

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, February 17, 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. and welcomed everyone.

**S 1081:** **Self-Funded Health Plans for Higher Education Employees. Joe Stegner**, University of Idaho, Special Assistant to the President for State Government Relations, introduced Kent Nelson, General Counsel for the University of Idaho (University). **Mr. Nelson** said the purpose of this bill is to reinstate the previous reserve and surplus requirements applicable to the University's self-funded health benefits plan prior to changes in 2013 legislation.

**Mr. Nelson** outlined what a self-funded plan contained. He said statute requires surplus and reserves be established and maintained. A reserve must be maintained in an amount certified by a qualified actuary as being necessary for payment of claims liability. He pointed out a public postsecondary educational institution is required to establish and maintain in its trust fund surplus an amount equal to at least 30 percent of the unpaid claims liability of the plan. This surplus must be maintained at all times throughout the year. **Mr. Nelson** stated the University surplus was approximately \$2.3 million. He said there was an anticipated surplus of \$3.1 million consisting of reserves and surplus. A bill was passed in the 2013 Legislative Session, changing the calculation of the reserve and surplus balances for all self-funded health plans, effective July 1, 2015. The University is faced with having to increase its reserves and surplus to over \$9 million, which is an increase of approximately \$6 million.

He said this bill will have no negative impact on the General Fund. Passage will relieve a potential burden on University unrestricted reserves. He said he discussed these changes with the Department of Insurance and with key legislators. He knows of no opposition to this legislation.

**Senator Cameron** asked Mr. Nelson to outline the most recent claims history and wanted to know if the University had approached or exceeded the 30 percent unpaid claims liability. **Mr. Nelson** responded the calculation for the 130 percent liability is based on the actuarial calculation of the amount of claims, some of which were unknown. The calculation changes constantly, but reserves are always maintained with trust balances in the excess. He said unpaid claims have never exceeded 30 percent. **Mr. Nelson** indicated he was unaware of the problem. **Ron Smith**, Vice President of Finance, University of Idaho, reported unpaid claims have never exceeded 30 percent.

**Vice Chairman Patrick** wanted to know how the current calculation related to the change would work. **Mr. Nelson** indicated the current calculation will go into effect on July 1, which removes the 30 percent requirement of the surplus and is replaced with 3 times the monthly expected contributions to the plan. The estimate is approximately \$6 million.

**Senator Heider** wanted to know if any thought had been given to including two-year colleges. If so, would the base be increased and the price lowered? **Mr. Nelson** responded that at the present, the University is the only institution that has a plan. If the other institutions were included, there would not be an increase in the base.

**Senator Schmidt** wanted to know the approximate ratio between employees and retirees. **Mr. Nelson** said the vast majority were employees.

**MOTION:**

**Senator Lakey** moved that **S 1081** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion.

**Senator Lakey** commented this was a public entity combined with private entities, which is an important consideration. **Senator Cameron** indicated he would support the bill. He was concerned about the appropriate amount of reserves and that the state may be forced to pay for any additional costs should there be a dilemma in the future.

The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

**MINUTES  
APPROVAL:**

**Senator Cameron** moved to approve the Minutes of January 20, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**S 1079:**

**Relating to Professional Engineers and Professional Land Surveyors.** **Keith Simila**, Executive Director, Department of Professional Engineers and Land Surveyors (Department), said this amendment corrects inconsistencies in platting and mapping requirements. Plats and Record of Survey (ROS) maps are required to have the same minimum features such as north arrow, graphic scale, and bearing and distances for better consistency. Plat and ROS map media requirements are updated and made consistent in all three sections of Idaho Code to remove outdated media specifications. Requirements are changed to list only the most current corner record on the ROS map to make it more concise. A technical correction ensures monuments set by Idaho licensed land surveyors are protected from defacement.

The amendment allows graduate and related science students to take the Fundamentals of Engineering (FE) examination prior to graduation, instead of after graduation. It also simplifies the application process to make it easier for all students to take FE or Fundamentals of Surveying examinations. Students will take the examination without first applying to the Board of Professional Engineers and Land Surveyors (Board). After passing the examination, they will apply to the Board for their intern certificate.

**MOTION:**

**Senator Martin** moved that **S 1079** be sent to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

**PASSED THE  
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

**DOCKET NO.  
59-0103-1401:**

**PERSI Contribution Rules. Don Drum**, Director, Public Employee Retirement System of Idaho (PERSI), said this rule was to delay a scheduled increase in contribution rates of employers and employees. Negotiated rulemaking was not conducted because it would be inconsistent with PERSI's exclusive fiduciary responsibility for plan operations. **Director Drum** said this rule addresses contribution rates and scheduled rate increases. These rules have rate increases scheduled to take effect on July 1, 2015 and July 1, 2016. At the October PERSI Board (Board) meeting, the Board authorized temporary rules to eliminate these scheduled increases. That action is reflected in the temporary rules in **Docket No. 59-0103-1401**. **Director Drum** reported that given the Board's action on the elimination of the rate increases, the Board requests that this pending rule be rejected.

**MOTION:**

**Senator Martin** moved to reject **Docket No. 59-0103-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
59-0106-1401:**

**PERSI Retirement. Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said this rule makes changes to Rule 131 and Rule 132 of PERSI's retirement rules. Both of these rules address what is known as retirement in place for PERSI members. These members are elected or appointed and generally serve on small boards or commissions. Rule 131 applies to a member who works full-time for one PERSI employer and also works minimal hours as an elected or appointed official for a different employer. The rule allows the member to retire from the full-time job and stay on in the part-time elected or appointed position and still collect PERSI retirement. He noted that prior to this change, Rule 131 allowed for retirement in place for an early or service retiree. Rule 131 also applies to a member who works only minimal hours as an elected or appointed official. It allows the member to remain in that position and collect PERSI retirement. He stated that prior to this change, Rule 132 allowed for retirement in place only for a service retiree.

Prior to the change, the rules were not consistent and this caused confusion because under one rule, the member could be an early or service retiree, but under the other rule the member had to be a service retiree. The change reflected in these rules makes both rules applicable to a PERSI member who is eligible to retire and is age 62 or older. The rule change makes for needed consistency in the two rules. It also will provide clarity to employers and members who could be affected by the rule. The rule will also make both rules consistent with the Internal Revenue Code which allows a plan to authorize retirement in place for anyone 62 or over.

**Director Drum** reported this docket was published as a proposed rule in the July 2014 Administrative Bulletin. PERSI received no questions or comments on these rules. He said negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the Board's exclusive fiduciary responsibility for plan operations.

**Senator Schmidt** wanted to know how PERSI defined service retirement. **Director Drum** explained service retirement was when an employee reached the Rule of 80 (for public safety officers). (Years of service plus the member's age must equal or exceed 80.) When early retirement occurs, the retirement rate is reduced.

**Senator Cameron** asked for an explanation of the statement on negotiated rulemaking and why PERSI was different from other agencies. **Director Drum** said he did not have a good answer.

**MOTION:** **Senator Schmidt** moved to approve **Docket No. 59-0106-1401**. **Senator Cameron** seconded the motion.

**Chairman Tippetts** followed up on Senator Cameron's question about negotiated rulemaking and said he wanted the Board to take a good look at the reason why negotiated rulemaking was not conducted. He said he was willing to support approval of the docket. **Director Drum** said he would follow up with the Board and respond to questions of Senator Cameron and Chairman Tippetts.

The motion carried by **voice vote**.

**DOCKET NO. 59-0201-1401:** **Rules for Judges' Retirement Fund.** **Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said that effective July 1, 2014, the management and administration of the Judges' Retirement Fund (JRF) was transferred to the PERSI Board (Board). These new rules govern the administration of the JRF. They include prior rules that had been previously adopted by the Idaho Supreme Court order. Those rules primarily addressed distribution issues and were intended to satisfy Internal Revenue Service (IRS) requirements. **Director Drum** stated the new rules also contain rules directed at PERSI's administration of the JRF in the areas of assumptions, contribution rates, disability and divorce. These rules were provided in draft to representatives of the Idaho Supreme Court prior to their being adopted. This docket was published as proposed in the July 2014 Administrative Bulletin. PERSI received no questions or comments on these rules.

**MOTION:** **Senator Schmidt** moved to approve **Docket No. 59-0201-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 59-0103-1402:** **PERSI Contribution Rules.** **Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said this was a temporary rule. The purpose for this rule is to eliminate scheduled contribution rates. He gave a brief history of the rates. He stated that this year with the market recovery and the strong-funded status of the fund, the Board determined the next two scheduled increases could be eliminated. State agencies and the Division of Financial Management have not included rate increases in agency budgets.

**MOTION:** **Chairman Tippetts** moved to approve **Docket No. 59-0103-1402**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 59-0103-1403:** **PERSI Contribution Rules.** **Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said this was a temporary rule. He said the purpose of the rule was to reduce the excess merger cost portion of the Firefighter Retirement Fund (FRF) employer rate. Actuarial valuation of the FRF indicates it is appropriate to reduce the rate. **Director Drum** stated the excess merger rate has been 17.24 percent since 1997. Over the latter half of 2014, the PERSI Board considered lowering the excess merger cost rate if the funded rate of the FRF reached 110 percent. The Board considered that a funded rate of 110 percent would allow a reduction in the excess cost rate, while at the same time provide a cushion against market volatility. Since the actuarial valuation as of July 1, 2014 showed the FRF was 110.9 percent funded, the PERSI Board at the October 2014 meeting authorized rules to lower the rate from 17.24 percent to 5 percent, effective January 1, 2015.

**Senator Ward-Engelking** moved to approve **Docket No. 59-0103-1403**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
17-0501-1401:**

**Rules Under the Crime Victims Compensation Act. George Gutierrez,** Bureau Chief, Industrial Commission (Commission), said this rule is necessary to implement updates under the Crime Victims Compensation (CVC) Medical Fee Schedule and to clarify the calculations of the allowable payment of Current Procedural Terminology (CPT) Codes established by the American Medical Association (AMA); and to provide direction and a consistent method for calculating mileage reimbursement for necessary treatment and services for eligible victims of the program.

**Bureau Chief Gutierrez** explained that Idaho Code § 72-1026 authorizes the Commission to adopt a fee schedule for the Crime Victims Compensation Program (Program) to use to determine allowable payments to medical providers for treatment and services for injuries sustained by innocent victims of crime. The Program adopted a fee schedule similar to the workers' compensation fee schedule, which is based on the Resource Based Relative Value Scale (RBRVS). The RBRVS is a reimbursement method used by the Centers for Medicare and Medicaid Services (CMS). He explained there are two main components to RBRVS. CMS assigns each coded procedure a numerical Relative Value Unit (RVU) based on the work, practice, and malpractice expenses associated with providing that service. The other factor is a monetary conversion factor determined by the Commission.

The allowed amount is the assigned RVU multiplied by the corresponding conversion factor. The adjustments in the table include a housekeeping change to particular code ranges without other adjustments to the actual conversion factors. The change in the code ranges in Medicine Groups 1 and 2 regroups certain psychiatric diagnostic evaluation codes to align with coding changes implemented by the AMA. These coding changes affect the allowable amount determined by the fee schedule. This allowable amount sets the rates the Program uses to reimburse treatment providers for services delivered to eligible victims of crime. Adoption of the changes in service categories enables the program to set appropriate allowable amounts for a particular treatment or service and to reimburse providers at the appropriate rates as determined by the fee schedule.

In the next section of the rule, the Commission is authorized to reimburse eligible victims or their immediate family members for their expenses for necessary travel incurred in connection with obtaining benefits covered under the Crime Victims Compensation Act (CVCA). Currently, the Commission does not have a provision in either statute or rule that specifies how this benefit is calculated or administered. This pending rule provides a standardized method for the Program to calculate and reimburse victims and their family members for transportation expenses to obtain treatment and services for their crime-related injuries.

**Bureau Chief Gutierrez** explained that Idaho Code § 72-1019 authorizes the Program to provide payment for reasonable treatment and services for victims who suffer injuries as the direct result of criminally injurious conduct. There is no provision in statute or rule that specifies how long treatment providers have to submit their claims for payment to the Program. On many occasions some treatment providers have waited several years to file their claims for reimbursement. As time passes, many providers move their records to offsite long-term storage or destroy them altogether. This often causes delays or outright prevents providers from submitting the records to the Program for review, leading to the denial of potentially compensable claims because the provider did not submit the required documentation. A two-year filing period from the date-of-service or the date of the application helps to ensure that claims and supporting documentation are submitted in a timely manner. The two-year time period is well within industry standards for submission of claims to both private and public benefit sources (Medicaid and

Medicare filing deadlines are one year). The failure of the provider to meet the filing requirement generally does not result in a financial burden to the patient. When the Program denies a claim, eligible victims have the right to appeal that denial, as outlined in the rules. In general, if the claim was denied due to the provider's negligence and the treatment is for a crime-related injury, the Program would provide compensation on behalf of the victim upon appeal.

Negotiated rulemaking was not conducted because the amendments are necessary to implement the changes in the CPT codes, published by the AMA. The CVC Medical Fee Schedule is not correctly reimbursing providers for some services delivered to eligible victims of crime; the rule amendment would allow the program to appropriately reimburse providers for eligible services.

**Chairman Tippetts** referred to reimbursement for transportation expenses and wanted to know how "local area" was determined. **Bureau Chief Gutierrez** said there was a 15 mile rule, which meant there was no reimbursement for travel within a 15 mile radius. He explained that any travel outside of 15 miles would be compensated. **Chairman Tippetts** said the definition was unclear, and he recommended the Commission specifically define "local area".

**Senator Schmidt** commented on how the fee schedule was similar to the workers' compensation fee schedule and wanted to know if the Commission had discussions about the rule changes with the Workers' Compensation Board. **Bureau Chief Gutierrez** replied "yes."

**Senator Cameron** wanted to know if the Crime Victims Compensation Fund (Fund) was considered the primary insurance or whether the victim's insurance company would be primary. **Bureau Chief Gutierrez** said the Fund was the last resort with the victim's insurance company being the primary. However, the Fund covers what the insurance company does not.

**Senator Cameron** remarked there was an opportunity to reduce compensation to victims who were already paid by the insurance company. **Bureau Chief Gutierrez** explained the Commission would obtain a copy of what the insurance company paid, and a payment would be made on the unpaid amount.

**Senator Schmidt** asked for a clarification as to whether the Fund was used prior to the Catastrophic Fund, which was a last resort. **Senator Cameron** remarked it was kind of the Commission to allow the victim two years to submit insurance paperwork. He was wondering how that would work if the Catastrophic Fund was secondary. **Bureau Chief Gutierrez** said payment would not be held up by the Catastrophic Fund. The Commission pays any bills received and makes up to three requests for documentation. A ledger is provided to the Catastrophic Fund based on what was already paid. If necessary a refund would be issued.

**MOTION:** **Senator Schmidt** moved to approve **Docket No. 17-0501-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

**ADJOURNED:** There being no further business, **Chairman Tippetts** adjourned the meeting at 2:23 p.m.

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Senator Tippetts  
Chair

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Linda Kambeitz  
Secretary