

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Thursday, January 12, 2017

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Anthon, Ward-Engelking, and Burgoyne

**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 Patrick** called the meeting to order at 1:31 p.m. He began the meeting and indicated he would pass the gavel as soon as Vice Chairman Guthrie arrived from another function. He introduced the first presenter.

**DOCKET NO. 09-0135-1601** **Unemployment Insurance Tax Administration Rules. Larry Ingram**, Unemployment Compliance Chief, Department of Labor (DOL), presented this docket. He stated this rule was to clarify that payments by a partnership to its partner or by a sole proprietorship to its owner are excluded as wages for purposes of unemployment insurance tax. The rule adds an additional exclusion to wages. This is currently how payments by a partnership to its partners or payments by a sole proprietorship to its owner should be handled. Providing this in a rule would help clarify this for partners, partnerships and owners of a sole proprietorship business.

The DOL conducted negotiated rulemaking and there was no opposition. There is no fiscal impact to the state.

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

**DISCUSSION:** **Senator Burgoyne** said that in his understanding of partners and partnerships, they can elect unemployment insurance coverage and in order to do that they would need to have wage credits. The only way to get wage credits is if the share of partnership income goes to the partner and that is counted at least in some degree as wage credits. He wanted to know if there was a rule or a statute against this distribution. **Mr. Ingram** said that Idaho Code § 72-1352(3) states it is a voluntary election of coverage, which this would fall under. The code specifically says "any employer for whom services are performed in the State, which do not constitute covered employment, may file with the director a written request, that these services be covered." **Mr. Ingram** explained that in this case, the sole proprietorship or the partner is actually the employer and the request would be denied. These are self-employed individuals and in essence what would be created is the opportunity for these individuals to cover themselves with unemployment. **Senator Burgoyne** clarified what Mr. Ingram was saying, which was the statute precludes the possibility of a partner or other self-employed individual from electing coverage. **Mr. Ingram** replied that was correct.

**Senator Martin** asked Mr. Ingram to elaborate on the idea there was no response or opposition to this rule by the individuals that this is affecting. He wanted to know if they were accepting and understanding of this rule. **Mr. Ingram** said most sole

proprietorships and partners know that their earnings and profits are not covered for unemployment insurance purposes. He indicated that approximately 80 percent of employers have corporations for which this rule does not apply, which leaves a very small percentage of the employer population. On occasion, a query is run on wage credits by the DOL based on ownership. Approximately 10 or 20 employers are found and the DOL talks to the employer and gives them a refund.

**MOTION:** **Senator Martin** moved to adopt **Docket No. 09-0135-1601**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 12-0110-1601** **Rules Pursuant to the Idaho Residential Mortgage Practices Act.** **Michael Larsen**, Consumer Financial Bureau Chief, Department of Finance (Department), presented this docket. He stated this pending rule updates references to incorporated federal laws and regulations (Truth in Lending Act (TILA) and Regulation Z) as well as the Real Estate Settlement Procedures Act (RESPA) and Regulation X). He stated there are no changes to the pending rule and it is being adopted as originally proposed. Negotiated rulemaking was not conducted because the rule is simple in nature as it merely updates references to incorporated federal laws and regulations. There is no fiscal impact to the State. The Department has received no opposition.

**Senator Martin** asked if the date changed for Regulations Z and X. **Mr. Larsen** said the date in the rules at the state level was specific, but not at the federal level. **Senator Martin** asked that by agreeing to this rule if the federal government made changes, would the State of Idaho be obliged to make changes as well. **Mr. Larsen** replied the state was not committed to make changes until the Department asks for that commitment. The state, by updating the rules and laws, is in compliance with federal requirements.

**TESTIMONY:** **Terry Otten**, representing the Idaho Association of Mortgage Professionals (Association), testified in support of the proposed rule. The Association has a good working relationship with the Department. The Department informs the Association of new rules and regulations, advises and asks for opinions before the Department moves forward. **Vice Chairman Guthrie** thanked Ms. Otten for her input. **Chairman Patrick** commented he worked with the Department on financial issues and complimented the Department for working well with him.

**MOTION:** **Senator Anthon** moved to adopt **Docket No. 12-0110-1601**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 24-0801-1601** **Rules of the State Board of Morticians.** **Mitchell Toryanski**, Legal Counsel, Idaho Bureau of Occupational Licenses (IBOL), presented this docket. He stated the 2016 Legislature passed **H 367**, which extended the length of time a resident trainee could practice from two to three years under a permit. Rule 250 is being amended to reflect current law by changing the limit of time that a resident trainee can hold a permit from two years to three years. Negotiated rulemaking was not conducted because the rule is being amended to comply with the new law. This rule was discussed in a noticed, open meeting of the IBOL Board. There is no fiscal impact to the state.

**MOTION:** **Senator Burgoyne** moved to adopt **Docket No. 24-0801-1601**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
24-2201-1601**

**Rules of the Idaho State Liquefied Petroleum Gas Safety Board. Mitchell Toryanski**, Legal Counsel, Idaho Bureau of Occupational Licenses (IBOL), presented this docket. He said the IBOL Board is amending the rule to incorporate by reference the 2017 edition of publication 58 of the Liquefied Petroleum Gas Code from the National Fire Protection Association (NFPA) to keep abreast of the most current safety standards.

Negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the IBOL Board. There is no fiscal impact to the state.

**Senator Thayn** discussed the changes that have taken place over the last 16 years with Mr. Toryanski, some of which have been minute and some have been in response to changes in technology. **Mr. Toryanski** stated that one change defined separation distances between liquefied petroleum gas (LPG) storage and other materials. The scientific method was used to determine that if there was too much snow, the LPG would not be damaged. Changes in the rule clarifies the position of shut-down stations not being located too close to tanks.

**Senator Lakey** commented that even though negotiated rulemaking was not conducted, notices were sent to all who would be affected. **Mr. Toryanski** said there were open meeting discussions and the public received notice. Postcards were mailed to all licensees, dealers, and owners.

**Senator Burgoyne** remarked he was comfortable with supporting the rule. He asked that a spreadsheet of changes be provided to the Committee. **Mr. Toryanski** said he would provide the information.

**MOTION:**

**Senator Martin** moved to adopt **Docket No. 24-2201-1601**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
24-2501-1601**

**Rules of the Idaho Driving Business Licensure Board. Mitchell Toryanski** Legal Counsel, Idaho Bureau of Occupational Licenses (IBOL), presented this docket. He explained the Board of Driving Businesses (Board) is amending its rules to clarify that the list of current instructors employed must be submitted for original and reinstatement applications. The list must be kept current and made available upon request of the Board. It also clarifies that while a driving business is allowed to use a third party provider for on-line classroom instruction, the licensee is responsible for ensuring that the content meets the requirements approved by the Board. The rule outlines when the business licensee will send performance information to the Department of Motor Vehicles (DMV) and it updates language as to who may provide a medical examination and what document must be submitted to the Board for verification. Negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board. No comments were received. There is no fiscal impact to the state.

**Senator Lakey** and **Mr. Toryanski** discussed the addition of the timeframe requirements due to instructors not submitting course completion information to the DMV in a timely way. Information is now transmitted electronically.

**MOTION:**

**Chairman Patrick** moved to adopt **Docket No. 24-2501-1601**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
59-0201-1601**

**Rules for the Judges' Retirement Fund (JRF).** **Don Drum**, Executive Director, Public Employee Retirement System of Idaho (PERSI), presented this docket. He said these rules apply to the JRF. The actuarial valuation for the JRF for the period ending June 30, 2015 reflected that the amortization period is above the maximum 25-year amortization period contained in statute. The PERSI Board (Board) has acted to adopt the rate increase as it is required to do to bring the amortization period to 25 years or less as required by Idaho Code § 1-2004 (A). The rate increase becomes effective July 1, 2017. There are no changes to the pending rule and it is being adopted as originally proposed.

Negotiated rulemaking was not conducted because negotiated rulemaking was not feasible as it would be inconsistent with the Board's need to bring the amortization rate to 25 years or less and with the Board's exclusive fiduciary responsibility for plan operations. Employer contribution rates will increase by 7.25 percent of salaries, beginning July 1, 2017. In other words, the employer rate will increase from 55.28 percent to 62.53 percent of salaries. The employee rate will increase from 10.23 percent to 11.57 percent of salaries. This will affect the general fund to the extent the contributions required of the employer (Supreme Court) are made from general fund dollars.

**Director Drum** pointed out this rule was a temporary rule last year and a pending rule this year. He wanted to avoid having another temporary rule.

**Senator Thayn** said he thought something in the rule was supposed to be stricken. **Vice Chairman Guthrie** asked for clarification. **Director Drum** said this rule was exactly the same as the temporary rule from last year and this pending rule would become permanent. **Senator Thayn** asked Director Drum what the Board wanted the Committee to do with the rule. **Senator Lakey** said Senator Thayn had a good point about the language and that the language could be viewed as conflicting if not stricken. Senator Lakey referred to the Employer Contribution Rate (Rule 300) and stated the first sentence was redundant. **Vice Chairman Guthrie** said he concurred. **Director Drum** said he conferred with the Deputy Attorney General assigned to PERSI, but she said she thought the rule as written would be acceptable. **Director Drum** indicated the language in the rule could be stricken and the rule could then be resubmitted to the Committee. **Dennis Stevenson**, Administrative Rules Coordinator, Department of Administration, indicated this could not be done this year. **Director Drum** said the Board would be out of compliance with the law. **Chairman Patrick** suggested the rule be revised and submitted in 2018. He said the current rule accomplishes what is needed. **Senator Lakey** said he concurred. He remarked the language was confusing, but the Committee could adopt the rule with the understanding that Director Drum brings the rule back next year.

**Senator Martin** said assuming the employer will absorb the additional cost, he was curious about the employee contribution and wanted to know if the multiplier was of their salary. **Director Drum** said it was and this was a proposal the Board has been working on with the judges. **Senator Martin** stated the amount taken out was a little over 1 percent of salary. **Director Drum** confirmed that amount was correct.

**MOTION:**

**Senator Lakey** moved to adopt **Docket No. 59-0201-1601**, with the caveat the language would be revised and the rule resubmitted next year. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
59-0201-1602**

**Rules for the Judges' Retirement Fund. Don Drum**, Executive Director, Public Employee Retirement System of Idaho (PERSI), presented this docket. He said this rule added a new subsection .05 to rule 101 to make clear that the Internal Revenue Code (IRC) section 415 limitation on benefits applies to the combined benefits from all plans if a member participates in two or more qualified defined benefit plans maintained by the employer (or a predecessor employer). This change is being made pursuant to requirements of the Internal Revenue Service (IRS) pursuant to the receipt of the determination letter received in December of 2015. The current section 415(b) limit (for 2016) is \$210,000. There are no changes to the pending rule and it is being adopted as originally proposed. Negotiated rulemaking was not conducted because it would be inconsistent with the Board's exclusive fiduciary responsibility for plan operations. There is no fiscal impact to the state.

**Vice Chairman Guthrie** asked about the withdrawal limit of \$210,000 a year. **Director Drum** indicated that \$210,000 is the limitation of what can be drawn from two separate funds. **Senator Guthrie** wanted to know if there were individuals outside of the limiting parameters, were they "grandfathered" in? **Director Drum** said that basically by law there is a limit of \$210,000, but there is no one doing that. The purpose of this law is to make retirees aware of the IRS limitations.

**MOTION:**

**Senator Thayne** moved to adopt **Docket No. 59-0201-1602**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED THE  
GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

**ADJOURNED:**

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:25 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary