion carried by voice vote.** **Rep. Barbieri** requested that he be recorded as voting **NAY**.

RS 21254: **Rep. Thompson** presented **RS 21254**. **Rep. Thompson** said this legislation was developed by the insurance industry in response to concerns about the number of uninsured motorists on Idaho's roadways. It creates an online insurance verification program with real-time response capability to verify the existence of motor vehicle insurance coverage. This program will be available to law enforcement, the Department of Transportation, the Department of Insurance, and the courts. **Rep. Thompson** said all carriers writing coverage in the state will be required to take part in this program. If a person is verified as having coverage, he or she will not be subject to an infraction for failure to carry proof of insurance. The program will allow the user to send a secure request to the insurer of record, based on the license plate number and the vehicle identification number, to verify that insurance is in force. **Rep. Thompson** introduced **Paul Jackson**, Farmers Insurance, to answer further questions.

Responding to committee questions, **Mr. Jackson** said the funding of the proposed system was discussed with proponents and the general fund seemed to be the best source of funds. He said if it was financed with a policy fee, that would seem to penalize those who carry insurance, whereas the general fund spreads the cost among everyone. **Rep. Thompson** said he had brought a similar bill to the Transportation Committee and said he had been communicating with the insurance community and transportation industry during the interim to prepare this legislation.

During committee discussion, it was pointed out that this legislation may actually save insurance companies money because they may not have to mail out as many forms. It may, however, be difficult to obtain funding from JFAC. **Mr. Jackson** said he did not have a cost analysis on the financial effect of this legislation on insurance companies; he said there will be some costs involved for the companies. A concern was expressed about further raising insurance premium rates to cover the irresponsible actions of those who do not carry insurance. **Rep. Thompson** said the intent of the bill was solely to protect Idaho citizens. **Mr. Jackson** agreed, and said there will be an additional benefit to the courts, since there may be a reduction in citations moving through the court system. He said last year there were over 63,000 citations issued for failure to provide proof of insurance; of those, 75% were dismissed because the driver actually had insurance coverage but was not able to produce proof of insurance. **Mr. Jackson** said there may be some slight increase in policies sold because of the added pressure to have insurance in place.

Asked about the effective date, **Mr. Jackson** said the date was picked to give the Department of Transportation enough time to develop their system and bring it into compliance with this new system. He said this system has no impact on current law in terms of the penalties for driving without insurance; it will simply aid in identifying those people who do so.

MOTION: **Rep. Palmer** made a motion to introduce **RS 21254**. In support of his motion, Rep. Palmer said further questions can be answered at the bill's full hearing, and stated most of the costs will be taken care of by the Idaho Transportation Department. He said this will make it easier for law enforcement to determine whether drivers have insurance. **Motion carried by voice vote.** **Rep. Bilbao** requested that he be recorded as voting **NAY**.

RS 21169: **Kris Ellis**, representing Realty in Motion, presented **RS 21169**. Realty in Motion is the new owner of the Kuna Melba News, but Ms. Ellis stated they will not be affected by this legislation. She explained that current law requires a newspaper to be continuously publishing for a period of 18 months before it is allowed to print public notices. This legislation will reduce that time requirement to 24 consecutive weeks. She noted the new requirement will be more in line with the practice in other states.

MOTION: **Rep. Rusche** made a motion to introduce **RS 21169**. **Motion carried by voice vote.**

RS 21265: **Ken McClure**, representing the Idaho Medical Association, presented **RS 21265**. Mr. McClure reported on his efforts to work with the Idaho Hospital Association on "any willing provider" legislation, saying the parties will continue to work on possible compromises.

As background information, **Mr. McClure** explained that if a physician wants to treat patients in a hospital, he or she has to be a member of that hospital's staff. There is anxiety in the medical community about the relationship between hospitals and doctors. Some physicians who are owners of specialty hospitals feel threatened about their ability to continue practicing in community hospitals. Mr. McClure cited an example from Idaho Falls, where a group of physicians attempting to build a specialty hospital were told they could no longer practice in the community hospital. Mr. McClure said physician credentialing should be based on competence only, not on economic considerations. This legislation specifies that hospitals can decide the criteria for staff membership, but they may not deny credentials to a doctor solely because he has ownership in another organization or because he is a member of a competing organization. It also specifies that a doctor should be able to practice in both hospitals in a particular city. This recognizes a patient's need to be treated by his or her own doctor. Finally, the legislation bars favoritism in credentialing, saying that a competent physician should not be barred from practicing.

In response to a question about the appeal process for a physician who is denied privileges, **Mr. McClure** said there is an internal appeal process, required of all hospitals, and there are also processes for appeal provided in the bylaws of the hospital boards. Ultimately the decision can be challenged in court as well.

Responding to further questions, **Mr. McClure** said a doctor will not be able to be denied status only because he or she is on another facility's staff. He explained the "exclusive contracting" provisions, saying in certain locations the hospitals sometimes have to guarantee an exclusive contract to attract doctors. For instance, this is particularly true in radiology, pathology, or emergency room care. He said physicians are reconciled to the fact that exclusive contracts exist, and the provisions in subsection 3 are not a significant concern for them.

MOTION: **Rep. Bayer** made a motion to introduce **RE 21265**. **Motion carried by voice vote.**

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M.
Room EW41
Wednesday, February 15, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------|------------------------------------|---------------------------------------|
| H 376 | Successor Corporations; Asbestos | Rep. Bayer |
| H 419 | Real Estate Appraisers, Licensure | Roger Hales, Bureau of Occup Licenses |
| H 466 | Plumbing/Plumbers; Enforce Program | Steve Keys, Division of Bldg Safety |
| H 467 | HVAC Contractors | Steve Keys |
| H 468 | Mobile/Manufactured Homes; Fees | 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 Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
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Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, February 15, 2012

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon (Malek), Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Leon Duce, Association of Idaho Cities; Marty Durand, Idaho Building Trades Council; Gilbert Pond, Pond's Plumbing; Dennis Butterfield, Meridian Plumbing; Kenny Calkins, Cloverdale Plumbing; Roger Hales, Board of Real Estate Appraisers; Brbara Jorden, Idaho Trail Lawyers Association; Jack Lyman, Idaho Housing Alliance; Jesse Taylor, William Gallagher, and Russ Westerberg, Crown Cork & Seal; John Nielsen and Steve Keys, Division of Building Safety; Lane Triplett, Local 296; Kate Haas, Kestrel West for Idaho; Benjamin Davenport, Risch Pisca

Chairman Black called the meeting to order at 1:35 p.m.

MOTION: **Rep. Bilbao** made a motion to approve the minutes of February 9. **Motion carried by voice vote.**

H 376: **Rep. Bayer** presented **H 376**, explaining this legislation deals with the asbestos-related liability of successor corporations. He said under current law subsidiary corporations avoid liabilities by "siloing" the assets of the businesses they acquire. In mergers, however, the liability of the acquired company passes to the parent company.

Rep. Bayer reviewed provisions of **H 376**, stating that it contains definitions for "asbestos claim," "corporation," "successor corporation" and "successor asbestos-related liabilities." He pointed out the January 1972 effective date for a successor corporation assuming or incurring asbestos-related liabilities, which is the point in time at which the dangers of asbestos became public knowledge. **Rep. Bayer** said that prior to that time asbestos was a commonly-used and widely-accepted material.

Rep. Bayer stated the legislation includes a section on applicability and specifies that it is applicable only to businesses that do not continue in the asbestos business. It places limitations on successor asbestos-related liabilities and sets a method for establishing fair market value of total gross assets of a successor corporation. **Rep. Bayer** also noted that liability insurance shall not affect any portion of this statute. Finally, the "scope of chapter" section of the bill specifies that it will apply to claims filed after the effective date as well as pending asbestos claims in which trial has not commenced as of the effective date.

According to **Rep. Bayer**, legislation similar to this bill has been passed in 15 states. In two states there have been legal questions regarding the retroactive clause, and **H 376** was crafted to include language that clearly addresses those concerns.

Jesse Taylor, representing Crown Cork & Seal, testified in support of **H 376**. Mr. Taylor stated the founder of this company in 1890 invented the crown-shaped bottle caps commonly used on beverage bottles. At present, one in five beverage cans is produced by Crown Corporation, which employs 4,000 people in the United States. Mr. Taylor gave the historical background of this legislation, stating that in 1963

Crown Corporation started acquiring stock from one of its competitors, Mundet Cork Company. Three years later Crown acquired the company and merged it into their corporation. Because of asbestos-related liabilities of the former company, which had once operated an asbestos insulation business, Crown has paid out more than \$700 million in asbestos claims, and their bond rating has been reduced to "junk" status. Mr. Taylor said this legislation is needed to address the injustices faced by successor corporations in dealing with asbestos-related liabilities. It will allow any company that merged with another prior to the 1972 regulations, and as a result incurred legal liability over asbestos production, to treat the acquired company as a separate subsidiary.

Russell Westerberg, representing Crown Cork & Seal, testified in support of **H 376**, saying this will protect successor corporations and their employees. Mr. Westerberg said passage of this bill will help the Department of Commerce in its efforts to attract businesses to Idaho, since it will put Idaho on record with the 15 other states who have decided not to hold someone responsible for damages they had no hand in causing. He offered to respond to any questions about similar legislation that has passed in other states.

Responding to committee questions, **Mr. Westerberg** said Crown does not have plants in Idaho, but 22 Crown retirees live here. He said Crown used to operate a can company in Pocatello, which was one of the assets dissolved to pay claims brought against them. Mr. Westerberg said he could not name other companies, besides Crown Cork & Seal, that would be affected by this bill. He said he does not think this legislation will change the incentive of a company to do the necessary due diligence studies when acquiring a business. He said when Crown acquired Mundet, asbestos was not known to be harmful; in fact, it was advocated in all parts of industry. It wasn't until well after the acquisition that its harmful effects were detailed in an environmental impact statement.

Mr. Westerberg stated Crown Corporation has paid \$750 million in claims; this legislation will limit liability for damages to the value of the subsidiary at the time of acquisition, indexed for inflation. He said there are no active claims against Crown Cork in Idaho. He stated this legislation was crafted to avoid the experience in some other states in which the retroactive portion had undergone legal challenges. Mr. Westerberg testified there is no intent to excuse someone who had direct participation in manufacturing a product, asbestos, that is known to be harmful. He noted that many manufacturers of asbestos are already bankrupt and said a \$38.5 million trust fund, paid for by these manufacturers, has been established to pay legitimate claims.

Asked whether this bill is an American Legislative Exchange Council (ALEC) bill, **Mr. Westerberg** said he has had no conversation with ALEC regarding this matter. In response to a question about the fact that the bill is specific to one business, he said if other companies do not fall under the definition of a successor asbestos company, as contained in the bill, they would not be protected unless the bill is amended.

Mr. Westerberg yielded the podium to **William Gallagher**, General Counsel and Vice President of Crown Corporation, to respond to further committee questions. Mr. Gallagher said the gross assets of Mundet at the time of acquisition were about \$12 million; adjusted for inflation, the current value would be between \$60 million and \$70 million. At the time this valuation was determined, Crown had already paid out \$600 million to settle claims; since that time they have paid an additional \$100 million. Mr. Gallagher said the biggest expense has been paying legal counsel for about 30 years, and said often cases are settled so the legal fees will end. Asked where Idahoans with possible claims would go to receive compensation, Mr. Gallagher said they could pursue the companies who produced

asbestos; within the federal court bankruptcy system there is a series of trust funds set up for these cases.

Mr. Gallagher confirmed that legislation similar to H 376 had been challenged in Pennsylvania and Texas on the grounds that it may not be constitutional to apply the statute to cases already in the courts when the legislation was passed. He said it is left to each individual state to decide about retroactivity when crafting their legislation. Mr. Gallagher said potential claimants in Idaho could file suit against both the individual companies and the various trust funds, although those would be two separate processes. He said one of the issues in some states has been multiple funds paying the same claims.

Rep. Patrick expressed his opinion that this legislation could be considered a jobs bill because it will shield companies from being held liable for a product they never manufactured.

Barbara Jorden, representing the Idaho Trial Lawyers Association, testified in opposition to **H 376**. Ms. Jordan said Idaho does not have a large number of trial lawyers pursuing asbestos claims, nor are there large numbers of workers negatively impacted by asbestos. She said the legislation is sponsored by Crown Cork & Seal and will end the asbestos liability of Crown in Idaho. She stated the Idaho Trial Lawyers Association considers this special interest legislation which will benefit only one company or group, successor corporations. She said in the 14 other states that have passed this legislation, no other corporations have been able to use it; in 13 other states the bill has failed to pass. Ms. Jordan said Crown should have known there would be future liabilities, although they would have had no idea how much those liabilities would be. She noted that as early as 1949 the Journal of the American Medical Association reported that asbestos caused cancer.

Ms. Jorden stated Crown Cork & Seal is part of a larger corporation with adequate assets; she said that in 2010 Crown Holdings indicated the company believes resolution of these matters is not expected to have an adverse effect on the company's position. She said the legislation is probably unconstitutional since the Legislature is not allowed to pass laws releasing the indebtedness or liability of any corporation in this state. She pointed out this company does not do business in Idaho and yet it is asking the Legislature to limit the money they have to pay to our citizens.

In response to committee questions, **Ms. Jorden** said she would not support this legislation even if it was more inclusive of all companies in Idaho. She said this bill would limit future claims coming from Idaho citizens who are victims of asbestos, such as those suffering from mesothelioma or asbestosis. Asked whether she had consulted with the Attorney General to determine the bill's constitutionality, Ms. Jorden said she had not.

Ms. Jorden was asked whether claims against Crown Corporation had included punitive as well as compensatory damages. She said the settled claims against Crown were all compensatory. She said it is difficult to know whether the amount of money in the existing trust funds will be adequate to settle all the claims, not knowing how many plaintiffs there will be. She agreed it is unfair that Crown may have to pay for something they weren't responsible for, but she said the law has proven it to be their obligation. Asked whether the amount of a company's resources should have any bearing on its liability, Ms. Jorden said she could not answer that.

Mr. Gallagher was asked to respond to further questions. He said the theory of the plaintiffs in the liability lawsuits filed against Crown had been the failure to notify of the asbestos danger, although OSHA hadn't found any danger. He further stated that there was no cause of action on asbestos before 1973, because no one knew of the danger.

Rep. Bayer yielded to **Mr. Gallagher** to conclude testimony on **H 376** and to respond to legal and other questions that arose during testimony. Mr. Gallagher said this legislation had failed to pass in three states and had been passed by 15 other states. In Washington it was tabled by the Speaker of the House; in Virginia it passed the House and was tabled by the Democratic leader of the Senate. In Delaware the legislation went nowhere. Mr. Gallagher clarified that Crown Corporation was created ten years ago because the former name (Crown Cork & Seal) had to be changed in order to get financing from banks who were unwilling to lend to Crown Cork & Seal. Mr. Gallagher briefly recounted the history of Crown Cork & Seal in Idaho, and testified that Crown Corporation has assumed responsibility for 20,000 retirees from various businesses they had acquired. He also told the committee that they produce billions of cans in Wyoming, under the name of Rocky Mountain Can Company.

Rep. Bayer made final comments, noting that if Crown had been operating under a business subsidiarity model, the assets of the acquired company could have been separated, which would have limited Crown's liability. The principle that needs to be established is that a successor company should not be connected to the liabilities of a former company they acquire. He said similar legislation had recently passed in Wyoming and was being considered in Utah.

MOTION:

Rep. Patrick made a motion to send **H 376** to the floor with a **DO PASS** recommendation. He stated this company had done nothing wrong, and noted they could have declared bankruptcy and absolved themselves of all liabilities, but have chosen instead to remain in business.

Rep. DeMordaunt stated he would not support the motion, saying this is special interest legislation. He said he appreciates Crown's plight but said that, since asbestos was a known health issue, it comes down to a matter of due diligence when Crown acquired the previous company. He also mentioned that this company wants to be exempt but they don't want insurance companies to be exempt.

Rep. Barbieri stated that he still has some concern about the constitutionality, but also realizes that the main concern should be Idaho citizens' actual damages, not punitive damages. He noted there is a fund to protect the citizens, assuming their claims are valid.

Rep. Thompson argued in favor of the motion, saying Crown Corporation has paid out three-quarters of a billion dollars in trying to do the right thing.

**ROLL CALL
VOTE:**

A roll call vote was requested on the motion. Motion carried by a vote of **14 AYE, 2 NAY, 1 Absent/Excused. Voting in favor of the motion: Reps. Henderson, Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, Guthrie, Batt, Smith (30), and Chairman Black. Voting in opposition to the motion: Reps. DeMordaunt and Rusche. Rep. Bayer** will sponsor the bill on the floor.

H 419:

Roger Hales, an attorney representing the Bureau of Occupational Licenses, presented **H 419**. Mr. Hales said this legislation accomplishes two things. First, it allows the Board the authority to discipline a licensee if he or she violates an order of the Board. Second, it allows the Board to certify out-of-state appraisers who meet Idaho's requirements, even in the absence of a reciprocity agreement. Mr. Hales explained that previously Idaho could license an out-of-state applicant only if the applicant's state had a reciprocity agreement with Idaho.

MOTION:

Rep. Thompson made a motion to send **H 419** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Thompson** will sponsor the bill on the floor.

H 466: **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **H 466**, saying this legislation would adopt the Idaho State Plumbing Code as the minimum requirement for plumbing installations in Idaho. He said the core of the bill is the same as that approved last year, but it incorporates some revisions to gain the endorsement of the Association of Idaho Cities and the Idaho Association of Building Officials. Mr. Keys said the most significant change is that the amendments will continue to be reflected in administrative rule rather than in the Code.

MOTION: **Rep. Palmer** made a motion to send **H 466** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Palmer** will sponsor the bill on the floor.

H 467: **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **H 467**. This legislation from the HVAC Board clarifies the Legislature's intent relative to the regulation of installation of solid-fuel burning appliances such as wood stoves and factory-built fireplaces. Mr. Keys said pellet stoves also qualify as solid-fuel burning appliances. Mr. Keys gave details of the bill, saying it changes the term "solid-fuel burning fireplaces" to "solid-fuel burning appliances." He said the Division believes the installation of these appliances is a legitimate public safety concern and they should be included in the HVAC program.

MOTION: **Rep. Rusche** made a motion to send **H 467** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Rusche** will sponsor the bill on the floor.

H 468: **Steve Keys**, Deputy Administrator of the Division of Building Safety (DBS), presented **H 468**. He said Congress passed legislation in 2000 requiring that all installations of new manufactured homes be inspected. The Department of Housing and Urban Development (HUD) developed regulations and then gave state agencies the opportunity to decide if the state wanted to conduct its own inspection program or defer to HUD. DBS has accepted responsibility for assuring the mandatory inspections are conducted. Mr. Keys said DBS is working with local jurisdictions to leverage existing programs in meeting the federal requirement. He said the \$50 installation tag requirement will enable DBS to track the location of all new installations, according to HUD requirements, and will produce revenue to facilitate training of inspectors and support quality assurance activities. Mr. Keys said DBS will issue permits and conduct inspections of new manufactured home installations in those areas that are not covered under other inspection programs.

Responding to questions from the committee, **Mr. Keys** said some Idaho counties, particularly in more rural areas, do not have building departments or inspection programs. He said DBS intends to utilize existing plumbing and electrical inspectors by giving them additional training and certifying them as building inspectors. He said DBS believes it will not be necessary to hire additional staff. Mr. Keys said the anticipated inspection fee for a single section home would probably be \$300 and for a double section home, \$400.

Asked why inspections are not done at the manufacturing site, **Mr. Keys** explained that, although there are inspections in manufacturing plants, the HUD-required inspection deals with installation procedures, assuring that such things as foundations and supports are done according to manufacturers' specifications. Mr. Keys said it is their intention to allow local jurisdictions to continue inspections, but it is DBS's responsibility to assure that the inspections meet HUD requirements. He said DBS believes the local inspection fees may be lower.

Mr. Keys was asked which entity makes application for the required inspection, and who is responsible for resolving problems. He said that under federal law the manufacturer and the installer will be responsible for resolving problems if

they arise. He said the permit fee is typically paid by either the retailer or the installer, and noted that sometimes the retailer is also the installer. He said that, because of the new regulations, all inspections would heretofore be conducted either by HUD or by a state program. Asked whether HUD would charge a fee if they performed the inspections, Mr. Keys said they would engage independent contractors who would set their own fees.

Jack Lyman, representing the Idaho Housing Alliance, a trade association that represents manufacturers, retailers, and installers of housing, testified **in support of H 468**. Mr. Lyman said in order to enforce the requirement that installations need to meet HUD standards, his group has worked with the Division of Building Safety to take on the responsibility of providing the inspections. He said if HUD were to handle the program, independent contractors employed by HUD would charge much higher inspection fees, possibly as much as three or four times as high. Mr. Lyman said the inspection fees will ultimately be paid by homeowners since they will be passed through by retailers. He said there will be administrative rulemaking that will establish the fee and he looks forward to being involved in the negotiated rulemaking process. Mr. Lyman said he expects that all parties will be on board with the negotiated rulemaking. He reported that **Rep. Henderson** has expressed his willingness to sponsor this bill on the floor.

Kate Haws, representing the Idaho Association of Building Officials, testified **in support of H 468**. She said her organization has a few concerns about clarifying some of the language, but she is confident those concerns will be addressed and settled during the negotiated rulemaking process.

MOTION:

Rep. Smith made a motion to send **H 468** to the floor with a **DO PASS** recommendation.

Asked whether it is DBS's intention to engage in negotiated rulemaking, **Mr. Keys** said they anticipate getting together with all parties to put together the temporary and pending rules. He said, however, that they need to get fees in place to start doing inspections by the end of the year. It was pointed out that a \$300 inspection fee might be too high, given that the Division intends to cross train existing inspectors to carry out these inspections. This will be a consideration when the Division submits its administrative rules to next year's Legislature.

VOTE ON MOTION:

Chairman Black called for a vote on the motion to send **H 468** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Barbieri** requested that he be recorded as voting **NAY**. **Rep. Henderson** will sponsor the bill on the floor.

Chairman Black recognized the committee's Page, **Benjamin Ovard**, and thanked him for his service during the first half of the session.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AMENDED #1 AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M. or Upon Adjournment of the House
Room EW41
Tuesday, February 21, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------------|--|------------------------------------|
| <u>H 520</u> | Electrical Contractors & Journeymen; Low Voltage Installations | Rep. Leon Smith |
| <u>H 539</u> | Video Service Act | Ed Lodge, CenturyLink |
| <u>H 420</u> | Insurance; Third Party Administrators | Bill Deal, Department of Insurance |
| <u>H 421</u> | Insurance; Director's Orders & Notices | Bill Deal |
| <u>H 422</u> | Insurance; Certified Report Requirements | Bill Deal |
| <u>H 423</u> | Immunizations; Standards, Rates | 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 Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon (Malek)
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith (30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Tuesday, February 21, 2012
- TIME:** 1:30 PM or Upon Adjournment of the House
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin
- ABSENT/
EXCUSED:** Rep. Bilbao
- GUESTS:** The sign-in sheet will be retained with the minutes in the committee's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.
- Chairman Black** called the meeting to order at 2:50 p.m. and introduced **Myleah Keller**, the committee's new page, who is from Idaho Falls.
- MOTION:** **Rep. Collins** made a motion to approve the minutes of February 15. **Motion carried by voice vote.**
- H 520:** **Rep. Leon Smith** presented **H 520**. He explained this bill will clarify that certain low-voltage electrical installations will not be covered for regulatory purposes. Rep. Smith said he had worked with Steve Keys, Division of Building Safety, in developing this legislation.
- Brian Stutzman**, President of Business Phone Specialists, a telephone wiring installation company in Idaho Falls, testified **in support of H 520**. Mr. Stutzman's company installs stereo systems, computer networks, phone systems, and the wiring that connects them; none of these systems involve life and safety concerns. He stated that a few words in the bill need to be changed to clarify that fire and security systems are not exempted. He noted that H 520 enjoys broad support from building contractors, the Idaho Association of Commerce and Industry, CenturyLink, retailers and others.
- Mr. Stutzman** explained the history behind this bill, saying that **H 139**, passed in 2005, opened the floodgates of regulation because of its vagueness. In 2006 the Division of Building Safety initially proposed many new rules but because of the unintended consequences they later asked that their own rules be rejected. Since that time, the regulation of these industries has remained undefined. Mr. Stutzman said H 139 will simply clarify the current exemptions applicable to low-voltage electrical installations. He said customers don't want to have regulations or permits for installation of phones, computers, speakers or similar products.
- Responding to a committee question, **Mr. Stutzman** said H 139 was vague enough that it led the Division of Building Safety to believe they could institute apprenticeship, permitting and inspection programs for low-voltage installations. Since DBS revoked those rules, the whole area of regulation of low-voltage installations has been undefined; H 520 will clarify the ambiguity.
- Mark Swenson**, owner and operator of Dad's Telephone, a sales and service company in Twin Falls that deals with telephones, overhead paging systems, fiber optic cable and data systems, testified **in support of H 520**. Mr. Swenson said this bill is necessary in order to exempt his industry from onerous regulations, permitting and inspections. Permit fees would be offset by the need for additional inspectors, and permits would be cumbersome and inconvenient. He testified it is his belief

that regulations are often proposed in order to protect an industry's profitability. Regulations create a barrier to entry for new businesses, which limits consumer choices, creates higher prices, and adds delays for customers.

MOTION: **Rep. Collins** made a motion to send **H 520** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: After declaring Rule 38, **Rep. Crane** offered a **substitute motion** to send **H 520** to General Orders. Explaining his substitute motion, Rep. Crane said the amendment would remove the words "outside wiring for fire and security and" on page 1, lines 26-27. This change is necessary in order to clarify that the exemptions will not apply to fire and security systems. He said his business, which deals with security systems, is licensed and highly regulated, and their installations require permits. He stated he had talked with the bill's sponsors and they are amenable to this change. **Rep. Bayer** seconded the motion to send H 520 to General Orders.

WITHDRAWAL OF MOTION: **Rep. Collins** asked that his motion be withdrawn.

During committee discussion, **Mr. Stutzman** clarified that he and the bill's other sponsors concur in the suggested amendments to **H 520**. He said eliminating the seven words in question will clarify current law, rather than changing current law. He said it was not the intent of the legislation to extend exemptions to fire and security systems. **Rep. Crane** noted the regulations apply only to commercial installations, not to residential installations.

VOTE ON MOTION: **Chairman Black** called for a vote on the motion to send **H 520** to **General Orders** for amendment. **Motion carried by voice vote.** **Rep. Smith (24)** will sponsor the bill on the floor.

H 539: **Ed Lodge**, representing CenturyLink, presented **H 539**. He said advances in technology currently make it possible for both cable and telecommunications providers to offer telephone, broadband and video services. H 539 offers a streamlined franchising process for the entry of additional land-based video providers, which may encourage additional private investment in Idaho's broadband infrastructure. Mr. Lodge said the bill also assures equality of treatment between incumbent cable providers and new entrants to the market.

Mr. Lodge testified the legislation will preserve local control and regulation of local government public rights-of-way and will continue the right of cities and counties to receive up to a five percent (5%) franchise fee. H 539 continues opportunity for cities and counties to require video service providers to make dedicated video channels available for public, educational and governmental (PEG) use. Mr. Lodge said this is compromise legislation that is supported by the Idaho Association of Cities and the Idaho Cable Telecommunications Association.

Mr. Lodge said in every community where video service will be provided by CenturyLink, the company will pay up to 5% of revenues to the city or county and will provide the local community with government and educational channels. He said this legislation could enable video service to be provided over a fiber optic network in areas where it currently is not available. Mr. Lodge stated satellite providers do not pay franchise fees and do not make PEG channels available.

Bill Roden, representing CenturyLink, testified **in support of H 539**. Mr. Roden reiterated that this bill is now supported by the Association of Idaho Cities and the Idaho Cable Telecommunications Association. He said the bill provides a simplified process for companies coming from outside who want to provide video service in Idaho in addition to broadband and telecommunications. He stated incumbent providers may choose to continue with their existing franchise

agreements with local communities, or they may decide to come under the state franchise. If they opt into the state system, they will be subject to any increase in franchise fees that local cities decide upon. Mr. Roden said if a city is currently requiring the federally-set maximum of 5% in franchise fees, they must comply with those fees.

Mr. Roden reviewed major provisions of the bill, stating it contains definitions of an "incumbent service provider," a "non-incumbent service provider," and a "video service provider." It also spells out the application process for a new applicant, which entails applying to the Secretary of State, the payment of a fee, the showing of insurance and financial responsibility, and a definition of their service area, which must encompass the entire political subdivision.

Mr. Roden said incumbent cable providers may decide they want to operate under a state-issued franchise but they are not required to do so, choosing instead to continue under their current franchise. Thus, there may be little or no change in existing services. He said Boise is the only city in the Treasure Valley that has requested public access channels be provided by video service providers. Mr. Roden said the fees were discussed with the Secretary of State before they were set in this legislation. The Secretary of State's only duty is to see that the statutory requirements are met; if the application is complete and the fee is paid, the franchise will be issued. If a system operator wants to terminate service, it would file with the Secretary of State to do so. Mr. Roden pointed out the bill's provisions that allow local governments the power to continue to exercise full and complete authority over the use of public rights of way, saying he had visited with the Ada County Highway District, the Association of Idaho Cities, and the Highway District Association. He also noted that video service providers coming into an area must pay reasonable fees for opening and closing, as well as permit fees, in addition to any franchise fees that may be required.

Mr. Roden reviewed the fee provisions of the bill and said one issue that had been worked out with the cities was whether advertising revenue and home shopping revenues would also be subject to the 5% fee. The agreed-upon language stipulates that if there is an existing franchise agreement in effect on July 1, 2012 between an incumbent provider and a political subdivision, and if that agreement defines revenues that exceed what is described in H 539, the city's definition will still apply. There will be no loss of revenues to the city. Mr. Roden said another issue is that of "redlining," the question of whether video service providers can skirt areas that are not economically as affluent as other areas, or whether they can discriminate against certain areas based on the population of that area. He said this bill absolutely prohibits that practice and adds increased intervention authority for cities and counties to mediate those issues of discrimination. If either party is not satisfied with the mediation, there is an appeal process to a court, which can order the service to be provided to those areas.

Further explaining the bill, **Mr. Roden** said it mandates that if a new entrant is coming into Boise and the City of Boise currently requires incumbent providers to provide PEG channels, the new entrant coming in must continue to provide the same number of channels on its system as is required of incumbents under current agreements. If an incumbent were to determine it wants to be under a state franchise, the city and/or county can still require that public access channels be made available. Under both federal law and this bill, the negotiation for public access takes place between the city or county and the provider. This bill recognizes that PEG channels should continue to be provided without charge to the political subdivision in which service is provided. Mr. Roden said the bill also mandates that public access channels be located at a location that is subscribed to by more than 50% of subscribers, in order to assure that a majority of subscribers will have PEG channels available. Additionally, once a location on the system is established, that

location or channel must be continued and can't be moved without at least 60 days' notice to the political subdivision requesting the access channel.

Responding to committee questions, **Mr. Roden** said federal law requires that public access channels be made available at no charge. He explained that if an incumbent provider decides to move to a state certificate of authority, that will void their existing agreement. The city would then be free to increase the franchise fee to the maximum allowable. He said there is nothing in the bill that prevents a political subdivision from changing a franchise fee under a state franchise; this would be done by city or county ordinance or resolution, after discussion with the provider. No permission is required from the state. Mr. Roden said currently TVCTV's PEG fees constitute about 25-30% of their total budget. They conduct fundraising, solicit grants, and get tax-deductible contributions. Pocatello is somewhat different; they are not as dependent on PEG fees.

Mr. Roden explained that the bill requires providers to have service across an entire political subdivision, but that does not mean across the entire state of Idaho. Agreements are negotiated between the provider and each individual political subdivision. What cannot be done is for a provider to have service in only one-half of Boise, for instance. Asked whether "public rights of way" referred to only land but not air, Mr. Roden confirmed that is the case. Asked whether there is any incentive for an incumbent provider who is currently at 2% franchise fee to enter into a state-issued franchise agreement and move to 5%, Mr. Roden said it would seem counter-intuitive to do so. A business may make the decision to do that, but it would be based on some other business reason.

Alex McNish, Executive Director of Treasure Valley Community Television (TVCTV), testified **in opposition to H 539**. She stated similar legislation has been before the Legislature the past four sessions, but this is the first time PEG fees have been eliminated from the language in the bill. Ms. McNish said TVCTV is a nonprofit entity, while other PEG stations are funded and structured differently. In Pocatello, for instance, the PEG channel is a city department. She said the bill will create a one-size-fits-all statewide franchising authority and said the current locally negotiated agreements, which have been working well, will be lost. She is also concerned about whether there is adequate oversight of a state system.

Ms. McNish reported that TVCTV is a small organization with one part-time employee who works ten hours a week; the rest of the staff is volunteer. She said they have not been able to engage in successful fundraising. According to Ms. McNish, PEG fees provide about 80% of her station's budget, not the 25% to 30% previously stated. She stated she does not know why PEG fees were omitted from this bill and said they were included in previous versions. Ms. McNish said callers to the Business Committee were given incorrect information when they were told that PEG channels would be funded. She stated the PEG fees for TVCTV are ten cents per subscriber per month; she asked that the legislation include PEG fees.

In answer to committee questions, **Ms. McNish** said their screen went black with a message crawler stating that TVCTV is in jeopardy of losing PEG fees if **H 539** passes unamended. She said the 10-cent PEG fee is a line item on cable subscribers' bills so it is a pass-through fee from the cable company. Ms. McNish said TVCTV receives about \$4,500 per month in PEG fees and \$54,000 from the City of Boise. Asked what her total budget is, Ms. McNish said those two figures constitute the bulk of it. Classes and producerships do not raise much revenue.

It was pointed out that last year's legislation contained PEG fee language but TVCTV did not support it. This year there is no PEG language but TVCTV still does not support it. **Ms. McNish** said she opposes it because of other concerns such as channel placement and the cost of switching to high definition. Asked whether TVCTV has conducted fundraising in order to supplement their PEG fees, Ms.

McNish said they have struggled to raise operating expenses. She said they are not asking the government to fund them and said the city should not take a portion of their franchise fee to fund a nonprofit. **Chairman Black** noted that among the more than 250 calls made to the Business Committee office regarding this bill, a number of callers indicated they would donate and work to support TVCTV if it was necessary to continue its operations. Ms. McNish said donations are not a secure source of revenue. She said she does not know how many viewers TVCTV has. TVCTV was the first in the Treasure Valley to operate public access television; Pocatello's station is one of the nation's oldest.

Ron Williams, representing the Idaho Cable Telecommunications Association, testified **in support of H 539**. He said a number of cities in Idaho have PEG channels and cable companies are required to provide access to that channel capacity free of charge. Mr. Williams said in many communities this is pretty valuable bandwidth resource. Some of these may have a few hours of broadcasting and then just run reader board announcements. Mr. Williams said only Boise and Pocatello charge additional PEG fees above and beyond franchise fees. Pocatello's charge is now a percentage, while Boise's is 10 cents per subscriber per month. He reported that the recent 2011 fourth quarter check was \$8,300; the annual amount is over \$32,000. The quarterly franchise check was \$292,437; the annual check is \$1,170,000. Mr. Williams said these amounts are declining as viewers switch to alternative providers including the internet.

Mr. Williams said the statement from Ms. McNish that this year is the first time PEG fees were omitted from the legislation is not correct. He said all but one of the previous eight bills over the last five years had the same consequence; that is, they did not include additional fees for PEG channels. He said it has always been his association's position that PEG can be a very valuable community resource. Mr. Williams said there is a lot of money already being paid to the City of Boise that is going into the general fund; if Boise wants to maintain PEG channels, it should make some of those funds available for peg funding.

Mr. Williams was asked why the PEG people were not brought into the negotiations on this bill. He responded that interested parties did meet with the PEG people, with Alex McNish and others, and with the mayor of Pocatello, where PEG is a city service. He said they implored the public access channels to seek additional sources of funding instead of looking to cable television subscribers, since the number of those subscribers declines every year. Mr. Williams said he does not foresee a wholesale movement of his members from local franchise agreements to a state-issued franchise. Asked whether this legislation would authorize local governments to simply impose a PEG fee above the franchise fee, Mr. Williams said he did not think so. He pointed out specific language on pages 7-8 that spells out what local governments can do to establish fees.

Asked whether satellite companies don't pay fees because they don't require the same rights-of-way, **Mr. Williams** said this is a sore point in the industry. He said cable systems operate at a 5% disadvantage because of required franchise fees. He said there could be a way to equalize the industries but it would have to be through use of a new tax on the satellite industry, as has been done in some states. Mr. Williams was asked whether Cable One had decided to go with a state-issued franchise or stay with local contracts. He reported that the vast majority of cable operators said they could not see a good reason to get state franchises.

Chairman Black explained that because of the short time remaining for the bill hearing, he would ask those waiting to testify to limit their remarks to three minutes each.

Dave Carlson, a PEG producer and user and a video engineer in Pocatello, testified **in opposition to H 539**. Mr. Carlson said Pocatello does a good job of financing their operation; 90% of their franchise fees goes to the PEG operation. He said if a new company does enter the market, PEG fees cannot be required of them. He testified Idaho is the only state in which franchising is being considered. Mr. Carlson suggested the bill should be sent to General Orders in order to make the language more similar to last year's version. He said all opposition would probably vanish if those changes were made. Mr. Carlson thanked Ed Lodge for his help, noting that Mr. Lodge was always available and willing to answer technical questions about the legislation concerning live programming and transmission format. Mr. Carlson said Mr. Lodge was honest in admitting that he did not know whether he could make any progress with regard to PEG fees because of possible opposition from the cable association. Mr. Carlson suggested that if PEG fees were included, it should be specified that they can only be used for brick and mortar, not for salaries.

In consideration of the time constraints, **Rep. Crane** asked whether the testimony on **H 539** could be completed and then a vote could be taken at the committee's next meeting on Thursday, February 23. **Chairman Black** agreed to do so.

Pete Peterson, a private citizen, stated his **opposition to H 539** by saying that TVCTV is a leaky canoe which will sink if nearly 80% of its funding is taken away. Mr. Peterson said the quality of public access television varies greatly but said TVCTV has a worldwide audience. He testified that for at least ten years BSU communications students have been able to get state-of-the-art, hands-on training which will go away if TVCTV dies with passage of the bill.

Pamela Thompson, producer of "Capitol Wrap" on TVCTV, testified in opposition to H 539. Ms. Thompson talked about various types of programming on TVCTV, including educational, spiritual, and political. Idaho Media Showcase promotes artists and photographers throughout Idaho. TVCTV also allows interested people to become producers by taking classes and paying a fee. Ms. Thompson said she believes this is a free speech issue. Noting that the current system has worked for years, she encouraged defeat of H 539.

Patrick Bailey, who works at TVCTV as a volunteer, testified **in opposition to H 539**. He stated the Boise City Council meetings are broadcast live and he fears that moving channels from the basic tier to somewhere down near the pay movie channels will eliminate that ability. Mr. Bailey said he would like the bill to include wording that would guarantee live broadcasting or maintain channel placement. In addition to City Council meetings, arts, entertainment and political programming are important. He is also concerned that video service providers can change their arrangement with 60 days' notice.

Robert Nicholas, a producer, testified **in opposition to H 539**. Mr. Nicholas said PEG fees are a concern because support from a community reflects the attitude of the community. Because PEG fees are such an issue, people must not be very community-minded. Either they are behind certain programs or they are not. He pointed out that BSU students are able to receive valuable training at TVCTV.

Gynii Gilliam, Economic Development Director for the Department of Commerce, testified **in support of H 539**. Ms. Gilliam said the legislation has the potential to attract significant new investment in Idaho. She stated the three pillars at her Department are: 1) protection and retention of existing business, 2) support of existing business, and 3) expansion of new business. This legislation addresses all three of those goals because it enables companies to expand business opportunities and services and it supports recruitment of new business. Ms. Gilliam said the availability of broadband is important to existing Idaho businesses as well as those thinking of moving here. She said in order to provide expanded services,

additional telephone and cable companies need to build out their capacity. Idaho's role in this expansion is to change public policy and regulatory policies in order to encourage broadband expansion.

Tom Williamson, representing SOA entertainment, testified on **H 539**. Mr. Williamson said he would prefer that the bill be amended so the PEG fees could be phased out gradually rather than all at once on July 1. Mr. Williamson said TVCTV accomplishes a lot with their limited budget and he asked committee members to send the bill to General Orders for amending.

Ken Harward, representing the Association of Idaho Cities, testified **in support of H 539**, saying he has been part of the negotiation on this bill for five or six years. Mr. Harward said he is pleased with the improvements that have been made and he is supportive of the current bill.

Responding to questions from the committee, **Mr. Harward** said he has heard some of the conversation Boise City has been having regarding PEG fees and public access channels. He said Boise's existing locally negotiated franchise agreement with Cable One will expire in the next few months. Since there is no obligation on the part of the cable provider to continue collecting ten cents per subscriber, nor any obligation on Boise's part to expand the definition of gross revenue, this legislation will be a protection for Boise. Mr. Harward noted that Boise City is very interested in seeing TVCTV continue operations, and they will need to work out a system to assure that. It was pointed out that Mayor Bieter had sent a letter expressing his support for this legislation, which would seem to indicate that Boise City has some plan in place to move forward. Mr. Harward said this legislation had a more acceptable solution to the definition of "gross revenues" which allows for the application of a more expansive definition to apply going forward, if that more expansive definition is in existing contracts in place before July 1, 2012.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, testified **in support of H 539**. Mr. Eaton said people who are trying to sell property in this area stress that the ability to have broadband capability is an important priority for buyers. This is true for both residential and commercial properties and it has become more important as more people are working from home offices. Mr. Eaton said this legislation will help attract greater broadband investment into our state.

Peter Lutze, a founder of TVCTV who also teaches at Boise State, testified **in opposition to H 539**. Mr. Lutze said the total fees the station receives each year is \$32,000; it also received an initial \$200,000 to purchase equipment and get the station set up. He said television is an expensive and labor-intensive business. Mr. Lutze said if this bill passes, all interests will be taken care of except the economic interests on the public access side. He pointed out there was a time when basic cable service cost \$13 per month, but now it is \$50. He stated public access may be able to continue, but the city's resources are decreasing and it is difficult to get funding from the city. Mr. Lutze said TVCTV provides a tremendous service for the university and the community.

Celynda Roach, General Manager of Cable One, testified **in support of H 539**. Ms. Roach said Cable One's profit margin is very low, which makes it necessary for them to make adjustments to their business in order to remain profitable. She said cable customers do balk at any price increase, no matter how small. Cable One's market share is shrinking; according to one recent study, 54% of all U.S. consumers receive video services from an alternative source such as the internet. Given this reality, Ms. Roach pointed out that the model supporting PEG fees is going away. In 2004, Cable One's payout for fees was \$14,000 per quarter, compared to last year's fourth quarter payout of \$8,300. In order to help Treasure Valley Community Television secure adequate funding in this new environment, Ms. Roach said she would offer her help to organize fundraising efforts for TVCTV.

Jayson Ronk, Vice President of the Idaho Association of Commerce & Industry, testified **in support of H 539**, saying this compromise legislation will encourage competition and greater investment in Idaho by video service providers.

Chairman Black stated he will give **Mr. Lodge** an opportunity to conclude his testimony at the committee's next meeting on Thursday afternoon. Following Mr. Lodge's concluding testimony, the committee will discuss and vote on the bill.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 5:35 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

**AMENDED #1 AGENDA
HOUSE BUSINESS COMMITTEE
1:30 pm or Upon Adjournment
Room EW41
Thursday, February 23, 2012**

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------|--|--|
| H 539 | Video Service Act (Committee Discussion and Vote Only) | Ed Lodge, CenturyLink |
| SCR 118 | Rejecting Rules Governing Use of National Electrical Code | Chairman Black |
| SCR 119 | Rejecting Rules Governing Group Insurance | Chairman Black |
| H 492 | Uniform Securities Act | Gavin Gee, Department of Finance |
| H 447 | Modular Buildings; Permits & Inspections | Steve Keys, Division of Building Safety |
| H 465 | Public Works Contractor Licenses; Classes of Licenses | 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 Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon(Malek)
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

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MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Thursday, February 23, 2012

TIME: 1:30 pm or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** Rep. Henderson

GUESTS: Steve Keys, Division of Building Safety; Russell Westerberg and Joie McGarvin, Westerberg & Associates; Cindy Hedge, Idaho AFL-CIO; Sarah Fuhriman, Roden Law Office; Robert Neal, citizen; Alex McNish and Jim Thomas, Treasure Valley Community Television; Dave Goins, Idaho News Service; Susan Randall, Boise State University; Will Hart, Idaho Credit Union Association; Benjamin Davenport and Max Greenlee, Risch Pisca

Chairman Black called the meeting to order at 2:52 p.m.

H 539: **Ed Lodge**, representing CenturyLink, was recognized to conclude his testimony on **H 539**. Mr. Lodge thanked the PEG community, particularly in Boise and Pocatello, for their work on the legislation. He said although he was not able to win their support, the suggestions they made helped create a better bill. Mr. Lodge said of the seven Idaho communities that have elected to have a PEG service, three of them assess a PEG fee to cable subscribers in addition to the franchise fee. Satellite subscribers do not pay franchise or PEG fees and do not have access to PEG channels. Mr. Lodge said franchise fees and PEG fees are paid by subscribers and not by cable or telecommunications companies; funding for PEG channels is always a local decision, and that will not change. He said the objective of H 539 is to attract investment from new land-based video service providers. Noting that 20 states have recently passed similar bills, Mr. Lodge said within two years of Missouri's 2007 bill the franchise fee revenues in that state increased \$11.5 million as a result of new investment. Mr. Lodge expressed gratitude for the support and help he had received from **Ken Harward** and the Association of Idaho Cities, as well as **Ron Williams** and **Celynda Roach** from the Idaho Cable Telecommunications Association.

In response to a committee question, **Mr. Lodge** said the most important concession he had made was making sure the content on public access channels would be allowed under PEG industry standards. He said this change was incorporated in last year's version of the bill as well as this bill.

MOTION: **Rep. Crane** made a motion to send **H 539** to the floor with a **DO PASS** recommendation.

In support of his motion, **Rep. Crane** said he has worked on this legislation for the past four years and during that time Qwest, AT&T and Verizon could never come to agreement. He congratulated those parties for making concessions to arrive at compromise legislation. He also noted that this would be the best arrangement that could be offered to the PEG people and he asked for the committee's support to move the legislation forward. In support of the motion, **Rep. Barbieri** agreed that this is probably the best deal that can be agreed upon with regard to PEG fees. He said public access channels will be free to restructure and find other sources of income. **Rep. Guthrie** also spoke in support of the legislation, thanking Mr. Lodge

for being professional and most responsive to any parties in Pocatello who had questions or concerns.

Chairman Black commended **Ken Harward** and the Association of Idaho Cities for their efforts. He made it clear that no one dealing with this issue has any intention of getting rid of the PEG channels. Because cities see the value of having these channels, they will be committed to finding a way to finance them.

VOTE ON MOTION:

Chairman Black called for a vote on the motion to send **H 539** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Crane** will sponsor the bill on the floor.

SCR 118:

Chairman Black presented **SCR 118**, explaining that this is a duplication of **HCR 31**, which rejects a rule from the Division of Building Safety that would have adopted the 2011 National Electrical Code.

MOTION:

Rep. Batt made a motion to send **SCR 118** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Black** will sponsor the bill on the floor.

SCR 119:

Chairman Black presented **SCR 119**, which rejects a rule from the Department of Administration in reference to group insurance. He explained that the Senate Commerce Committee determined this section needed to be rejected because the wording in one paragraph dealing with reimbursement for prescription drug costs was incorrect. The language reads "of the covered year" but should read "of the following year."

MOTION:

Rep. Collins made a motion to send **SCR 119** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Rusche** will sponsor the bill on the floor.

H 492:

Gavin Gee, Director of the Department of Finance, presented **H 492**. Mr. Gee stated this legislation had already had two bill hearings before the Business Committee, at which a concern was raised about the statute of limitations provision. He said that concern, as well as several technical corrections, are addressed in **H 492**. The statute of limitations is set at three years from the date of discovery. The bill also adds provisions that make theft of client funds and use of Ponzi schemes specific violations of the Uniform Securities Act. Mr. Gee said his department is not aware of any objections to the bill.

MOTION:

Rep. Patrick made a motion to send **H 492** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Patrick** will sponsor the bill on the floor.

H 447:

Steve Keys, Deputy Administrator of the Division of Building Safety (DBS), presented **H 447**, changes to requirements for modular buildings. This legislation sets up a statewide installation permitting and inspection requirement for modular buildings and requires DBS to perform inspections in areas of the state not covered by local inspection programs. Mr. Keys said the fees for DBS inspections will be set by administrative rule. He stated that commercial coaches, typically mobile job site facilities, qualify for exemption from the permitting and inspection requirements. Recreational park trailers do not fall within the definition of a modular building, when used within their defined purpose. Mr. Keys said the modular board and manufacturers of modular buildings have expressed interest in setting up this inspection program to address consumer complaints about installation-related issues.

Responding to questions from the committee, Mr. Keys said the language exempting mobile job site facilities appears on page 2, lines 35-37. The commercial coach definition appears on page 1. Mr. Keys said the anticipated inspection fee will probably be \$200 to \$400, but DBS is looking at every way possible to minimize the fee. Asked whether this legislation is being brought in response to a federal mandate, Mr. Keys said manufactured homes fall under a federal program, whereas modular homes do not. Modular buildings are built in a factory setting according to applicable building codes. He testified that when the manufactured housing board proposed their new inspection program, the modular board asked for the same type of program.

MOTION: **Rep. Collins** made a motion to send **H 447** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Barbieri** will sponsor the bill on the floor.

H 465: **Steve Keys**, Deputy Administrator of the Division of Building Safety (DBS), presented **H 465**. Mr. Keys said this bill responds to input from licensees and affected government entities. It will expand the current Public Works Contractor classifications by establishing a new "CC" class of license between the existing "C" and "B" classes. Currently a "C" contractor is allowed to bid on contracts up to \$200,000 while a "B" contractor is allowed to bid on contracts up to \$600,000. **H 465** allows the "CC" class to bid work up to \$400,000 and establishes minimum financial requirements of \$25,000 in working capital and \$75,000 in net worth. Applicants for a "CC" license must have undertaken projects of at least \$280,000 to fulfill the experience requirements. Mr. Keys said this new license classification will engender additional bidder participation on projects between \$200,000 and \$400,000.

In response to a committee question, **Mr. Keys** said the minimum financial requirements in the bill include a net worth requirement as well as an experience requirement, in terms of the size of projects a contractor has performed in order to qualify for a certain class of public works license.

Rep. Crane declared under **Rule 38** that his firm does hold a public works contractor license.

MOTION: **Rep. Collins** made a motion to send **H 465** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Collins** will sponsor the bill on the floor.

There being no further business to come before the committee, the meeting was adjourned at 3:25 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 P.M. or Upon Adjournment
Room EW41
Monday, February 27, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------|--|-------------------------------------|
| H 420 | Insurance; Third Party Administrators | Bill Deal, Department of Insurance |
| H 421 | Insurance; Director's Orders & Notices | Bill Deal |
| H 422 | Insurance; Certified Report Requirements | Bill Deal |
| H 423 | Immunizations; Standards, Rates | Bill Deal |
| H 471 | Insurance; Portable Electronics | Stephen McDaniel, Asurion Insurance |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
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MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Monday, February 27, 2012
- TIME:** 1:30 PM or Upon Adjournment
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin
- ABSENT/
EXCUSED:** None
- GUESTS:** Joie McGarvin, America's Health Insurance Plans; Russell Westerberg, Westerberg & Associates; Jim Genetti, Idaho Association of Health Underwriters; Tom Iberle and Kelly Anderson, Society of St. Vincent dePaul; Woody Richards, Insurance Lobbyist; Wayne Hoffman, Idaho Freedom Foundation; George Gersema, Employers Resource; Marnie Packard, Pacific Source; Kathie Garrett, Idaho Academy of Family Physicians; Georgia Siehl, Donna Daniel, Bill Michels, Tom Donovan and Bill Deal, Department of Insurance; Julie Taylor, Blue Cross of Idaho; Shad Priest, Regence Blue Shield, Elizabeth Criner, Pfizer
- Chairman Black** called the meeting to order at 2:20 p.m.
- MOTION:** **Rep. Smith (30)** made a motion to approve the minutes of February 21 and February 23. **Motion carried by voice vote.**
- H 471:** **Roy Eiguren**, representing Asurion Insurance, presented **H 471**, dealing with insurance for cell phones and other portable electronics. He said this is an attempt to make uniform the manner in which insurance policies are monitored and regulated by the Department of Insurance. Mr. Eiguren said he had vetted the bill with the Department. He introduced **Stephen McDaniel** who represents Asurion Insurance, the only company selling insurance policies on cell phones. Mr. Eiguren said these policies cover all kinds of hazards and cost about \$9 per month.
- Stephen McDaniel**, representing Asurion Insurance Services, testified **in support of H 471**. Mr. McDaniel said this creates a uniform and consistent model for consumers in Idaho. He said similar legislation is being pursued in 26 states this year, and more will be doing so next year.
- Responding to committee questions, **Mr. McDaniel** said his company's insurance policies do cover internal malfunctions like battery failure; the average premium is between \$4 and \$6 per month per device. Mr. McDaniel said Square Trade offers service contracts which are limited to inherent defects in materials or workmanship. He testified that service contract providers are subject to less regulation than insurance providers. He said it is his opinion that service contracts would not cover such things as theft or full immersion in water. He said Square Trade's model would continue unchanged after passage of this bill. Mr. McDaniel said his company has had very few complaints about the quality of replacement products provided under their insurance coverage.
- Mr. McDaniel** said during the development of this legislation all stakeholders were brought to the discussion, and he stressed this is not an attempt to exclude or reduce competition. He stated there are several companies involved in selling these insurance policies, including Liberty Mutual, CNA, American Bankers, and Asurion, as well as some smaller regional companies. Mr. McDaniel said this bill will create a corporate-level license, similar to a rental car limited lines license.

Bill Deal, Director of the Department of Insurance, was asked to respond to further committee questions. He said his department did review the legislation. He testified those who wish to sell insurance on electronic devices would be evaluated under the same criteria as other applicants and would have to meet the same requirements with regard to financial stability. Mr. Deal said he does not know of any complaints about insurance products offering coverage for electronic items such as phones. He said the effort is to reach uniformity in what this product is and how it is being sold. He stated the Department of Insurance will handle future complaints through its Consumer Affairs Department, as it does with other complaints about insurance products. He also stated the Department could have oversight with regard to premium rates for these products.

Tom Donovan, Deputy Director of the Department of Insurance, was asked to delineate the differences between a company regulated under this legislation and a company like Square Trade, which is underwritten by Amtrust, a large insurance company. Mr. Donovan pointed out that according to Idaho Code service contracts are not subject to the insurance code. Similar to a warranty, a service contract covers damage resulting from normal wear and tear or defects in material or workmanship.

Mr. Donovan was asked whether the Department of Insurance would have regulatory authority over a device that was purchased outside the state of Idaho, for instance, in Washington. He said the Department would look at the location of the risk and therefore Idaho regulation would apply to such a transaction. Asked whether these insurance policies would cover Ipads as well as cell phones, he said it was his belief that they do cover those items.

Mr. McDaniel responded to a question about whether a consumer would qualify for a "quantity discount" in premiums if he or she owned and insured more than one device. He said there is no discount for multiple devices. Asked why Canada is mentioned, he said it was to allow a Canadian resident to enter information for claims. Mr. McDaniel testified the required information provides for regulatory oversight to make sure all people have been properly vetted. He noted that Asurion, his company, and another company, Asurent, are the two largest players in the field; they are licensed insurance agencies in the state who work with wireless carriers to set up insurance programs on the devices they sell.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in opposition to H 471**, noting that his organization had given this bill a freedom index score of minus 6. Mr. Hoffman said it creates a regulatory burden and imposes specific record keeping and training requirements. He said he is also concerned about the rigid requirements for insurance adjuster licensing, including names and addresses, social security numbers, background checks and other information. Mr. Hoffman said the bill will place excessive control on companies insuring electronic devices and he noted there has been no rallying cry to regulate this industry. He said achieving uniformity across all states is not a good reason to regulate something and said there is no rush to enforce these regulations.

Responding to questions, **Mr. Hoffman** said he does believe the state should play some role in regulating insurance, but in this instance there is no consumer protection issue. He said he is not aware of any companies who think they may be hindered by this legislation, but he thinks it is important to speak up for the free market.

Vice Chairman Henderson assumed the chair and conducted the remainder of the meeting.

Mr. Donovan was asked to clarify the type of information required of applicants for insurance licensing. He said the Department requires some background checks and biographical information on the officers and directors of insurance companies, although fingerprints may not be required of those individuals. Mr. Donovan responded to a question about whether it would be possible to purchase a rider on one's homeowner's insurance to cover portable electronic devices, saying he believes that would be possible.

Answering further questions, **Mr. Donovan** said if a person is truly selling an insurance policy that would cover electronic devices, and not simply a service contract, then that person ought to be licensed as an insurance producer. He explained that H 471 proposes the creation of a vendor license under which an entity could be licensed; that entity would be responsible for the conduct of the individuals selling its insurance products. Mr. Donovan explained this bill would allow for a new type of limited lines insurance for portable electronics vendors, which would be less regulatory, not more regulatory.

Mr. McDaniel stated that the sale of this type of insurance is incidental to the sale of cell phones. This bill creates a limited lines insurance license allowing salesmen to sell only these kinds of policies.

Mr. Eiguren offered to have the bill held in committee, subject to the call of the Chair.

MOTION: **Rep. Bilbao** made a motion to **HOLD H 471** in committee, subject to the call of the Chair.

Bill Deal, Director of the Department of Insurance, offered a further clarification on **H 471**. He said if the Department of Insurance is licensing an insurance company, the company would be required to submit biographical and other information on its officers. An insurance agent simply needs to provide his or her fingerprints in order to facilitate a background check.

H 420: **Bill Deal**, Director of the Department of Insurance, presented **H 420**, which deals with audited financial statements for third-party administrators (TPAs). Mr. Deal said smaller TPAs should be granted an exemption from the requirement to provide audited financial statements. Companies who will not be required to provide audited statements will be required to post a 10% or \$20,000 bond. Mr. Deal said he is not aware of any opposition to this legislation.

Georgia Siehl, Bureau Chief and Chief Examiner at the Department of Insurance, was recognized to respond to a question about whether there are specific rules set up to define "hardship." She said that in general small third party administrators (TPAs) do not have audited financial statements. Ms. Siehl said the Department takes into account the size of a TPA's assets as well as the business they write in Idaho. Ms. Siehl said prior to the law being changed a couple of years ago, audited financial statements were not required but a bond was required. The model law was adopted which required audited statements, and the Department had no ability to waive that requirement. They have found there are some small TPAs who felt this requirement was a very big financial burden on them. Ms. Siehl said if this exception for small firms is not implemented, such firms may not want to operate in Idaho.

Bill Michels, Deputy Chief Examiner at the Department of Insurance, was recognized to respond to a question about how "good cause" is determined and how the cost of a bond compares with the cost of an audit. Mr. Michels said the Department will accept "reviewed" or "compiled" financial statements from smaller companies in lieu of audited financial statements. He said a company would have to make a case as to what represents a hardship. He said this exception is targeted to small businesses for whom audited financial statements represent a significant expense.

MOTION: **Rep. Cronin** made a motion to send **H 420** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Cronin** will sponsor the bill on the floor.

H 421: **Bill Deal**, Director of the Department of Insurance, presented **H 421**, saying it amends current law dealing with service orders and notices given by the Director. Mr. Deal said this bill will allow him to use e-mail when sending notices. When the transmission of such notices is done by e-mail, both parties have to agree to that method. He said there is no known opposition to this change.

MOTION: **Rep. Collins** made a motion to send **H 421** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Collins** will sponsor the bill on the floor.

H 422: **Bill Deal**, Director of the Department of Insurance, presented **H 422**. Mr. Deal explained that fees and taxes collected by the Department of Insurance are deposited and updated daily with the Treasurer's Office through an electronic accounting system. Currently there is a requirement that the Department file a certified report on funds collected and submitted to the State Treasurer. During the Department's audit last year, the auditor suggested this requirement could be eliminated since the funds are tracked electronically. Mr. Deal said there is no opposition to this change.

MOTION: **Rep. Chadderdon** made a motion to send **H 422** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Chadderdon** will sponsor the bill on the floor.

Bill Deal, Director of the Department of Insurance, was recognized to present general information about his Department and their work. Mr. Deal stated the Department operates to regulate the insurance industry in the state of Idaho under Title 41 of Idaho Code. The Legislature sets policy and the staff at the Department makes decisions based on that policy. Mr. Deal introduced **Georgia Siehl**, Chief Financial Examiner, who has been Chief Examiner for the past 12 years. Ms. Siehl is a CPA and also a Certified Financial Examiner (CFE). Her primary responsibility is to make sure the Department meets all National Association of Insurance Commissioners (NAIC) requirements. Mr. Deal then introduced **Bill Michels**, CPA and CFE, Deputy Chief Examiner, who supervises the team that examines domestic insurance companies for financial stability and other factors. Mr. Michels is a 12-year employee of the Department. Mr. Deal also introduced **Donna Daniel**, a 23-year employee who is Supervisor of the Rates and Forms Section, one of the busiest divisions at the Department.

H 423: **Bill Deal**, Director of the Department of Insurance, presented **H 423**. He explained that the Department has regulatory authority to administer and review health insurance rates.

First, **H 423** allows the Department to make certain information available that was previously considered proprietary, such as the explanation given for an increase in premium rates. **Mr. Deal** said that beginning last September any increase in premiums greater than 10% must be submitted to the Centers for Medicare and Medicaid (CMS). The Department of Insurance can either post the justification for such increase on its website or it can link to the CMS website in order to give the public access to the information. Once the justification is sent into CMS, the Department reviews the rate increase, makes a judgment on its appropriateness, and either approves or disapproves it. Mr. Deal said CMS cannot override that decision; the rate approval authority stays within the state.

Second, this legislation will incorporate language containing definitions and standards that are already in the property/casualty section of Idaho Code, namely, to specify that "rates shall not be excessive, inadequate or unfairly discriminatory."

Mr. Deal said this is the same language used as a standard in many states. He testified that since 2008 all health insurance rates have been or are being reviewed. He said the NAIC model law is the basis for Idaho's review process, but Idaho statutes and rules are the primary basis. Mr. Deal said the recent Patient Protection and Affordable Care Act (PPACA) did not mandate any rules. He testified that an actuary determines whether rates are "excessive," meaning that a company will achieve an inordinate level of profit, or whether they are "inadequate" meaning the company could not maintain operations, or whether they are "unfair or discriminatory," which could mean that a company charges different rates for a man than for a woman.

Mr. Deal concluded his testimony by saying that the Department has had an effective review process for many years. He noted the second primary function of the Department is to assure that companies are solvent and financially stable so they can pay for claims.

Responding to committee questions, **Mr. Deal** said for small companies and individuals the new medical loss ratio allows 20% for company expenses and requires 80% to be used to pay claims. For large companies, the ratio is 15% for expenses and 85% for claims payment. If income exceeds those figures, the difference has to be refunded to policy holders.

Bill Michels was recognized to respond to a question about how the determination is made on whether 20% is adequate to pay company expenses. He testified that his department examines insurance companies once every five years to determine their solvency; they also look at corporate governance, market conduct, claims payment, management procedures and practices. He said the major issue with companies is actuarial soundness, which includes past history and rate adequacy, among other factors. Mr. Michels said the "refund" of excess funds is in the form of a dividend check that is returned to the policy holder.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in opposition to H 423**. Mr. Hoffman said after reading the bill and its Statement of Purpose, he does not think the bill is entirely transparent. He said this legislation references 45 CFR 154.215, which is the federal rule derived from the Public Health Service Act. Mr. Hoffman said this was added by Section 1003 of the Patient Protection and Affordable Care Act (PPACA), and thus this legislation codifies in Idaho Code the rules written through PPACA. He testified if a rule's existence is simply stated in statute, then the statute changes in accord with that rule any time that rule changes, which is unconstitutional.

Mr. Hoffman testified this bill creates arbitrary language and sets it in Code; it is not specific as to what qualifies as "unreasonable" or "excessive." He said this language is already in Code, but it has done nothing to help with insurance rates. Mr. Hoffman is concerned that Idaho is delegating away the Director's authority and is putting language into Idaho Code that is derived from legislation the state is trying to block, namely, PPACA. He believes this bill is unconstitutional, is an affront to federalism, and increases control of the private sector.

George Gersema, Chief Executive Officer of Employees Resource in Boise, testified **in opposition to H 423**. He said he is philosophically opposed to this legislation. He stated there used to be a provision that dealt with information that should be considered proprietary and secretive, but now the Director is required to make information available, which means information is subject to public disclosure. Mr. Gersema said insurance carriers may say they are okay with that provision, but it may give pause to companies who were anticipating entering the Idaho market because they may not want to disclose information to competitors. Mr. Gersema also has concerns about the rating standards. He said there currently is adequate regulatory authority in Idaho Code.

In response to committee questions, **Mr. Gersema** said the government has not proven itself to be very good at determining excess or inadequate pricing. He said he ran a self-directed health plan for over 20 years so he is very familiar with actuaries, claims, reserves, and other aspects of the health insurance industry. Mr. Gersema said he does see a role for the Department of Insurance to determine whether premiums are too high or too low, but he believes the current regulation is more than adequate to allow the Department to do so.

Shad Priest, representing Regence Blue Shield, testified **in support of H 423**, nothing that he previously worked for the Department of Insurance for 15 years, including serving as Deputy Director. Mr. Priest said the primary change has nothing to do with the Director's authority to regulate rates; that authority has been in place since at least 1995. He said insurance companies file rates and the Department reviews them; this legislation will not change that. He stated that the use of the terms "excessive, inadequate, discriminatory" is common throughout the country, and this language is already in Idaho Code. The insurance industry is comfortable with that language. Mr. Priest said the primary change effected by this legislation is to add some transparency to the rate-filing process. Idaho's current law states that all rate information is proprietary. This legislation will open that information by allowing the Department to disclose a company's justification for its rate increases.

In response to a committee question, **Mr. Priest** said the referenced language appears in Idaho Code Section 41-3915, Subsection 6. He said the terminology has been there since the Managed Care Act of 2001. Asked whether the state is giving away its regulatory powers if this bill is passed, Mr. Priest said insurance carriers are required to follow these rules regardless of whether the state adopts this approach. He said if Idaho does lose regulatory oversight, it will have to deal with the federal government, which may be politically driven, on rate questions.

Julie Taylor, Director of Government Affairs for Blue Cross of Idaho, testified **in support of H 423**. Ms. Taylor said it is important that the Department of Insurance remain the primary regulator. She stated the terms excessive, inadequate, and discriminatory are meant to protect consumers. Ms. Taylor gave an example of a company, Lincoln National, which operated as a managed care organization in Idaho in the early 1990s. Because they "low-balled" rates, they ultimately did not have enough reserves to pay claims. Blue Cross took in the policy holders from Lincoln National but had to raise rates in order to cover the risk pool.

Asked whether she thinks there is a problem in Idaho with excessive, inadequate or discriminatory practices, **Ms. Taylor** said she is not the party who could best answer that question.

Marnie Packard, representing Pacific Source Health Plans, testified **in support of H 423**.

Tom Donovan was recognized to comment on the concern that the Legislature may be delegating authority to the federal government. Mr. Donovan explained that the Department is faced with the constitutional challenge and possible repeal of PPACA. In order to comply with the Public Records Act, agencies need to make information public. The Department will have a problem doing this if the legislation does not pass. If the information is filed with the federal government and someone asks for access to it, the Department needs to be able to give out the information. Mr. Donovan said the bill was drafted with the phrase "otherwise provided by law" because the exemption provided under federal law is not quite as broad as that available to the Director. He also said PPACA does not require everything that Idaho Code requires to be made public. For instance, one would not find all actuarial information or rate-setting information, but the Department would have that information on file.

Bill Deal was recognized to offer concluding testimony. He stated **H 423** is important legislation particularly for the health insurance industry in Idaho. He said the rate standard, which comes from the NAIC rate manual, is used throughout the country. Mr. Deal said the Department is simply trying to make sure that insurance companies operating in Idaho are solvent, are charging valid rates, and have adequate reserves to pay claims. He said his Department is trying to maintain its own effective rate review process, as dictated by Section 41 Idaho Code.

Responding to further committee questions, **Mr. Deal** said the Centers for Medicare and Medicaid Services (CMS) has decreed to insurance companies that if their rates increase by 10% or more, they have to send the justification to CMS. That information goes on the CMS website. The Idaho Department of Insurance then determines the rate adequacy, and that decision is sent to CMS. CMS has no authority to change the rate; the Department's decision is attached to the justification submitted by the company. Mr. Deal said if the Department does not have the authority to deal with that rate information, which is proprietary, the federal government takes over and makes the decision.

MOTION: **Rep. Rusche** made a motion to send **H 423** to the floor with a **DO PASS** recommendation. **Rep. Crane** requested a roll call vote on the motion.

During discussion on the motion, **Rep. Barbieri** said he is not sure the bill is drafted constitutionally because the reference to federal rules does delegate the Legislature's authority. He said it seems as if Idaho is trying to comply with the federal act to keep the federal government from pre-empting the state's authority.

Speaking in support of the motion, **Rep. Rusche** said Idaho should not turn over management and oversight of Idaho's health industry to the federal government. He said we will not assert Idaho sovereignty by turning power over to the federal government.

Rep. Bayer expressed his concern with the two instances in the bill citing federal regulations, noting that it seems to embed federal law into Idaho Code and that it seems to be fairly open-ended. He said he will not support the motion.

ROLL CALL VOTE: **Vice Chairman Henderson** called for a roll call vote on the motion to send **H 423** to the floor with a **DO PASS** recommendation. **Motion failed by a vote of 6 AYE and 9 NAY, with 2 absent and excused. Voting in favor of the motion: Reps. Collins, Bilbao, Chadderdon, Thompson, Smith (30), and Rusche. Voting in opposition to the motion: Reps. Henderson, Crane, Patrick, Bayer, Palmer, Barbieri, DeMordaunt, Guthrie, and Batt. Reps. Black and Cronin were absent and excused.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:40 p.m.

Representative Frank Henderson
Vice Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 PM or Upon Adjournment
Room EW41
Wednesday, February 29, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------|-----------------------------------|---|
| H 549 | Liens, Notice | Jeff Harvey, Office of the Secretary of State |
| H 550 | Business Entity Names | Jeff Harvey |
| H 587 | Out-of-State Insurers; Amendments | Rep. Ellsworth |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

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MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, February 29, 2012

TIME: 1:30 PM or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** Reps. Henderson, Patrick and Cronin

GUESTS: Jeff Harvey, Secretary of State's Office; Max Greenlee, Risch Pisca; Joie McGarvin, America's Health Insurance Plans; Tony Smith, Benton Ellis; George Gersema, Employers Resource; Wayne Hoffman, Idaho Freedom Foundation

Chairman Black called the meeting to order at 2:46 p.m.

H 549: **Jeff Harvey**, Office of the Secretary of State, presented **H 549**, which addresses some issues with liens. Mr. Harvey explained that in 1998 the filing of liens transitioned from the Recorder's Office to the Secretary of State's Office. In some cases the County Recorder's liens are abandoned. Then, when customers attempt to make a major purchase that requires a credit check, old liens may surface. When an inquiry is made, the County Recorder confirms that the lien exists but cannot provide any further information. If further checking takes place with the Tax Commission, the Tax Commission may confirm that the records have been destroyed since under statute the liens lapsed after a period of five years. Therefore, there is nothing documented at either the Recorder's Office or the State Tax Commission. At this point a consumer has to hire legal help to prove the lien is no longer valid. Mr. Harvey explained this bill will stipulate that any lien filed before July 1, 1998 is null and void and is no longer a valid filing with the Recorder. He said this will allow people to provide a copy of this stipulation and request that the lien be removed from their credit report. Mr. Harvey said he had checked with the three major credit reporting firms, Experion, Equifax and Transunion, to confirm that a person providing a copy of this amendment should have no problem getting the disputed lien removed from his or her credit report.

Responding to committee questions, Mr. Harvey said the Secretary of State is subject to the same five-year statute of limitations on liens. He said if the Tax Commission has not filed a continuation of the lien, it is no longer in effect. The Secretary of State allows the lien to lapse or fall off the record. This legislation, however, will not require the County Recorder to delete any information from their records; if necessary, the records will still be available through the Recorder's office. Mr. Harvey said the Secretary of State's office wants to put something in place that clearly states these liens are no longer valid.

MOTION: **Rep. Thompson** made a motion to send **H 549** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Thompson** will sponsor the bill on the floor.

H 550: **Jeff Harvey**, Office of the Secretary of State, presented **H 550**. He explained that when the business entity laws were changed and updated in 2007, language was omitted which caused an inconsistency regarding business entities. Mr. Harvey said H 550 will reinstate that language, which prohibits using a business name that falsely states or implies a business is affiliated with a government entity. Mr. Harvey said the omission of this language was a simple oversight.

Answering questions from the committee, **Mr. Harvey** gave examples of names that would imply a government affiliation, such as a name containing "City of Boise" or "eagleidaho.com". He said that in general the use of the name "Idaho" does not imply a government affiliation, but something like "Idaho Department of Carpet Cleaning" may imply an affiliation. Mr. Harvey said decisions on allowable business names are made on an individual basis by a naming committee. If there is some concern about whether or not a name is appropriate, the naming committee usually sides with the filer. He said all appeals to their decisions are judicial and are written into statute for each business entity type. He also noted that naming conventions are fairly consistent from state to state.

MOTION: **Rep. DeMordaunt** made a motion to send **H 550** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. DeMordaunt will sponsor the bill on the floor.**

H 587: **Rep. Julie Ellsworth** presented **H 587**, the Idaho Free Market Insurance Act. She stated this bill intends to remove some roadblocks that stand in the way of attracting out-of-state health insurance companies to serve Idaho citizens. Rep. Ellsworth said she is aware that some amendment is needed to clarify Section 3 and said she will work with the Department of Insurance to develop amendments. She distributed copies of Idaho Code Title 41, which is the insurance code.

Rep. Ellsworth outlined the main portions of the legislation, noting that Section 2 is the "exceptions" area of Code. She said the legislation will create an exception to the requirement for out-of-state insurers to get a license. She pointed out the new section, beginning on page 2, line 11, which is being added to the Code. She is proposing an amendment to a portion of this, and said some of the stakeholders are comfortable with the proposed amendment. She pointed out that on page 3, beginning on line 10, "individual accident and sickness insurance" is defined. She also noted the bill includes a severability clause.

Speaking to the justification for allowing insurance companies to receive "endorsements" rather than licenses, she stated that Idaho already does this with other professions. For instance, doctors licensed in other states receive an endorsement to practice here. The same is true for dentists, chiropractors, nurses, psychologists, and many others. Idaho relies on successful examinations in other states, and then those practitioners can come here if they remain in good standing with their own states. The provision for this appears on page 2, line 23 of the bill.

Rep. Ellsworth clarified that insurance companies doing business in Idaho will need to remain licensed in another state, as stipulated on page 2, line 23, and will need to comply with the provisions outlined in Subsection (3) on page 2, beginning on line 31. She said if a company ceases to be licensed in another state, it will not be able to do business in Idaho.

Rep. Ellsworth testified that the Department of Insurance receives a great deal of funding through licensing fees. When an insurance company is licensed by the Department, the company is required to remit a fee and pay a renewal fee in succeeding years in order to keep the license in place. Rep. Ellsworth said it was not her intent to reduce the fees collected by the Department and she is willing to clarify in the legislation that the certificate of authority will need to be annually renewed. She said this legislation is intended to expedite people going across state borders to shop for insurance.

Rep. Ellsworth explained that the proposed amendment to **H 587** makes more clear the procedure to follow with regard to dispute resolution; it references the chapter in Code that lays out the procedure. The amendment supplants paragraph (3) on page 2 of the bill, making it clear that dispute resolution will be governed by Idaho law. She also stated that companies selling health insurance in Idaho will be

required to pay the premium tax and contribute to the catastrophic health care fund. The Department of Insurance is given authority to promulgate rules to carry out the provisions of the bill. Finally, there is a severability clause included in the legislation. Rep. Ellsworth asked that the committee vote to send H 587 to General Orders with the proposed amendment attached.

In response to questions from the committee, **Rep. Ellsworth** said she intended the legislation to apply to both small groups and individuals. It is also her intent to require out-of-state insurance companies to comply with provisions of Idaho law, in addition to the licensing laws in their respective states. She said her primary concern is to make a free market approach work in terms of health insurance, while still requiring companies to comply with Idaho Code Title 41. **Rep. Rusche** expressed concern over whether an out-of-state company could, in fact, comply with Title 41 but be regulated under a different regulatory scheme. He said he is particularly concerned about the any willing provider laws, the difference in underwriting standards, the assessment of insolvency, as well as the bill's reference to only individual standards.

George Gersema, Chief Executive Officer of Employers Resource, testified in support of H 587. Mr. Gersema testified about some of the problem he thinks this legislation will help solve. He said Boise has more back surgeries per capita than anywhere else in America. Colonoscopies here cost \$2,500 to \$3,500, whereas in Dallas the cost is \$1,200 to \$1,500. The first example is a case of overutilization, while the second example is a case of lack of competition. Mr. Gersema said the National Conference of State Legislators in 2009 ranked Idaho as having the fourth highest benefit costs for state employees of all 50 states; only Alabama, Alaska and Oregon pay more. Idaho's cost per employee was \$733.08; this is the cost of single employee coverage, not family or spousal coverage. Mr. Gersema pointed out the demographic issues Idaho faces, with 1.3 million people dispersed across the 13th largest state in the union and a density of only about 50 people per square mile. This inherent characteristic is one factor that Idaho can't change, and it represents a challenge to health care companies.

Mr. Gersema said some at the national level think one way to make insurance more accessible to individuals and groups is to have the federal government decree that insurance companies can sell across state lines. He said he is not sure they have the authority to do that, although Idaho can do that by allowing other insurance companies from outside the state to sell their products, as long as Idaho can maintain certain safeguards. Mr. Gersema offered three reasons why Idaho might want to do this: 1) to provide competition; 2) to lead the way for other states; and 3) to gain choice.

In terms of competition, **Mr. Gersema** testified that the largest provider in the state has 425,000 members out of a total insured population of 705,000 to 710,000. Blue Cross covers 60% of the insureds in the state, while Blue Shield covers 21% and Pacific Source covers 4%. Thus, the three largest carriers cover 85% of the insured population. Included in that 705,000 number, however, are about 100,000 people insured by Blue Cross of Oregon, Blue Cross of Montana, and other carriers outside of Idaho; these people are employees of out-of-state companies who live here in Idaho. If those people are taken out of the total, there are 605,000 insured in the state. Given that figure, Blue Cross covers 70%, Blue Shield 24%, and Pacific Source 5%. Therefore, the three major carriers cover 99% of the insureds in the state. Mr. Gersema said this amounts to an oligopoly. He questioned why Idaho consumers have a wide variety of choices when it comes to buying car insurance, but not in the matter of health insurance.

Mr. Gersema said Idaho could lead the way for other states who may have a similarly dispersed and low-density population. To overcome that obstacle, he said something needs to be done to make Idaho more attractive to insurance companies. He said H 587 is a beginning step in the right direction because it allows us to make it attractive for carriers to come into Idaho and provide services and products in the state.

Finally, in terms of gaining choices, **Mr. Gersema** testified about his experience in shopping for a health plan for his company and employees. He said he wanted two things: a \$20,000 deductible and a specific drug formulary. He could not find a policy available in Idaho with a \$20,000 deductible, nor any policy with a \$30,000, \$50,000 or even a \$15,000 deductible. He did locate a policy offered by Aetna with a \$10,000 deductible, and found that Aetna could cover his employees in Texas, California, Georgia and other parts of the country. But they could not cover anyone in Idaho, where most of his employees are, because they do not do business in Idaho. Mr. Gersema then went to Blue Cross, Regence Blue Shield and Pacific Source but found that none of them offer a \$10,000 deductible policy. Therefore, he could not buy the product he wanted; instead he purchased a \$5,000 deductible policy from Regence, at a cost of \$356,000 per year per 100 employees. Had he been able to purchase the same policy from Aetna the cost would have been \$144,000 - a difference of \$212,000.

Concluding his testimony, **Mr. Gersema** said he wants to see Idaho businesses prosper. He said his health insurance purchasing decision cost an additional \$212,000 that could have been used to create jobs and hire people, thus helping Idaho's economy. Because of the limited choices in the Idaho health insurance marketplace, he had to buy a product he did not want, at a cost two and a half times higher than the product he did want. He said Idaho needs to allow more choices to Idaho businesses.

Responding to committee questions, **Mr. Gersema** said the introduction of insurance products from out-of-state companies will give businesses, employers and individuals the tools to figure out how to fix problems of cost control and utilization in Idaho. Asked whether Aetna gave a reason for not doing business in Idaho, he said he was told there is not sufficient population base here to provide enough business. He said Idaho also is in the position of being a tough insurance market to break into, so a company like Aetna would have to work doubly hard to gain a foothold and create a presence. Mr. Gersema was asked how passing this bill would help open up the market in Idaho, given the admitted dominance of Blue Cross and Blue Shield. He said a new company would be wise to create a niche strategy by offering a product not currently provided by those companies. He said there are companies in neighboring states such as Utah or Washington who could be successful in providing services to Idaho companies in communities near those state borders.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in support of H 587**, saying his organization has for the past three years been discussing the restriction on buying and selling insurance across state lines. He said the law that is amended by H 587 has been in effect since 1961. Currently other states, including Georgia, Minnesota and Oklahoma, are lifting similar restrictions. Mr. Hoffman said the current public policy is not working for residents of Idaho since premium costs continue to escalate. Competition would allow for lower prices and would bring down premiums. The money saved could be spent on capital expenditures to grow the Idaho economy. Mr. Hoffman said Idaho consumers should not be prohibited from shopping for lower rates, particularly in the current environment of internet sales.

Bill Deal, Director of the Department of Insurance, testified on **H 579**. Mr. Deal asked that he be allowed to offer further amendments to the bill, stating that he and Rep. Ellsworth can work together on amendments that will address some additional concerns and will still be acceptable to both the bill's sponsor and the Department.

Mr. Deal testified there are currently 731 insurance companies that sell health insurance in Idaho. He said the Department's website maintains a list of those companies, showing the top 20 companies that operate in the state. Blue Cross and Blue Shield have the primary market share, as they do in other states. Mr. Deal stated the IRS distributed a statistic showing that Idaho's small group rates are the lowest in the country and individual rates are in the lowest 10%. He said multi-state health insurance companies are not required to have offices in Idaho, but domestic companies do have to have offices here.

Mr. Deal testified that two sections of the bill seem to be in conflict with one another, namely: page 1, lines 30-33 suggests that a certificate of authority is not required of out-of-state insurers, but page 2, lines 21-25 states that the Director shall issue a certificate of authority to an out-of-state insurer. He asked that this contradiction be clarified. He is also concerned about the status of fees that would be paid by out-of-state insurance companies. He explained the Department is a self-funded agency, deriving its funding from fees paid by companies and producers. If this legislation passes, the Department is no longer able to issue a license to an insurance company not domiciled in the state, but it would be required to give the company a certificate of authority. Mr. Deal said he wants to make sure the legislation will allow the Department to continue requiring annual renewal fees for certificates of authority, at a level sufficient to continue funding the Department's operations.

Answering questions from the committee, **Mr. Deal** said he does not know whether the legislation covers group products. He said a process will need to be outlined in rule to deal with non-compliant companies. Since out-of-state companies will not be licensed to do business in Idaho, the Department will not be privy to some information and will depend on the company's state of domicile to provide information on such things as insolvency. Mr. Deal said there are no obstacles to a company like Aetna that would prevent it from providing plans, filing rates and forms, and doing business in Idaho.

Mr. Deal reiterated that there are 731 insurance companies licensed to do business in Idaho for the sale of health insurance. He said on a practicing basis there are about 20 companies that are actively selling individual health insurance and another set that sells group insurance. He was asked whether it is the role of the Department to encourage more of the several hundred companies that are not actively selling in Idaho to do so, thus providing greater choice for consumers. He stated there was an effort by his Department, in conjunction with the Department of Commerce, to contact insurance companies and try to attract them to Idaho. He said the two Blue companies do a lot of business in the state and noted that their market conduct and their claims history are good.

Mr. Deal testified the Department receives about \$1.8 million annually from renewal fees from the 731 companies licensed in Idaho. He said Idaho residents who are covered by out-of-state insurance companies most often are part of either Blue Cross or Blue Shield. Their claims processing is handled here, but if there is a dispute the employee has to deal with his or her employer and the insurance company in the employer's respective state. Asked whether an out-of-state company like Microsoft is more or less compelled to buy Blue Cross coverage rather than Aetna coverage for its Idaho employees, Mr. Deal said the company may have employees who work in many different states, and the basis of their health plan is whatever they have chosen in those states.

Mr. Deal was asked what kind of loss the Department would experience if the 731 insurance companies no longer needed to be licensed in Idaho. He said these companies are licensed in Idaho for various reasons, and if the bill is amended the Department will still be able to collect fees. But with the change of rules represented in H 587, he thinks those companies may have a different outlook as to whether to remain licensed in Idaho, especially if they are not doing business here. He said it could be an expensive problem for the Department.

Asked whether the 731 figure includes brokers, life insurance companies, and others paying the licensing fee, **Mr. Deal** said that is not the case. He again said there are 731 insurance companies that are licensed and pay a certificate renewal fee in the state of Idaho; this is the number for individual and small group insurance. Of that, about 20 companies have a market share, some of them less than 1%. He said a good number of the 731 are not actively selling health insurance in Idaho. **Mr. Deal** was asked whether he thought he could arrive at amendments that would allow his Department to remain neutral on the bill. He said he wants to make sure he has clarity on what is being asked of the Department. He also needs to guarantee, insofar as possible, that the Department will not lose \$1.8 million of income. In order to assure that, he said the bill needs to carefully state the fees and when they will be required to be paid.

MOTION:

Rep. Smith made a motion to **HOLD H587** to a time certain, to allow the Department and the bill's sponsor to arrive at amendments that would be satisfactory to all.

Answering further questions from the committee, **Mr. Deal** said he is concerned with the possible loss of oversight if companies are not licensed in Idaho. His two areas of concern are regulating the insurance industry as outlined in Title 41, and making sure companies are sufficiently solvent to pay claims. Asked about whether this bill will open the market and provide greater competition, **Mr. Deal** said it could serve as a trial run. He said in his 46 years of experience in the insurance industry he has never seen cross-state insurance sales to be an advantage, but suggested the climate is different now, with internet sales, web pages and different means of communication. He said if this is what the state wants, his Department will do its best to carry out its regulatory function. **Mr. Deal** was asked what role his Department would play if an out-of-state company were to go bankrupt. He said if the company is not a domestic Idaho company, the responsibility of rehabilitating or dissolving the company would be up to the state in which the company is domiciled; Idaho would not have responsibility or authority to deal with it. He said he would need to study this issue more and he intends to take the matter to the Deputy Attorney General to get these questions answered and get a fuller understanding of how this bill will affect regulation. **Mr. Deal** said he will seek the best possible solution that will still provide the Department with sufficient income and adequate regulatory authority.

SUBSTITUTE MOTION:

Rep. Bayer made a substitute motion to send **H 587** to General Orders. **Rep. Crane** seconded the motion. In support of his substitute motion, **Rep. Bayer** stated his believe that the concerns expressed by the Director and others can be addressed in General Orders with amendments. He said he views General Orders as providing a constructive step in this process.

Rep. Rusche argued against the substitute motion, saying the legislation is not quite well enough developed yet. He pointed out that the issues brought up by the Department and others, including whether the bill applies to both group and individual insurance, are significant enough to hold the bill and have it reworked.

Rep. Smith argued in support of the original motion, noting that the Director stated his willingness to work with the bill's sponsor in developing amendments that will pass muster and that are legal.

Rep. Crane argued in support of the substitute motion, saying something needs to be done to increase competition and options for the citizens of Idaho. He said he found 11 companies on the Department of Insurance website listed as small group insurance providers and six listed for individual policies. There is considerable overlap among those two groups. Rep. Crane said his health insurance rates continue to escalate and yet there are no new ideas or fresh approaches to health care coverage. He said wherever there is a monopoly and little competition, prices will not be driven downward. Rep. Crane said the concerns over whether this bill applies to group and individual policies can be addressed on General Orders.

**ROLL CALL
VOTE:**

Chairman Black called for a vote on the substitute motion to send **H 587** to General Orders. **Substitute motion passed by a vote of 11 AYE and 3 NAY, with 3 absent and excused. Voting in favor of the motion: Reps. Collins, Bilbao, Chadderdon, Crane, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, and Batt. Voting in opposition to the motion: Reps. Smith (30), Rusche, and Black. Reps. Henderson, Patrick and Cronin were absent and excused. Rep. Bayer** will sponsor the bill on General Orders.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:20 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 PM or Upon Adjournment
Room EW41
Thursday, March 01, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------------|---|--|
| <u>S 1268</u> | Auto Deductibles | Lyn Darrington, State Farm Insurance |
| <u>S 1225</u> | Real Estate License Law; Exam Fee | Jeanne Jackson-Heim, Real Estate Commission |
| <u>S 1226</u> | Real Estate License Law; Premium | Jeanne Jackson-Heim |
| <u>S 1227</u> | Real Estate License Law; Continuing Education | Jeanne Jackson-Heim |
| <u>S 1228</u> | Real Estate License Law; Individual Licenses | Jeanne Jackson-Heim |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Thursday, March 01, 2012
TIME: 1:30 PM or Upon Adjournment
PLACE: Room EW41
MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin
**ABSENT/
EXCUSED:** Rep. Henderson
GUESTS: Jim Trent and Lisa M. Brown, State Farm Insurance; Phil Barber, The American Insurance Association; MiChell Bird and Jeanne Jackson-Heim, Real Estate Commission; John Eaton, Idaho Association of Realtors

Chairman Black called the meeting to order at 2:32 p.m.

S 1268: **Lyn Darrington**, representing State Farm Insurance, presented **S 1268**, which addresses statutory caps for auto insurance deductibles. Ms. Darrington gave some historical background, saying this law was first passed in 1969. She noted that Idaho is the only state in the union with a law like this. Idaho is a non-cancellation state, which means insurance companies cannot cancel insurance coverage even for customers who present multiple comprehensive or collision damage claims each year; there are some exceptions such as for customers with DUI charges. Originally the law prohibited an insurer from requiring a deductible of more than \$100 as a condition of continuing coverage. Given the non-cancellation provisions, Idaho limits the insurer's ability to suggest that customers move to higher deductibles. This section provides an insurer with the ability to ensure that a customer will pay at least the first dollars of loss out of his or her own pocket. It allows an insurer to condition the renewal of a policy to the customer's acceptance of a higher deductible, but the required deductible cannot be higher than the statutory cap unless the customer accepts a higher amount.

Ms. Darrington said the \$100 cap was increased to \$150 in 1991; this legislation will increase the \$150 cap for comprehensive coverage to \$250 and will increase the \$250 cap for collision to \$500. She stated these amounts are consistent with the increase in the Consumer Price Index over the past 20 years. Ms. Darrington said raising the caps will allow insurance companies to more accurately price the cost of insurance, which results in lower rates for policy holders. If a company cannot end its relationship with an insured, other policy holders are required to subsidize the claims cost from those high-utilization customers.

Pointing out that Idaho is the only state in the union with this kind of law, **Ms. Darrington** said her client would like to see the non-cancellation policy disappear. Since most customers have higher deductible policies, this law applies only to those individuals who have a \$150 comprehensive or a \$300 collision policy. This is a very small pool. Ms. Darrington said she is not aware of any opposition to this legislation. She also noted that The American Insurance Association is supportive, as are Allstate Insurance, Farm Bureau Insurance, and American Family Insurance.

Responding to committee questions, **Ms. Darrington** said there is no maximum allowable premium price for insurance coverage. This legislation does not speak to premiums but only to deductible amounts. Premiums can be affected by factors such as credit scoring, infractions and tickets, and underwriting. She stated that,

unlike health insurance, auto insurance premiums can be raised on an individual rather than an entire class of individuals.

MOTION: **Rep. Patrick** made a motion to send **S 1268** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Thompson** will sponsor the bill on the floor.

S 1225: **Jeanne Jackson-Heim**, Executive Director of the Real Estate Commission, presented **S 1225**. She said this bill increases the statutory cap for the real estate license exam fee from \$100 to \$150; the present exam fee is \$85. Ms. Jackson-Heim explained that the Commission contracts with an outside company to provide examinations; their existing contract expires in November. The Commission is concerned that the next bids receives for exam services could exceed the \$100 cap, leaving the Commission with no qualified exam administrator. She said the Commission does not receive any portion of the exam fee; applicants pay the fees directly to the provider. Applicants are not required to take an exam once they are licensed, so this is not an ongoing expense for licensees.

Responding to questions, **Ms. Jackson-Heim** said the exam fees have steadily increased since she has been at the Commission, beginning at \$65 and rising to \$85 now. She said there are only three or four qualified exam providers; if none of those can provide an exam for less than \$100, the Commission will be left without a qualified exam provider. She said she does not think the lower cap would provide a negotiating tool to receive lower bids. Ms. Jackson-Heim said the providers also provide testing facilities, staff to administer the exams, and electronic fingerprinting at exam facilities. She said if the reputable companies will not provide an exam for less than the cap, the Commission may end up with a less-than-reputable company to provide fee. The Commission is not equipped to develop and administer the exams in-house.

Ms. Jackson-Heim was asked to provide further information about the historical rate of exam fees. She said she does not know how long the \$100 cap has been in statute, but thinks it has been at that level for at least eight or nine years. She said exam providers have an incentive to keep their costs low because they are bidding against other providers. She stated she is loathe to return every two or three years to ask for an increase in the cap, so the Commission decided to ask for the \$150 cap. She testified there are three or four major players in the provider pool and said other providers might be more inclined to submit a bid if the cap were higher.

Ms. Jackson-Heim was asked whether the realtors support raising the cap, and she responded that they do. She said the Commission asked for a four-year bid last time, and the exam fee was set at \$75 for the first two years and \$85 for the second two years. The current contract expires in November 2012. Ms. Jackson-Heim said there are 50 to 60 new applicants for licensure every month; she estimates there may be as many as 1,200 exam sittings per year, since some applicants do not pass the first time and must re-take the exam. Asked whether exam providers have to meet some kind of national standard, Ms. Jackson-Heim said the Commission requires at a minimum that the exam be certified by a licensing body, but all laws vary from state to state, as do exam providers.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, testified **in support of S 1225**. Saying he thinks it is vital to the continuance of a good real estate environment in the state, Mr. Eaton said these tests are important to generating quality real estate agents in Idaho. The Association board voted to support this bill, as well as the remaining three bills from the Commission. He said they are concerned about not having a quality licensing entity that can test for under the \$100 level. He stated it would cost the Commission many more times that amount to provide the test in-house, and the additional expense would result in an

increased license fee. Mr. Eaton said his association has 6,000 members, down from 9,000 members just a few years ago. This is a reflection of the downturn in the real estate market.

Rep. Collins was recognized to answer a question about whether examination fees for insurance producers also are capped; he responded that they are.

MOTION:

Rep. DeMordaunt made a motion to send **S 1225** to the floor with a **DO PASS** recommendation. He noted that his preference would be for this cap amount to be lifted in order to allow competitive bidding to determine the amount. In that way, the best price would be reached and the Commission would not have to return to the Legislature to raise the cap every few years. **Rep. Barbieri** argued in opposition to the motion, saying he would prefer to leave the cap at \$100 and have the Commission request next year that it be abolished. **Rep. Collins** suggested the reason agencies have to come back to get the caps increased is because the Legislature thinks it needs to micromanage. **Rep. Crane** said he will not support the motion because he sees this as creating a barrier to entry for real estate licensees. There is no incentive to keep exam fees low; instead, this bill represents a government-mandated 50% increase.

**ROLL CALL
VOTE:**

A roll call vote was requested on the motion. **Motion passed by a vote of 11 AYE and 5 NAY, with 1 absent and excused. Voting in favor of the motion: Reps. Collins, Chadderdon, Patrick, Bayer, Thompson, DeMordaunt, Guthrie, Smith (30), Rusche, Cronin and Black. Voting in opposition to the motion: Reps. Bilbao, Crane, Palmer, Barbieri, and Batt. Rep. Henderson was absent and excused. Rep. DeMordaunt** will sponsor the bill on the floor.

S 1226:

Jeanne Jackson-Heim, Executive Director of the Real Estate Commission, presented **S 1226**, which increases the statutory cap for the required errors and omissions (E&O) insurance premiums from \$200 to \$250 per year. Ms. Jackson-Heim explained that real estate licensees are required to carry E&O insurance and the Commission contracts with a company to provide a group policy. The Commission is in the last year of a three-year contract with the present insurance provider; the premium currently is \$186 per year. She said the insurance company must cover everyone in the group and no one can be charged a disparate premium fee. Since the Commission will be going to bid in the near future, the Commission would like to raise the cap to \$250. Again, the Commission does not receive any portion of the premiums paid by licensees.

Responding to committee questions, **Ms. Jackson-Heim** said about 25% of their licensees buy E&O insurance on their own rather than participating in the group policy. Individual coverage must meet the same minimum requirements and be reasonably equivalent to the group coverage. **Chairman Black** related that during his insurance career he wrote E&O policies, but at some point the realtors came together and developed the existing policy requirements. As a result, the rates stabilized, leading most licensees to purchase their E&O insurance through the group. **Ms. Jackson-Heim** explained that companies providing the insurance must have an AM Best rating of B+ or higher, must be qualified to write this type of insurance, and cannot cancel a policy for any licensee other than for nonpayment of premium. In addition, the policy must cover all activities contemplated for a licensee. The policy offers \$100,000 liability coverage with an aggregate of \$300,000. The deductible must not exceed \$3,500 per year. The premium for this coverage has been \$186 per year for the past three years.

Ms. Jackson-Heim was asked whether she anticipated a significant increase in claims because of the increasing problems in the real estate market, including foreclosures, malfeasance on the part of developers, and other problems. She said she has claims information for the past 11 years; the five most frequent claims

are negligence, fraud, breach of fiduciary duty, breach of contract, and earnest or escrow money disputes.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, was recognized to respond to a question about repealing the caps and letting free-market forces decide the rates. Mr. Eaton said his Board had discussed this option, but the Board preferred having the cap in place because it does create a downward pressure on insurance providers. He also noted that if the \$200 cap is exceeded, the requirement to carry E&O insurance goes away. He expressed willingness to work with legislators on this issue and said he would take the discussion back to his Board for further consideration.

Answering further questions, **Ms. Jackson-Heim** said the last time the Commission asked for bids on insurance there were three companies who submitted bids. She said it is a fairly specialized market, with companies specializing in writing insurance for states that have mandatory E&O programs.

MOTION: **Rep. Rusche** made a motion to send **S 1226** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Rusche** will sponsor the bill on the floor.

S 1227: **Michelle Bird**, Director of Education and Licensing at the Real Estate Commission, presented **S 1227**. Ms. Bird said S 1227 deals with continuing education requirements for real estate licensees. She said Idaho Code permits some courses taken in other jurisdictions or for other professions to satisfy Idaho's continuing education requirement. This legislation adds language to clarify that in order for those courses to be accepted for real estate credit, they must be somewhat equivalent to Idaho-certified courses by meeting the same minimum requirements as a course certified by the Commission.

Responding to a committee question, **Ms. Bird** said the law gives people who take courses in other states or who are accredited for other professions to submit their continuing education courses to the Commission for consideration. If the courses meet the Commission's certification standards, they can be accepted as CE credits in Idaho.

MOTION: **Rep. Smith** made a motion to send **S 1227** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Smith** will sponsor the bill on the floor.

S 1228: **Jeanne Jackson-Heim**, Executive Director of the Real Estate Commission, presented **S 1228**, which deletes two obsolete references left over from previous law changes. Ms. Jackson-Heim said in the first instance the section of law pertaining to applicants with license revocations was moved to its own section. In the second instance, the reference to subagents was overlooked when the brokerage representation act was passed more than ten years ago.

MOTION: **Rep. Guthrie** made a motion to send **S 1228** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Collins** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:28 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
Upon Adjournment of the House
Room EW41
Wednesday, March 07, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------|---|--------------------------------------|
| HCR 45 | Private Health Insurance Exchanges | Rep. Bob Nonini |
| S 1307 | Secured Transactions; Definitions and Technical Corrections | MIke Brassey, Uniform Law Commission |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith (30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

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MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Wednesday, March 07, 2012
- TIME:** Upon Adjournment of the House
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin
- ABSENT/
EXCUSED:** None
- GUESTS:** Mike Brassey, Uniform Law Commission; Joie McGarvin, America's Health Insurance Plans; Elizabeth Criner, Idaho State Dental Association; Lyn Darrington, Regence BlueShield of Idaho; Tony Smith, Benton Ellis; Wayne Hoffman, Idaho Freedom Foundation; Max Greenlee, Risch Pisca; Woody Richards, Attorney/Lobbyist; Reiley O'Brien,
- Chairman Black** called the meeting to order at 2:20 p.m.
- MOTION:** **Rep. Rusche** made a motion to approve the minutes of February 27. **Motion carried by voice vote.**
- MOTION:** **Rep. Bilbao** made a motion to approve the minutes of February 29 and March 1. **Motion carried by voice vote.**
- HCR 45:** **Rep. Bob Nonini** presented **HCR 45**. Stating that he has been a vocal opponent of government-run health care exchanges, Rep. Nonini said he thought he should offer alternative ideas to address the high cost of health insurance as well as the issue of accessibility. Referring to a recent Idaho Statesman article, Rep. Nonini pointed out that Regence and Blue Cross seem to be advocates of an exchange. He said if the insurance industry wants to set up an exchange, the Legislature should not stand in the way. Therefore, this resolution encourages Idaho health insurance providers to establish their own private exchange.
- Responding to committee questions, **Rep. Nonini** said the idea of companies establishing a private exchange would probably run counter to **Rep. Wood's** proposed legislation. Rep. Nonini said that after considerable discussion early in the session, the consensus was that the only way to make a state exchange self-sustaining was to raise premium taxes. He said he is not sure how assessing additional fees on health insurance carriers to raise the necessary revenue for an exchange will help drive down the cost of health care. He suggested the insurance companies could contribute the funding for an exchange from their considerable reserves, thus saving the taxpayers from paying for it.
- Asked about the term "seeks to force states" to implement government-owned health insurance exchanges, **Rep. Nonini** said it is his understanding that if the state does not establish an exchange that is satisfactory to the federal government, the federal government would force its own exchange on the state. He stated it is acquiescence for the state of Idaho to establish an exchange approved by the federal government. Rep. Nonini said he is not addressing the Medicaid issue but is rather focusing on the individual mandate that requires everyone to have health insurance. If insurance companies choose to form their own exchange, that does not qualify as a "mandate." Rep. Nonini likened such an exchange to travel sites such as Travelocity, where consumers can comparison shop for air fares and other travel accommodations.

Rep. Nonini was asked how an exchange designed by insurance companies would meet the federal guidelines. He said he still expects the state to fight against implementing the federal exchange, and he believes this resolution will indicate to insurance companies that they have the blessing of the Legislature to create an exchange on their own. Asked why a consumer would choose to opt for a private exchange rather than choosing a subsidized product from a federal exchange, Rep. Nonini said many people will always choose a government subsidy. His belief is that it is each person's responsibility to take care of his or her own health insurance and health care needs. For those financially unable to do so, there is free or subsidized medical treatment available at any public hospital's emergency room. Rep. Nonini said a site like www.ehealthinsurance.com might provide a partial solution, but he would like to see Blue Cross, Regence and Pacific Source collaborating on a private exchange, paid for by the insurance companies. Asked whether he had the Department of Insurance review this resolution, Rep. Nonini said their representatives attended the print hearing but he had not had specific discussion with them. He said the resolution does not create any new Code sections but is simply an encouragement to move toward a solution.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in support of HCR 45**, saying the resolution will put the Legislature on record as supporting free markets.

Responding to committee questions, **Mr. Hoffman** said the private sector has not been able to solve the idea of an exchange because the government has tried to inject itself into the solution. He also pointed out that the private sector has to some extent worked on the problem by creating websites where consumers can shop for insurance products.

MOTION:

Rep. Rusche made a motion to **HOLD HCR 45** in committee. In support of his motion, he said there are numerous parts of the resolution that are clearly aimed at inflammatory but unproven allegations, specifically in lines 10 through 17. He said line 18 and lines 21-23 misstate the Affordable Care Act requirements. Rep. Rusche said he believes the end result of a private insurance exchange owned and run by insurance companies is not likely to be satisfactory to Idaho policyholders. He is also concerned about integrating an exchange with Medicare and Medicaid eligibility.

SUBSTITUTE MOTION:

Rep. Barbieri made a **substitute motion** to send **HCR 45** to the floor with a **DO PASS** recommendation. In support of his motion, Rep. Barbieri said his main concern with a state-run exchange is the cost of the bureaucracy to run it, since the Director of the Department of Insurance has stated fees would have to be developed to pay for it. This resolution merely puts the Legislature on record as saying it is a good idea for insurers to begin this process of developing their own exchange. This will allow a fuller debate on the issue to see whether that kind of exchange would be appropriate.

Responding to a committee questions, **Rep. Rusche** said he does not understand how turning over an exchange to the federal government would "strip the state" of its sovereignty over health insurance matters.

Rep. Henderson expressed support for the substitute motion, saying he thinks the concept of an exchange developed by the insurance companies is worthy of debate, and he thinks the Legislature should be a part of the debate. **Rep. Crane** also expressed support for a fuller discussion of the issue, saying a state health insurance exchange does strip sovereignty based on the fact that the federal government is mandating the purchase of health insurance, even if Idaho runs the exchange on a state basis.

**VOTE ON
SUBSTITUTE
MOTION:**

A roll call vote was requested on the substitute motion. Substitute motion carried by a vote of **14 AYE** and **3 NAY**. **Voting in favor of the substitute motion: Reps. Henderson, Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, and Chairman Black. Voting in opposition to the substitute motion: Reps. Smith (30), Rusche, and Cronin. Rep. Nonini** will sponsor the bill on the floor.

S 1307:

Mike Brassey, representing the Uniform Law Commission, presented **S 1307**. Mr. Brassey said the Uniform Law Commission was formed in 1892 to provide a group that could study and recommend laws that could be adopted by all states. Since Idaho joined the Commission in 1910, the state has adopted about 125 uniform laws. S 1307 deals with Article 9 of the Uniform Commercial Code (UCC), Secured Transactions. Mr. Brassey said this bill contains the 2010 amendments to Article 9.

Mr. Brassey testified the bill has 22 sections. Of those, six are to conform to other amendments, six make technical corrections, two sections are made up entirely of the transition and effective date sections, and one section conforms another article of the UCC to the amendments in this legislation. The remaining seven sections are substantive. Mr. Brassey briefly reviewed those seven sections, the most significant of which is Section 11 on page 22, dealing with the name of the debtor. It attempts to create a place to go to find a name that all parties can rely on. The first choice will be the name as it appears on a driver's license; the second choice will be an "individual name," and the third choice is the surname and first name of the debtor. Driver's licenses were chosen because they are the most commonly held identification document.

Section 12 on page 24 deals with name changes and the time frame in which a debtor must report any change in name, as well as what happens to a security interest in name change cases. Other sections deal with the three-part process to perfect a security interest in personal property, security interests when a debtor moves out of state or merges with a company located out of state, and clarification of the effect of filing a "correction statement." Other changes in the bill deal with what it means to "control" electronic chattel paper, as well as new forms for filing with the Secretary of State to perfect a security interest.

In answer to questions from the committee, **Mr. Brassey** said questions arising over name change and after-acquired property typically occur in commercial transactions where the security interest is in the inventory of a seller. Any of the inventory purchased after the time the security interest was initially filed is considered "after-acquired" property. There is sometimes a concern about who has priority on that property if there are competing creditors. Mr. Brassey said he knows of no opposition from the banking industry, either locally or nationally, and the retailers have not taken a position on the legislation.

MOTION:

Rep. Patrick moved to send **S 1307** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Barbieri** will sponsor the bill on the floor.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
Upon Adjournment of the House
Room EW41
Tuesday, March 13, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------|-------------------------------|---|
| H 624 | Deeds of Trust Notices | Jeremy Pisca, Newspaper Assn of Idaho |
| H 649 | Insurance; Electronic Devices | Roy Eiguren, Asurion Insurance |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Tuesday, March 13, 2012

TIME: Upon Adjournment of the House

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao (Reynoldson), Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin

**ABSENT/
EXCUSED:** Representative Palmer

GUESTS: Phil E. DeAngeli, citizen; Larry Benton, Tony Smith and Kris Ellis, Realty in Motion; John Eaton and Miguel Legarreta, Realtors; Erik Makrush, Idaho Freedom Foundation; Tom Donovan, Department of Insurance; Jeremy Pisca, Matt Davison, and Sean Evans, Newspaper Association of Idaho; Jason Kreizenbeck, AT&T; Colby Cameron, Asurion Insurance; Leonard C. Martin, Blackfoot Morning News; Scott Anderson, Teton Valley News; Tonja A. Hyder, Emmett Messenger Index; Pat Healy, Preston Citizen; John Dillon, Payette Independent Eclipse; Lyn Darrington, Idaho Business Review

Chairman Black called the meeting to order at 2:20 p.m.

MOTION: **Rep. Collins** made a motion to approve the minutes of March 7. **Motion carried by voice vote.**

H 624: **Jeremy Pisca**, an attorney representing the Newspaper Association of Idaho, presented **H 624**, which deals with residential home foreclosures. Mr. Pisca testified that Idaho law allows for a power of sale under a deed of trust. Because this process is easier than a judicial foreclosure procedure, it has more checks and balances as well as greater transparency. As a part of the foreclosure procedure, the trustee is required to publish a notice in a newspaper of "general circulation" in the county once a week for four consecutive weeks. This requirement is in place for two main reasons; first, it will attract more bidders, and second, it imposes a level of transparency.

Mr. Pisca said it is important to attract more bidders so the owners being foreclosed upon can receive the best possible price, since they still have to pay other expenses, including any taxes owed, any assessments, outstanding insurance premiums, trustee and attorney fees and the costs of the sale. The proceeds of the sale are distributed according to Idaho Code 45-1507. The trustee receives his fee first, then funds are paid to relieve any obligation of the homeowner, then recorded liens are paid. Although a surplus is rare, any surplus is paid to the grantor.

Addressing the transparency issue, **Mr. Pisca** said the publication should be done by an independent source. Publication creates a record and proof that the notices actually were published. The published notice is important to alert anyone having an interest in the property, including possible lienholders. If there is improper notice given, the sale can be undone.

Given these two reasons for notice publication, **Mr. Pisca** said it goes against public policy for a trustee to have an interest in a newspaper that publishes the notices. He noted one company in particular that controls every tier of the whole foreclosure process, owning a law firm and a title company, hiring a trustee, and now owning the newspaper that will print the public notices. Mr. Pisca said this trend could continue to expand.

Noting that profit is the only motive behind the newspaper ownership, **Mr. Pisca** said this is profiteering from those losing their homes. He said the business model of this company is not to purchase large daily newspapers but rather small weekly newspapers, which are less expensive to run. Because the publication rate is set by statute, the publication of these notices becomes a profit center for the small newspaper. Mr. Pisca said this trend started in Washington state, spread to Oregon, then to Hawaii and Alaska, and is now in Idaho, with the Kuna-Melba News. The owner of that newspaper has said he is not a journalist but rather a businessman providing a service.

Mr. Pisca stated that **H 624** removes the financial incentive to "self-deal" and bury the notices of sales in smaller publications. He said he believes public notices should be available to the broader public. The bill will make it unlawful for a trustee to place notices in newspapers in which they have a financial interest; the misdemeanor offense will be punishable by a fine, jail time, or both. He said Missouri and Florida have similar provisions, and he noted that newspaper associations in the Pacific Northwest are studying the issue as well.

Responding to committee questions, **Mr. Pisca** said he does not believe the legislation is anti-competitive, since trustees can still publish notices in other newspapers. He said it is against public policy to make publication decisions based on pocketbooks. **Rep. Henderson** noted that a newspaper of "general circulation" does not necessarily mean one with the largest circulation. He also clarified that the notices are "public" notices but not official legal notices. **Mr. Pisca** stated that these public notices must include specific information such as the names of the grantors or homeowners, the trustees, a description of the property, the debt still owing, any liens, and the date and time of the sale.

In answer to further questions, **Mr. Pisca** explained that the "general interest" and "general circulation" requirement is usually understood to be the newspaper with the largest paid circulation within a political subdivision. He briefly explained a Supreme Court decision that found deed of trust notices are "private" notices, so they do not fall under the classification of "governmental" notices as used in the title to Idaho Code Section 60-106. He said the trustee is required to make three attempts at least 30 days prior to sale to reach the property owner. Mr. Pisca said following publication of the notices, the publication has to provide an affidavit and proof of publication.

Mr. Pisca was asked whether there is anything preventing a vertically integrated business from meeting the general circulation standard. He said they probably could meet the standard. He said, however, the business in question is profiting from placement of trustee sales. It is not in their economic best interest to purchase a large newspaper because it would be more expensive to operate. Mr. Pisca said this business is not meeting the "general circulation" standard in the true spirit or intent of the law, since the true intent is to get the notice out as broadly as possible. Notices need to reach anyone with an interest in the property. Mr. Pisca testified that the Idaho Statesman could not vertically integrate under this proposed legislation. If they chose to do so, by buying a title company, he still does not believe they would be meeting the spirit of the law.

Mr. Pisca was asked to explain the term "general circulation." He said this term in Idaho Code Section 60-106 means the newspaper with the largest paid circulation. Public notices, however, are not included in the category of "governmental" notices as cited in the title to that Code section, because of a Supreme Court decision that issued that opinion. Therefore, public notices do not fall under that requirement since a trustee is not a governmental entity. Mr. Pisca said the business model of purchasing a small newspaper and squirreling away the notices into the small paper solely to maximize financial gain is not good public policy because it does not

maximize the number of people who will see the notices. He also agreed that this arrangement sets up a perception of conflict of interest.

Answering further questions, **Mr. Pisca** said the notices are required to be printed in a newspaper in the same county as the property; the county is specified, in preference to the city, because it is a broader area of coverage. He said putting notices in smaller papers does limit the number of people who will see them and could negatively impact the sales price. He listed the current requirements of a qualified publisher, saying a weekly paper has to have been in continuous operation for 78 weeks and a daily paper for 12 months. Asked whether this problem could be approached by addressing a standardized qualifying parameter rather than through a perceived conflict parameter, Mr. Pisca said he did not believe so. He said he is dealing with a direct financial interest, based on the placement of the notification.

Phil E. DeAngeli, an attorney with Spink Butler, a business and real estate firm, testified **in opposition to H 624**. Mr. DeAngeli stated he is testifying on his own behalf. He said in the last five years title agents have been primarily processing foreclosures; many Idaho companies have subsisted on foreclosures alone. Mr. DeAngeli said it is his opinion that the problem addressed by H 624 could be better addressed in a section of Idaho Code that deals with the publishing industry.

Mr. DeAngeli reviewed the notice requirements in foreclosure cases. First, there are three good-faith attempts to notify the owner at the property; if no one is at the home, a notice of trustee sale is tacked on the front door. Then a certified or registered letter is sent to all parties who may be potential borrowers or defaulters under the deed of trust. Finally, the notice publication takes place. These measures are required so a person cannot lose a home to foreclosure without knowing it.

Mr. DeAngeli said trustees are defined by statute, and can include lawyers, banks, or title companies; some attorneys run giant foreclosure operations. These trustees are the people who will be criminalized by the language in H 624. Mr. DeAngeli also said the terminology "direct or indirect financial benefit" would be problematic because of its breadth. He testified that as a result of efforts by Fannie Mae and Freddie Mac to make all deeds of trust uniform, all costs of foreclosure are added to the financial obligations of the property owner. Requirements imposed by legislation like H 624 could add to the expenses because there will be fewer competitors. Mr. DeAngeli said everyone favors vertical integration for certain businesses, but opposes it when it negatively affects their own interests.

Answering committee questions, **Mr. DeAngeli** said the legislation clearly spells out that it shall be unlawful for a trustee to have a financial interest in a newspaper publishing a notice or to profit directly or indirectly based upon publication of the notice. Therefore, to the extent that a person profits, either directly or indirectly, he or she is punishable. He said the trustee who conducts a foreclosure sale automatically profits from the process, and part of that process is the publication of the notices.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, testified **in support of H 624**. He said the intent of publishing the notices should be to get the notice of foreclosure out to as many potential bidders as possible. Mr. Eaton said it doesn't make sense to have properties selling in Boise being noticed in Kuna. He said in Idaho a deficiency can be forgiven by a bank, but the homeowner then owes income tax on the amount forgiven. Noticing in a manner that will not attract the highest bid is making a person's financial situation even worse and is profiteering off of people's financial difficulties.

Mr. Eaton was asked whether it would be possible to develop standards that would facilitate the broadest public notice without automatically eliminating a vertically-integrated business. He said a business interested in making money will purchase the smallest available paper in a county because of the higher profit

margin. A business like this has no intention of meeting the current statute. He said the publication fee is set by statute and, based on the Supreme Court's decision, someone has figured out that all the public notices can be swept into a smaller newspaper. Mr. Eaton said this is probably a unique situation as far as business models go.

It was pointed out that "broad notice" may not be the right goal for notice publications. In order to maximize the number of bidders, perhaps the goal should be to target those interested in real estate investing, which may require publication in an investment publication or other paper besides the one with greatest circulation. **Mr. Eaton** agreed, noting that in Ada County the previous publisher of most notices was the Idaho Business Review. He said, however, that vertical integration can lead to abuse of the current requirements.

Matt Davison, Publisher and President of the Idaho Press Tribune, testified **in support of H 624**. Mr. Davison said he is also testifying on behalf of the Newspaper Association of Idaho. He said newspapers try to distribute notices to as many as possible. Having an interest that will result in financial gain will not benefit the public. If an independent third party is taken out of the equation, the notice process itself is in jeopardy. If any part of the process can be called into question, this can further delay the process of foreclosures, which in turn impacts jobs, the housing market, and the economic recovery.

In response to committee questions, **Mr. Davison** said the requirement of newspapers to achieve the status of having a second-class postage permit is a federal government requirement. Mr. Davison testified the Idaho Press Tribune's circulation is 22,000 daily and 30,000 on Sunday, compared to the Kuna Melba News circulation of around 1,000, some of which are unpaid subscriptions. Mr. Davison said the Kuna-Melba News does not have a physical office in Melba.

Sean Evans, Vice President of the Idaho Business Review and Chairman of the Legislative Committee for the Newspaper Association of Idaho, testified **in support of H 624**. He said the legislation will restore independence, transparency and accountability to the publication process, noting that there is an inherent conflict of interest for a trustee to pay himself and verify for himself. Mr. Evans said the bill will also protect the integrity of the public archive.

Mr. Evans was asked to explain his statement about a newspaper "verifying" itself. He said newspapers offer verification that they ran notices on stated dates and that they included all statutorily-required information. This is verified by an affidavit and also by clippings that the notice ran as required. The affidavit is provided to the trustee, the party requesting publication of the notice. If the parties acting as trustees are also publishing the paper, they would in effect be giving themselves notice. Mr. Evans said H 624 will stipulate that to be a violation of public policy. He said an independent third party needs to do the verification. There should be no question of the intent of the trustee; the intent should be to get the widest possible circulation for the notices.

Eric Makrush, Idaho Freedom Foundation, testified in opposition to **H 624**, saying the Foundation has scored this legislation at a minus 4 because it creates a new and inexplicable regulatory restriction on newspapers, accompanied by a jail term or a fine. Mr. Makrush said this interferes with the private sector and restricts the free market. Specifying that a trustee may not have an interest in a newspaper publishing notices of trustee sales is anti-competitive and restricts the rights of business owners. He stated that vertical integration is the model of many media companies. Saying the bill could have unintended consequences, Mr. Makrush requested that an interim committee be set up to work on possible solutions.

Mr. Makrush was asked what will happen if this legislation does not move forward this year. He said the bill singles out one company in Melba, which does not represent a big problem, although this arrangement could become a bigger problem in the future. He stated his understanding that there was not a great deal of communication among interested parties to reach consensus, and he thinks some of the problems could be worked out over the interim. Mr. Makrush said if he were someone who wanted to buy a foreclosed property, he would find out where the notices are published and would go to that publication, regardless of its size. He also said in today's media environment, publication on the internet might be a better solution for foreclosure notices.

Rep. Patrick stated his opinion that this bill will increase competition because it will eliminate a trustee sending notices to his own newspaper. **Mr. Makrush** said preventing someone from publishing certain notices does not prevent him from owning a paper.

Kris Ellis, representing Realty in Motion, testified **in opposition to H 624**. Ms. Ellis said vertical integration is not a new business model and, in fact, it is being touted as a good direction for the health care industry. She would characterize vertical integration as simply bringing functions "in-house" for efficiency purposes. She asked why it is a problem for a company to buy a newspaper and make money. She does not agree that this business model puts small newspapers in jeopardy, noting that the Kuna newspaper has had to increase staff. Ms. Ellis said she has concerns about unconstitutional vagueness in the bill, particularly the language about someone who profits "directly or indirectly." This could be interpreted to include a trustee owning stock in a newspaper or a person with newspaper stock in his or her mutual fund. If they make a profit on those investments, they could go to jail. She expressed concern about unintended consequences if the bill passes.

Ms. Ellis recommended that the committee hold the bill and asked them to request an interim or ad hoc committee. She said the Attorney General's office is agreeable to this idea, as is the Association of Idaho Cities, The Idaho Bankers Association, the Idaho Association of Counties, and the Idaho Land Title Association. Ms. Ellis said if the real purpose is to get the broadest possible notice, interested parties can access notices online or from title companies, sometimes before a newspaper is even published. She also said the industry needs to move to a system that is less expensive, one that would benefit both seller and buyer. She said if there is no funding for an interim committee, there is support for an ad hoc committee that would not need to be funded. She said the Attorney General suggested notices could be publicized by the Department of Administration which would centralize them and make them more accessible than they are now.

Responding to questions from the committee, **Ms. Ellis** said the business model of Realty in Motion is not necessarily new or unique. She said trustees, who are either attorneys, banks or financial institutions, are licensed either by the Department of Insurance or by the Department of Finance, and those departments have regulatory control over the trustees to make sure they are meeting the requirements of the law. Therefore, accusations of misconduct in this case are misplaced.

Jeremy Pisca was recognized to conclude his testimony. He reiterated that the purpose of publishing notices of foreclosure is not just to notify the person losing his home. Rather, the purpose is to notify the widest possible number of interested bidders. A newspaper publication is a statutory requirement, not a backup. He said the only thing prohibited by this legislation is profiting by the placement of notices. He also stated there had been allegations that the company in question was charging more than the statutory rate. Mr. Pisca said the Attorney General's office had not expressed any concerns to him about the legislation. With regard to publishing on

the internet, he said the newspaper association congregates all notices and puts them on one central website. Finally, Mr. Pisca distributed a newspaper article about Realty in Motion, as an illustration of the problem addressed in H 624.

MOTION: **Rep. Crane** made a motion to send **H 624** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. DeMordaunt** offered a substitute motion to **HOLD H 624** in committee. He agreed that the issue of broad notification is a valid concern, but he does not want to penalize or criminalize a vertically integrated company. He said the notices need to be published appropriately and to the right people, but he asked whether a different standard could be set in order to do so. He questioned whether the "general circulation" standard is the correct one to use in order to achieve the best notice. He suggested the issue should be studied further.

Arguing in opposition to the original motion, **Rep. Bayer** said he is not convinced there is a cause and effect with regard to a vertically integrated business model, but said he is not sure an interim committee is necessary. He said standards need to be in place that serve the public interest. He is concerned with the possible interpretations of the term "indirectly" on page 2, line 25, noting there are numerous degrees of possible affiliation with a newspaper. Rep. Bayer said minimizing notices in order to maximize profits is criminal and said the issue of standardization may need to be addressed further. Stating that he does not see an automatic conflict of interest, he cannot support the legislation's language as it stands.

AMENDED SUBSTITUTE MOTION: **Rep. Barbieri** made an amended substitute motion to return the bill to its sponsor. He said he thinks the discussion concerning **H 624** has highlighted more issues than just the notice issue, stating that it has touched on the deficiency and conflict of interest issues as well. He said the practice addressed by H 624 appears to be noncompetitive, but he is not sure this statute remedies that problem.

MOTION WITHDRAWN: It was pointed out that a bill cannot be returned to sponsor, so the motion was not proper. **Rep. Barbieri** withdrew his amended substitute motion.

Rep. Guthrie argued in support of the original motion, noting that there is an obligation to assure the best possible outcome of a foreclosure. He said the notices need to be published in papers with the broadest circulation in order to get the greatest value out of the properties. **Rep. Patrick** also supported the original motion, reminding the committee of the recent lawsuit against the country's five largest banks, in which transparency in real estate transactions was an issue. He said professional conduct is at the heart of this discussion.

Rep. Henderson stated his support for the substitute motion, noting that the issue could be handled by redoing the qualifications and setting different standards for the newspapers publishing the notices. His suggestion would be to include language on page 2, line 19, that the newspaper would be "one having audited paid circulation and/or one selected as the legal newspaper for the local unit of government where the property is located."

ROLL CALL VOTE ON SUBSTITUTE MOTION: A roll call vote was requested on the **substitute motion to HOLD H 624** in committee. **Substitute motion failed by a vote of 4 AYE and 12 NAY, 1 Absent/Excused.** Voting in favor of the substitute motion: **Reps. Henderson, Bayer, Barbieri and DeMordaunt.** Voting in opposition to the substitute motion: **Reps. Collins, Bilbao (Reynoldson), Chadderdon, Crane, Patrick, Thompson, Guthrie, Batt, Smith (30), Rusche, Cronin, and Black.** **Rep. Palmer was absent and excused.**

VOTE ON ORIGINAL MOTION:

Chairman Black called for a vote on the original motion to send **H 624** to the floor with a **DO PASS** recommendation. **Motion carried by a voice vote. Reps. Henderson, Barbieri and DeMordaunt** requested that they be recorded as voting **NAY**. **Rep. Crane** will sponsor the bill on the floor.

H 649:

Colby Cameron, representing Asurion Insurance, presented **H 649**. Mr. Cameron said this legislation creates a better licensing mechanism for vendors who sell portable electronics insurance in Idaho. This bill clarifies and minimizes regulation on vendors, requiring them to obtain one insurance license that will cover all their stores and employees who sell these devices. Mr. Cameron said the legislation had been reviewed by other insurance providers and is supported by the Idaho Association of Commerce and Industry (IACI). He pointed out the change made to the previous version of this legislation, noting that the fingerprinting requirement for adjusters was removed. The requirements will simply default to whatever the Department of Insurance requires.

Eric Makrush, Idaho Freedom Foundation, testified **in opposition to H 649**. Mr. Makrush acknowledged that some changes had been made to **H 471** but said this new bill still offers government regulation as a solution to a problem that does not exist. He testified he does not think this type of insurance should be added to the Code; there is no public demand for it and no prevailing issues requiring it. He said it is his belief that the true intent of the bill is to subject the market to limitations that will make it harder to enter the field, and said it appears to be aimed at benefiting only one company. He also questioned the "emergency" clause since the effective date is July 2013.

In response to a question from the committee, **Mr. Makrush** said this bill's freedom index rating was improved to a minus 5, slightly better than the previous bill.

Jason Kreizenbeck, Lobby Idaho, representing AT&T, a major provider of wireless services, testified in support of H 649. He said the bill will lower the regulatory burdens on portable electronic device providers and will take the burden off their sales staff. Mr. Kreizenbeck said he does not believe this will limit entry but rather will create surety for insurance companies offering this coverage.

Tom Donovan, Department of Insurance, was recognized to respond to questions from the committee. Mr. Donovan said this legislation will require the Department to develop some new sections containing reduced requirements for a limited lines insurance producer. He said the Department has reviewed the legislation and does not foresee any problems in implementing it. He said if an individual seller of this type of insurance does something in violation of Code, the vendor will either pay a penalty or will bar that individual from acting on their behalf. Alternatively, the vendor could lose its license to sell this insurance. Mr. Donovan said this kind of insurance is currently sold by a licensed carrier; in other words, a person selling it would have a producer license. The coverage offered by these policies is broader than that offered under service contracts. He said some specific provisions of this legislation will offer greater consumer protection than is currently available.

MOTION:

Rep. Thompson made a motion to send **H 649** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Black** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:30 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 pm or Upon Adjournment of the House
Room EW41
Monday, March 19, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------|--|---|
| H 652 | Small Employee and Individual Health Insurance Rates; Public Information | Tom Donovan, Deputy Director, Department of Insurance |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao(Reynoldson)
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

MaryLou Molitor
Room: EW58
Phone: (208) 332-1139
email: mmolitor@house.idaho.gov

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Monday, March 19, 2012
TIME: 1:30 pm or Upon Adjournment of the House
PLACE: Room EW41
MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao (Reynoldson), Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin
**ABSENT/
EXCUSED:** None
GUESTS: Thomas Donovan, Deputy Director, Department of Insurance; Wayne Hoffman, Idaho Freedom Foundation; George Gersema, Employers Resource; Julie Taylor, Blue Cross of Idaho

Chairman Black called the meeting to order at 2:45 p.m.

Rep. Smith (30) made a motion to approve the minutes of March 13, 2012. **Motion carried by voice vote.**

H 652: **Thomas Donovan**, Deputy Director, Department of Insurance (DOI); explained that **H 652** followed **H 423**, also presented by the DOI, which failed in committee on February 27, 2012. He said that **H 652** seeks to amend two sections of the insurance code: Title 41, Section 41-4706, regarding small employer health benefit plans and Section 41-5206, regarding individual health benefit plans. He further explained the changes and amendments: (1) page 3, line 44, changing "4" to "5," (2) insertion of the words "or as otherwise applicable" on page 3, line 46 and page 6, line 12. He said each of the two sentences to be amended provides an exemption from public disclosure of the health insurers' rating information, which is considered "proprietary and trade secret information." The existing language in each section also contains exceptions to the exemption from public disclosure. They are: (1) where a violation of the chapters 47 or 52 from the Patient Protection and Affordable Care Act (PPACA) occurs, (2) where the health carrier agrees, and (3) as otherwise ordered by a court of competent jurisdiction.

Mr. Donovan indicated there are three differences between **H 423** and **H 652**. In **H 652**, the reference in Chapter 60 from PPACA dealing with immunization assessments has been dropped, and the references to providing a general standard that rates shall not be "excessive, inadequate, or unfairly discriminatory" have been dropped in response to the committee's concern that the language was overly broad. In **H 652**, the language has also been deleted that gave specific reference to federal regulations that may or may not be ruled constitutional in PPACA. In conclusion, Mr. Donovan stated that adding the clause "or as otherwise provided by applicable law" to the other three listed exceptions for the release of health insurer rating information will help remove confusion for the agency, should it receive a public records request. He said it will also help increase transparency and access to Idaho insurance information.

Responding to questions from the committee, **Mr Donovan** said that in **H 423** specific sites and specified rating differences had been listed, both state and federal. However, in **H 652** those have been removed. In response to a question regarding the legal basis for responding to an unconstitutional law, he said there is no court order that PPACA is unconstitutional. He also said the Governor's office gave permission to the insurers to address legislation for an effective rate review

program as required by Health and Human Services, the entity given jurisdiction to administer PPACA.

Julie Taylor, Director of Government Affairs for Blue Cross of Idaho, was called upon to answer a question regarding rate review. She spoke **in support of H 652**. She noted that Blue Cross of Idaho had a rate regulator but that Idaho did not have what was needed to comply with PPACA on the issue of an effective regulator. She said when an insurance company's rates rise by more than 10% for medical coverage in any area, it is necessary to have a rate review. The insurance industry wants one entity to deal with and it would be preferable to deal with an Idaho government agency instead of trying to get a review from the federal government.

In response to a question from the committee, **Ms. Taylor** said what is in statute today effectively meets the rate review except for one step: It does not make it public.

Responding to a further question, **Mr. Donovan** said that Idaho may be out of compliance. To a question about the Centers for Medicare and Medicaid Services removing Idaho's power to review rates, Mr. Donovan said there is a standard and if an insurance carrier exceeds that standard by more than 10% there is an enforcement mechanism, kind of like a "scarlet letter." The carrier must wear the label "unreasonable" on its website for three years. He said either state or federal government can do the rate review and Idaho wants the state to be the designated reviewer and the provider of information for public disclosure.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in opposition to H 652**. He noted although the bill is an improvement, he disagrees with the interpretation of the statute and said there is ambiguity between what the public records reveal and Section 3 of PPACA. He said the public records law does not force the state to include items deemed public by the federal government. He argued that the rate review does not allow the government to say rates are too high, they can only "opine" and that does not force insurers to change the rates. His final objection concerned the enshrining of the federal law into Idaho Code.

In response to committee questions regarding free market principles for consumers, **Mr. Hoffman** said the bill violates free market principles and sets the state on a path of requiring the same public disclosure of gas stations, grocery stores, farms, etc. He said the government should allow the consumer to do his/her own search of insurance rates and not compel private industry to disclose information relative to how prices are set.

George Gersema, Chief Executive Officer of Employees Resource in Boise, testified **in opposition to H 652**, stating that the bill was not about transparency, but it was about PPACA. He opposed the state government doing the bidding of the federal government and he said the public disclosure referred to in **H 652** is in violation of his rights. He stated that Kathleen Sebelius, US Secretary of Health and Human Services, just released rules for the implementation of PPACA. He showed the committee the 646-page document that guides that implementation. Mr. Gersema concluded by quoting Thomas Jefferson, who warned against the hordes of government administrators stealing constitutional freedoms.

Chairman Black called on **Mr. Donovan** to close debate. He said the purpose of **H 652** is to broaden the existing statute to include public disclosure if required by other applicable law. He asked the committee to pass the legislation.

**ORIGINAL
MOTION:**

Rep. Rusche made a motion to send **H 652** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE
MOTION:**

Rep. Crane made a substitute motion to **HOLD H 652** in committee.

During the discussion on the motions, **Rep. Barbieri** said the DOI is saying PPACA is law and we need to comply. He stated the law was unconstitutional and everyone needs to step back and wait for the court decision before passing another law.

Rep. Rusche argued against the substitute motion, stating the appeals court still finds PPACA constitutional. He said that until it is overturned, we cannot ignore it. That is nullification. We should allow our DOI to regulate rates. **Rep. Bayer** said the phrase "applicable law" is concerning because it could be applied to almost anything. **Reps. Guthrie** and **Cronin** spoke in favor of the original motion. They argued that **H 652** was brought before the committee by the regulated parties who do not have the luxury of choosing which laws to facilitate, and if the law is judged unconstitutional, any of the amendments to the Idaho Code could be re-legislated.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

Rep. Crane requested a roll call vote on the substitute motion. **Motion passed by a vote of 9 AYE, 8 NAY. Voting in favor** of the motion: **Reps. Henderson, Collins, Bilbao, Crane, Bayer, Palmer, Barbieri, DeMordaunt, and Batt. Voting in opposition** to the motion: **Reps. Black, Chadderdon, Patrick, Thompson, Guthrie, Smith, Rusche, and Cronin.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:10 p.m.

Representative Max C. Black
Chairman

Jean Vance
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
1:30 p.m. or Upon Adjournment
Room EW41
Friday, March 23, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------|--|------------------|
| S 1390 | Certificates of Insurance | Sen. Goedde |
| S 1395 | State Insurance Fund; Board of Directors | Sen. Goedde |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

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MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Friday, March 23, 2012

TIME: 1:30 p.m. or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** Rep. Cronin

GUESTS: Mike Brassey, Idaho Bankers Association; Randy Pipal, Independent Insurance Agents; Mike Kane, Property Casualty Insurers Association of America; Dawn Justice, Idaho Bankers Association; Tom Donovan, Department of Insurance

Chairman Black called the meeting to order at 11:30 a.m.

On behalf of the Business Committee and the Ways and Means Committee, **Rep. Joan Wood** presented **MyLeah Keller**, the Legislative Page who worked for both committees, with a gift to recognize her service.

MOTION: **Rep. Smith** (30) made a motion to approve the minutes of March 19. **Motion carried by voice vote.**

S 1390a: **Sen. John Goedde** presented **S 1390a**, which deals with some problems with regard to insurance binders and certificates of insurance. The bill defines certificates of insurance and requires that the forms used must be approved by the Department of Insurance. Misleading use of these forms is prohibited. With regard to binders, Rep. Goedde explained that a very small space, approximately 4 inches by 1/2 inch, is provided for supplemental information on standard binder forms. He said it is virtually impossible to fit all the necessary information into the small space provided. This bill will allow supplemental information to be attached to the binder on a separate sheet. It also eliminates language that places a time limit on the issuance of the insurance policy.

In response to committee questions, **Sen. Goedde** said the legislation attempts to correct a situation in which liability is being shifted from a general contractor to a subcontractor, which is currently taking place. This legislation restricts the use of inappropriate or misleading language in an insurance certificate. Sen. Goedde said the forms filed with the Insurance Department are certificates; binders are separate forms and can, in fact, be done orally or in writing.

Randy Pipal, appearing on behalf of the Independent Insurance Agents and Brokers of Idaho, testified **in support of S 1390a**, stating that he affirms **Sen. Goedde's** testimony on the current problems with certificates of insurance and the merits of the bill in fixing the problems.

Responding to a question about Department of Insurance support, **Mr. Pipal** said interested parties have been working on the bill for 18 months and they started the process by working with the Department.

Mike Brassey, representing the Idaho Bankers Association, testified **in support of S 1390a**. He said banks are involved in this because most loan agreements require a borrower to insure the collateral in order to obtain a loan. The borrower can provide either a certificate or a binder to prove they have the requisite insurance.

Mike Kane, representing the Property Casualty Insurers Association of America, testified on **S 1390a**, noting that he has worked closely with **Sen. Goedde** on the legislation. Mr. Kane said his association does have some concern regarding the binder language on line 44, page 3, because "supplemental information" is not closely defined and therefore could be anything. He said he intends to work further on language that will deal with this concern and will return next session to try and amend the language.

MOTION: **Rep. Rusche** made a motion to send **S 1390a** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Black** will sponsor the bill on the floor.

S 1395: **Sen. John Goedde** presented **S 1395**. This legislation changes the remuneration paid to State Insurance Fund members to an honorarium. The change is necessary in order to assure that those payments are not subject to PERSI and will not interfere with board members' personal retirement plans.

Responding to a question about board compensation, **Sen. Goedde** said board members are paid \$50 per meeting, and they hold four meetings per year.

MOTION: **Rep. Rusche** made a motion to send **S 1395** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Rusche** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 11:45 a.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

AGENDA
HOUSE BUSINESS COMMITTEE
2:00 pm or Upon Adjournment
Room EW41
Tuesday, March 27, 2012

| SUBJECT | DESCRIPTION | PRESENTER |
|---------|---------------------|-----------|
| | Approval of Minutes | |

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

COMMITTEE MEMBERS

Chairman Black
Vice Chairman Henderson
Rep Collins
Rep Bilbao
Rep Chadderdon
Rep Crane
Rep Patrick
Rep Bayer
Rep Palmer

Rep Thompson
Rep Barbieri
Rep DeMordaunt
Rep Guthrie
Rep Batt
Rep Smith(30)
Rep Rusche
Rep Cronin

COMMITTEE SECRETARY

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MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Tuesday, March 27, 2012

TIME: 2:00 pm or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: None

MOTION: **Chairman Black** called the meeting to order at 2:00 p.m.

Rep. Rusche made a motion to approve the minutes of March 23. **Motion carried by voice vote.**

Chairman Black expressed his gratitude to committee members for their cooperation and their work on this year's legislation. He said he greatly values his 20 years of experience serving in the House of Representatives and noted that he has always been most impressed by the high caliber of the members of the Legislature.

Vice Chairman Henderson, noting that many parties expected **Chairman Black** to return as a legislative advisor, presented him with a green tag that reads "Max Black - Unwilling Provider." Vice Chairman Henderson also presented him with two gifts from committee members, one a book on the 50 State Capitols and one about Boise history.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:10 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary