

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 20, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt, and Ward-Engelking

ABSENT/ EXCUSED: None

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

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m., welcomed everyone and went over the agenda.

PASSED THE GAVEL: Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

DOCKET NO. 07-0103-1401 **Rules of Electrical Licensing and Registration - General. Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. He said the Division of Building Safety (Division) and the Electrical Board (Board) determined, based on numerous complaints by the industry in recent years, that an increasing number of individuals already licensed in other jurisdictions as master and journeyman electricians enter Idaho and obtain apprentice registrations from the Division for the purpose of working on single jobs and leave the state upon completion of the job. This prevents Idaho apprentice electricians from filling these positions and furthering their education and experience in working towards their journeyman license. There is no basis for someone already recognized as a journeyman in another jurisdiction working in Idaho as an apprentice to "learn" to be a journeyman. By registering as an apprentice, this circumvents Idaho licensing requirements and allows these non-resident trade people to avoid testing for the Idaho journeyman license. This rule would require anyone who has previously been licensed in any jurisdiction as a journeyman or master electrician to disclose their licensure history to the Division upon application. It also prevents any such individual from obtaining an apprentice registration.

Mr. Keys pointed out that negotiated rulemaking was not conducted because the matter was formally designated as an agenda topic before the Board at four meetings over the last two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

Chairman Tippetts referred to page 14, Section 011, and wanted to know if the Idaho Electrical Code (Code) was adopted. **Mr. Keys** replied the National Electrical Code (NEC) was adopted as the code in Idaho. **Chairman Tippetts** stated it was more appropriate to refer to the code as the National Electrical Code. **Mr. Keys** said absent any statutory basis, this would have to be addressed in statute. **Chairman Tippetts** and **Mr. Keys** discussed the eight hours of training. **Mr. Keys** explained training could be anything industry-related and not restricted to code.

MOTION: **Chairman Tippetts** moved to approve **Docket No. 07-0103-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0107-1401**

Rules Governing Continuing Education. **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. He said the reason for adopting this rule was that the Board and Division have determined that imposing a less restrictive Continuing Education Requirement (CEU) would allow licensees a better opportunity to fulfill their education requirements. The Board and the Division determined that licensees would be better served by having the discretion to use eight hours of training directly related to the NEC, but not necessarily based on changes in the latest edition of the NEC. **Mr. Keys** pointed out this change was in line with requirements in other states which have reciprocal licensing agreements with Idaho. The proposed rule would allow an additional category of instruction in the area of the NEC-related training to qualify toward the continuing education credits. Currently, journeymen and master electricians are required to receive 24 hours of CEU training in each three-year licensing period. The 24 hours currently consists of 16 hours of code update covering changes included in the latest edition of the NEC and eight hours of industry-related training. This proposed rule would require eight hours of code update, eight hours of industry-related training, and eight hours of code-related training. It would also clarify that the required CEU hours must be completed in each three-year licensing period, as opposed to the period between updates of the NEC.

Negotiated rulemaking was conducted.

Senator Lakey said he noticed that on page 14 there was a CEU requirement of a three-year period between updates of the NEC, but now the CEU requirement is between license renewal. He assumed licenses were renewed every three years and the NEC did not necessarily follow that cycle. **Mr. Keys** indicated that was the case. At one time the Division skipped the code adoption cycle, and these changes were to clarify the requirements.

MOTION:

Senator Martin moved to approve **Docket No. 07-0107-1401**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0111-1401**

Rules Governing Civil Penalties. **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** said no specific provision existed in the rule to impose a civil penalty for failure to disclose the required information on an application for registration or certificate of competency. Requiring this disclosure would help prevent applicants, particularly those already licensed in other jurisdictions, from circumventing the journeyman licensure requirements in Idaho. This rule would establish a civil penalty for applicants who failed to disclose the required information on any Division electrical license application, specifically to include their licensure history and any licenses previously held in any state or jurisdiction.

Negotiated rulemaking was not conducted because the matter was formally designated as an agenda topic before the Board at four meetings over the last two years prior to rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

Vice Chairman Patrick and **Mr. Keys** discussed out-of-state contractors who registered for an apprentice position. **Senator Martin** talked with Mr. Keys about the frequency of penalties assessed last year compared with projected penalties for this year. **Senator Lakey** mentioned the failure to disclose the required information by an applicant and the disbarment of an individual in another jurisdiction for cause, pertinent to the State of Idaho granting them a license. **Senator Schmidt** wanted to know if this was a fee rule. **Vice Chairman Patrick** said he assumed the Division did not make that determination.

Senator Cameron said he thought there were some jurisdictions that were not recognized by the State. He wondered if a journeyman would be penalized if he did not disclose licensure in another state, and how would the Board handle a situation where someone failed to disclose they were a journeyman in a non-recognized jurisdiction. **Mr. Keys** stated Idaho would recognize a jurisdiction who has a credible licensing program rather than a registration program. Nevada does not have statewide licensure for journeymen. However, they do have a program geared more towards general contractors. **Mr. Keys** said the Board would look at intent. If the applicant did not disclose that they had a license in Nevada, for example, because it was not the same as that in Idaho, they would not be penalized.

Chairman Tippetts wanted to know if "failure to disclose" was on an application. He had a concern about the words "upon request" and was not sure he would interpret filling out an application as a request. **Mr. Keys** explained that from his perspective and that of the Board, if the question was specifically asked on the application and the prior licensure history was not disclosed, that was a request. **Chairman Tippetts** thought it would be more clear if it said, "who fails to provide the information", rather than including language where it sounds like they were making a formal request. That may be a change that could be made. **Mr. Keys** remarked that was a good suggestion.

Senator Lee questioned that as they talked about approved jurisdictions, was this going to capture the intent of the rule for all journeymen coming in at the apprentice level or how will this affect others who come from unapproved jurisdictions. **Mr. Keys** indicated the rule had provided additional disclosure and had discouraged journeymen and masters from Utah, for example, coming into the State and not applying for licensure. If a journeyman or a master already has the experience, all they have to do is take the exam.

Chairman Tippetts asked if they were focused primarily on people from out-of-state. If someone within the State had been licensed previously and was seeking to be re-licensed, and they fail to put their complete licensure history on the application, would they be subject to a penalty. **Mr. Keys** said what the Board was looking for was if an applicant answers "yes" to the fact they had been licensed in another jurisdiction, it would be incumbent upon the agency to get more information about the complete history and ask for further detail. **Chairman Tippetts** commented that he didn't think the language gave the agency that option. **Mr. Keys** said if the individual exercised good faith, the penalty would be minimal. **Chairman Tippetts** commented that he would like to have the Department comply with State laws and rules, rather than being lax.

Senator Lakey remarked he agreed with Chairman Tippetts in that the language really did not give discretion by using the word "shall". He suggested the word "shall" be changed to "may". **Mr. Keys** explained the language was that one "may" be subject to a civil penalty, but a penalty still has to be imposed. The imposition was at the discretion of the administrator. One was subject to the imposition of a civil penalty, but whether or not one was imposed, would be at the discretion of the agency. **Senator Lakey** said he would want to look at the language, but he read it

as "subject to" and he did not see where the Division had the discretion. **Mr. Keys** commented he did not have the language with him.

MOTION:

Chairman Tippetts moved to approve **Docket No. 07-0111-1401**. **Chairman Tippetts** explained he wanted to support the approval of this docket and wanted the Division to look at the issues that were discussed. If they felt they needed to make a revision they could bring the issue back to the Committee. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0204-1401**

Rules Governing Plumbing Safety Inspections. **Steve Keys**, Deputy Administrator - Division of Building Safety, presented this docket. **Mr. Keys** said the Idaho Plumbing Board (Board) had adopted the Cross Connection Control Manual (CCCM) as the installation standard. The CCCM was published by the American Water Works Association (AWWA), and was recently updated as reflected in the 7th edition of the manual published in 2012. This rulemaking adopts the 7th Edition of the CCCM published in 2012 by the AWWA in place of the now out-dated 1995 6th Edition.

Negotiated rulemaking was not conducted because this rule merely adopts the most recent edition of the CCCM. Although formal negotiated rulemaking did not occur prior to the promulgation of this rule, the matter was formally designated as an agenda topic before the Board at three board meetings over the past two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

Senator Lakey mentioned the rule looked like a wholesale adoption of a new manual covering changes from 1995 to 2012, and he questioned the lack of negotiated rulemaking if there was not an opportunity to put the Idaho "spin" on the rule. **Mr. Keys** replied this was a situation when the Department of Health and Welfare has jurisdiction over wastewater. His Division has jurisdiction up to the entry-point of the septic tank or other treatment situation on site. Anything beyond that falls under the jurisdiction of Health and Welfare. He stated the Department of Health and Welfare was already using the 2012 edition. **John Nielsen**, Program Manager, Division of Building Safety, stated that the CCCM was being used by everyone who tests backflow devices. There have been some formatting changes but no requirement changes. He said they wanted to be up-to-date with the current manual.

MOTION:

Senator Heider moved to approve **Docket No. 07-0204-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0205-1401**

Rules Governing Plumbing Safety Licensing. **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** said this proposed rule more clearly defines the qualifications and requirements necessary to become a licensed plumber in Idaho. It more clearly aligns the requirements for licensure from out-of-state applicants with in-state applicants, eliminating any advantage to out-of-state applicants and ensuring all applications are handled uniformly and consistently. Licensing requirements vary throughout the country, and this rule requires that out-of-state applicants meet the same requirements as plumbers who are trained and licensed in Idaho. The proposed rule more clearly establishes the schooling and work experience requirements necessary to obtain a plumbing journeyman certificate of competency (license), as well as the necessary requirements for applicants who come from other states. Similarly, it more clearly establishes the work experience requirements necessary to obtain a plumbing contractor license, including the requirement to obtain a journeyman license.

Negotiated rulemaking was conducted.

Senator Lakey commented that he looked at the journeyman requirements for the educational component and the work component. He wondered why there were four years of education required. He commented that even though four years were noted, the rule specified hours. **Mr. Keys** indicated the Board was currently working on how that was applied so that an individual would be able to move through schooling at their own rate by allowing for placement tests and challenges to the rule, just like challenging a college course. One of the barriers they discovered was the rigidity of the program. **Senator Lakey** wanted to know if the program was as rigid as the work experience requirement of four years and was it defined as 8,000 hours. Could this requirement be completed in less than four years. **Mr. Keys** replied the Board was looking for 8,000 hours of verified work experience.

Senator Schmidt noted there were multiple references to written examinations and wanted to know if they were on-line. **Mr. Keys** said the examination was in a written format on-line.

Senator Lee referred to page 26, Section 03.b, and asked if an individual could still apply for an apprenticeship if the applicant could obtain the easier certification by challenging the requirement. **Mr. Keys** indicated the Board was working to allow challenges to the educational requirement, and an applicant could come in and essentially test to the level of their competency. **Senator Lee** asked if an applicant could decide if they wanted to qualify for a particular license based on their preference. **Mr. Keys** said the applicant would have the ability to choose whether they had the knowledge to challenge a course. They would have the option of choosing whether or not to challenge the requirements or attend the four years of school.

Senator Lakey referred to page 26, Section 02.b, and wanted to know if there was a deadline for completion of the time period. **Mr. Keys** remarked the two-and-a-half years of experience was consistent with the requirements to become a contractor. **Senator Lakey** commented that applicants had to prove two-and-a-half years of experience as a journeyman to be a contractor. However, under item b, applicants have to also prove, once they become a journeyman, four years of experience for plumbing work of a nature equivalent to that of a journeyman. He asked if the requirement to be a contractor was another year-and-a-half for someone who has been licensed in a recognized jurisdiction. **Mr. Keys** explained the Board was looking for four years of experience from an applicant who had been in a non-recognized jurisdiction working as a journeyman or two-and-a-half years of experience from an applicant who had been working as a journeyman plumber in the State of Idaho. **Senator Lakey** asked if an applicant was performing work that was equivalent to Idaho standards, why were four years of work experience required? If their experience was inside of Idaho, the requirement was two-and-a-half years of experience. **Mr. Keys** said the reason the Board made that requirement was because they do not have confidence in a non-recognized jurisdiction. The Board does not have an issue if the state is a recognized one.

Chairman Tippetts explained Section 02.a was for an applicant for a contractor certificate of competency who had previously been licensed as a journeyman, and Section 02.b was for someone who has never been previously licensed as a journeyman. He stated that the requirement was four years of school and four years of work if an applicant had never been a journeyman, but if an applicant had been a journeyman, then the requirement was two-and-a-half years of experience. **Mr. Keys** acknowledged this was how he understood the rule.

Senator Lakey remarked that he didn't want someone coming from out-of-state

thinking they were being unfairly treated if they had to establish the journeyman qualification. If they had to establish equivalent work out-of-state, he expressed a concern that the applicant had to establish equivalency to what was done in Idaho. **Mr. Keys** explained that there have been contractors coming in from California. In California, a contractor's license was not required, but could be obtained by establishing oneself as a journeyman. If one's former employer in California verified an applicant was a journeyman, a contractor's license would be granted.

Senator Heider commented that if a person was a licensed journeyman, they have already exhibited their ability to pass an exam and work in that area. If a person was not a licensed journeyman, but may have worked in related fields, they should have more time because they have not actually passed the journeyman exam. He explained that the rule was saying that if an applicant had not been a journeyman in another state, then they must have four years of experience in doing the same thing that a journeyman would have done. If the applicant was already a licensed journeyman, then only two-and-a-half years would be required.

Senator Lee remarked that what has been described does not seem to stave off the initial problem. Would this still leave a gap with applicants coming into the State and not fulfilling the intent of what she sees as the bulk of this rule? **Mr. Keys** replied these rules were put into place in an attempt to assure that Idaho applicants for licensure were not being treated unfairly. The Board has had complaints by the trades in Idaho that they had stricter requirements than those who came in from other states. **Senator Lee** stated she wanted to make sure there was clarity on approved versus unapproved jurisdictions.

MOTION: **Senator Lee** moved to approve **Docket No. 07-0205-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0206-1401 **Rules Concerning Idaho State Plumbing Code.** **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** said this rulemaking updates the Idaho State Plumbing Code (IPC) to allow certain materials to be used for potable water distribution piping and building sewers. This would allow contractors and property owners greater flexibility when installing such pipes and sewer systems. It also eliminates several provisions of the code which can unnecessarily cost contractors and property owners additional expense. This rulemaking amends several provisions of the IPC. It allows for the use of Polypropylene (PP) of Raised Temperature (PE-RT) materials in building supply pipes and fittings as well as water distribution pipes and fittings, and Polyethylene (PE) for use in building drains. It eliminates the requirement for a plumber to test a shower pan for water-tightness. It also eliminates the requirement to use a device in bathtubs and whirlpool tubs that limits the maximum hot temperature of the water discharged. Finally, it eliminates the requirement in certain seismic areas to anchor or strap water heaters in place to resist against displacement due to earthquake motion.

Negotiated rulemaking was conducted.

Chairman Tippetts pointed out the change on page 38, item 11, where the reference to Crosslinked Polyethylene (PEX) Tubing was removed and said he did not see any reference to PEX. He wanted to know if that was a product that had been used in the past and if it would be approved now. **John Neilson**, Division of Building Safety, Plumbing Program Manager, indicated item 11 was deleted when the Uniform Plumbing Code (UPC) was adopted. PEX was currently in table 6-4, number 14, and is included in the IPC.

MOTION: **Senator Schmidt** moved to approve **Docket No. 07-0206-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

Rules of Building Safety - Mechanical Ventilation. **Steve Keys**, Deputy Administrator, Division of Building Safety (DBS), presented this docket. **Mr. Keys** reported that energy code requirements related to the tightness of building envelopes have resulted in poor indoor air quality. The Board and a collaborative group recognized this problem last year when reviewing the adoption of new editions of the building codes and decided to delete the requirement for mechanical ventilation pending the acquisition of more data related to the problem. The industry and code groups have concluded upon reviewing the available data that mechanical ventilation should be required on all dwellings where the air changes average less than five changes per hour. The average new home testing in the past year was at 3.5 air changes per hour. This rulemaking amends several provisions of the 2012 International Residential Code (IRC). The estimated cost of providing supplemental ventilation is \$200 to \$400 per home. It reinstates an exemption for building permits for fences not over seven feet in height. It expands on the amendments to a table which establishes residential exterior wall fire resistance ratings and fire separation distances. Finally, it amends a provision requiring residential mechanical ventilation to ensure the exchange of air within the dwelling and creates an exception for such mechanical ventilation where the air infiltration of a home is already greater than an established amount (five air changes per hour when tested with a blower door).

Negotiated rulemaking was conducted.

Chairman Tippetts queried who decided that if there were fewer than five air changes per hour, a ventilation system would be required. **Mr. Keys** indicated the determination was through the Building Code Collaborative, which is a group assembled by the DBS coordinated with the building industry, code officials in various locations, the Division and other stakeholders in the mechanical Heating, Ventilation, Air-Conditioning (HVAC) industry. **Chairman Tippetts** wanted to know if research had been conducted on the health effects of having less air movement in a building. **Mr. Keys** replied the five air changes per hour were basically what the ICC reflected in the base code. Industry has begun to recognize there are negative impacts of not having enough air changes in the home environment which contributes to a build up of toxins. **Chairman Tippetts** asked **Mr. Keys** to verify whether there was a current requirement in International Code (IC) regarding the ventilation of five air changes per hour. **Mr. Keys** said the requirement could be higher at seven air changes per hour. **Chairman Tippetts** remarked that this provision in the rules was not an additional requirement and wanted to know why it was necessary. **Mr. Keys** reported that last year when the rule was brought forward, the data was not available. The Board determined that since they did not have the data they would not move forward. **Chairman Tippetts** wanted to know if approval of this rule would impose a new requirement. He wanted to know if a requirement was being duplicated that was somewhere else, such as the IC. **Mr. Keys** clarified this was an amendment to the code requirement from last year. **Chairman Tippetts** stated that the average new home tested last year indicated there were about three-and-a-half air changes per hour as opposed to the five minimum. Was testing specific to Idaho or were these tests done on a national or international level? **Mr. Keys** stated the figure reflected Idaho requirements through blower testing in various jurisdictions throughout the State.

Senator Martin wanted to know if townhouses were part of the testing. **Jason Blase**, City of Boise Building Official and a member of the Idaho State Building Code Board, stated that research was conducted over the year. Mechanical ventilation was a new requirement and the Board wanted to analyze the requirement and study the issue. Currently, there have been over 600 homes tested throughout Idaho. In Boise, 165 homes have been tested and 80 percent were under the five air change requirement. It has become very apparent that fresh air needs to come into homes, which has been done every day for commercial buildings.

Senator Martin wanted to know how this testing would be conducted. **Mr. Blase** replied testing is done on new homes as they are being built. Boise has a high number of Energy Star homes being built. A base requirement of Energy Star is the home has to be tested. They have received a lot of data from testing. A blower door can be installed in a home after the fact, but most of the time the door is installed during construction.

Senator Martin wanted to know if not having five air changes was a health problem. **Mr. Blase** indicated the energy codes have progressed requiring more sealing and caulking. In doing so, the air exchange in the house is much lower. A simple answer is a fresh air duct that comes from the return side of the furnace, horizontal and six to eight inches in diameter, which directs fresh air to the furnace and in turn brings air into the home. **Senator Martin** wanted to know how to test an existing home. **Mr. Blase** explained mechanical ventilation was required for all newly-constructed homes. If there is an air exchange between five and seven, the fresh air duct is not necessary because there is enough air infiltration. **Senator Heider** commented that if a building permit was drawn to install a new furnace or water heater, that would trigger an inspection on the home.

Senator Lakey referred to page 45, exterior walls, and wanted a clarification on the separation distance between an exterior wall and another wall. **Mr. Blase** explained the rule had to do with the property line of a home. The State has amended the requirement to three feet to make it consistent with the IC. **Senator Lakey** asked if the separation between the exterior wall and the property line was less than three feet, would the wall be rated as a fire-resistant wall with a one-hour test, according to the standards. **Mr. Blase** said that if the distance was less than three feet, the wall had to be fire-rated.

Chairman Tippetts asked if the data the Board had was related to air exchange in a typical new home or was it related to the health effects of low air exchange in any home. **Mr. Blase** explained most of the data related to air exchange. **Chairman Tippetts** wanted to know if Mr. Blase had any information on what the health effects would be on a person who was subject to low air flow. How was the risk assessed for occupants of a home that only had three-and-one half air exchanges compared with a home that had five? **Mr. Blase** said the information was on the internet. He pointed out there were toxins from gas appliances, moisture, carpet, furniture and paint.

Senator Lee stated the increase in cost for a new home was negligible, but wondered what the cost would be to the consumer. **Mr. Blase** said the estimated cost would be \$250 to \$350 for a fresh air duct installation.

MOTION:

Senator Martin moved to approve **Docket No. 07-0301-1401**. **Senator Heider** seconded the motion.

Chairman Tippetts remarked he was uncomfortable imposing the cost on a new home buyer. He said he was not sure of the health risk without having a better understanding of the issue. Absent additional information, he would be voting "nay."

The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1402**

Rules of Building Safety. Steve Keys, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** reported this amendment of the 2012 edition of the International Residential Code (IRC) was the result of negotiated rulemaking and the deliberations of a collaborative group within the building industry that included local building officials, code development officials, board members and other interested stakeholders that occurred in 2013. This amendment corrected an error to the same rulemaking submitted last year. This amendment correctly establishes the maximum guestroom amount as five rooms instead of three, which was submitted last year in error. This rulemaking would amend the IRC to allow owner-occupied lodging house occupancies (bed and breakfasts) with five or fewer guestrooms to be constructed or remodeled in accordance with the IRC instead of the commercial building code. It also would allow such bed and breakfasts to be operated without the installation of fire sprinklers.

Because this rulemaking corrected an error from a rulemaking from the previous year (2014 Legislative Session), it was necessary to make the rule effective as soon as possible to confer a benefit to building contractors and operators of owner-occupied lodging houses (bed and breakfasts).

Negotiated rulemaking was not conducted because this rulemaking was negotiated and submitted as rulemaking in a previous legislative session. Due to a textual error in that rulemaking, it is being corrected and resubmitted this year.

Senator Martin stated he had noticed that on page 54, the installation of smoke alarm and carbon monoxide alarms was deleted, and he wanted to know why. **Mr. Blase** said there was a lot of discussion in getting this approved by the Board, but it was still assumed that the smoke detectors and carbon monoxide alarms would be installed and that requirement was covered in another section of the code. **Senator Martin** commented he thought it especially important to have a smoke alarm and carbon monoxide detectors installed in a bed and breakfast.

MOTION:

Chairman Tippetts moved to approve **Docket No. 07-0301-1402**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

RS 23291

Relating to Workplace Safety was presented by Tom Limbaugh, Commissioner, Industrial Commission (Commission) and Kelly Pearce, Administrator, Division of Building Safety (DBS). **Tom Limbaugh** said the language for this RS was worked on jointly by the DBS and the Idaho Industrial Commission (Commission) over the past year.

The Commission's Advisory Committee formed a Workplace Safety Subcommittee to work through these proposed changes. The invited members represented labor, self-insured employers, insurance companies, the State Insurance Fund, the logging industry, the Association of Idaho Cities, the Idaho Association of Counties, the Idaho Association of Highway Districts, the Idaho Retailers Association, the National Federation of Independent Business, the Idaho Association of Commerce and Industry, the Idaho Hospital Association, the Legislative Budget Office, the Division of Financial Management, the DBS and the Commission.

Mr. Limbaugh said the Industrial Accident Board (Board) was created in 1917 by the Idaho Legislature. The Board was given authority over workplace safety. In 1971, as part of a major recodification of the workers' compensation laws, the Legislature again assigned the responsibility over workplace safety to the Industrial

Accident Board renamed the Industrial Commission. Around the time of the 1971 recodification, the United States Congress enacted the Occupational Safety and Health Act (OSHA). Since Idaho has no state workplace safety and health program under a plan approved by the U.S. Department of Labor, all private sector employment is covered under OSHA. As a result of federal preemption in this area, current Idaho law incorrectly vests the Commission with authority over private workplace safety. However, state and local government workplaces are excluded from federal coverage under OSHA.

This legislation clarifies the scope of safety inspections and programs, and transfers all related responsibilities to the DBS, the majority of which they now hold. Further, this proposal identifies the continued use of the Commission's Administration Fund to fund DBS inspections of public buildings, public schools and the logging safety training programs and permits the Administrator to issue a stop work order where evidence reveals a logging workplace safety condition that poses an immediate threat of serious bodily harm or loss of life to employees or members of the public. It provides for enforcement of that order by the Attorney General and makes a knowing violation of such a safety order a misdemeanor.

Mr. Limbaugh stated the Administrator of the DBS was also required to promulgate rules adopting minimum safety standards and procedures for conducting logging safety inspections and logging safety training. This legislation also authorized the Administrator of the DBS to conduct safety inspections of buildings owned or maintained by other political subdivisions of the State upon receipt of a written request from the governing body of that political subdivision. Inspections would be subject to the availability of DBS resources and an agreement by the political subdivision to pay the DBSs current fees. The findings of these inspections shall be reported to the governing body of the political subdivision. The Administrator may also promulgate rules adopting minimum safety standards and procedures for conducting such inspections, as well as the fees for performing the same.

Kelly Pearce said he concurred with Mr. Limbaugh's remarks. The changes had gone through an extensive negotiated hearing process throughout the industry. Statutorily, the responsibility would be transferred to the DBS. This proposed RS eliminated some heavy sections of code, which gave the responsibility to the Commission almost jointly with OSHA for workplace inspections. **Mr. Pearce** said neither the entities nor the DBS should be involved in these types of inspections. He noted in the past the DBS would conduct inspections of all political subdivisions including cities, counties and every other conceivable subdivision. All of that has been eliminated through this proposal. If an entity wanted to have a safety inspection process or training program conducted by the DBS, it would be upon written request of that entity to the DBS. The DBS charges an hourly rate and makes a written report to the entity.

Senator Martin asked about page 3 relating to logging operations when there was an immediate threat of serious bodily harm or loss of life to any person. The Administrator has the power to shut down the operation, and it is important that both sides of the issue be considered. **Mr. Pearce** replied he thought the industry would be there to testify on behalf of that section at the next hearing. The industry requested this item.

MOTION: **Senator Ward-Engelking** moved to send **RS 23291** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

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

Senator Tippetts
Chair

Linda Kambeitz
Secretary