

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Thursday, January 26, 2017

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

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Senator Souza

**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 Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

**GUBERNATORIAL APPOINTMENT AND HEARING:** The appointment of R. D. Maynard, Meridian, Idaho, to the Industrial Commission (Commission), to serve a term commencing January 13, 2017 and expiring January 13, 2023. **Mr. Maynard** said he is a native Idahoan. He worked in the construction industry for 29 years with most of those years at the Idaho National Laboratory (INL). He was a Business Representative for the Operating Engineers for eight years. **Mr. Maynard** stated he served for five years as President of the Idaho Building and Construction Trades. He also served on the Butte County School District #111 Board of Trustees for seven years with five of those years as Chairman. While at INL, **Mr. Maynard** said he served for 12 years on the INL Citizens Advisory Board, serving the last two years as Chairman. He was appointed to the Commission in 1999; reappointed in 2005 by Governor Kempthorne and in 2011 by Governor Otter.

**Mr. Maynard** gave a brief overview of the Commission. He reported the Commissioners are Thomas E. Limbaugh, Chairman; Thomas P. Baskin; and himself. The Commission is responsible for deciding contested cases, administering insurance requirements, approving settlement agreements, mediating workers' compensation disputes, providing no cost return-to-work services, deciding unemployment insurance appeals, and administering the Crime Victims Compensation Program (CVCP).

**Mr. Maynard** talked about some of the misconceptions about the Commission. **Mr. Maynard** said the Commission does not pay workers' compensation benefits, is not the State Insurance Fund, not an insurance company, or does the Commission set workers' compensation rates.

**Mr. Maynard** said with the exception of the CVCP, the Commission's primary funding source for ongoing operations is premium tax. Starting four years ago, the Commission implemented a 20 percent temporary reduction of the premium tax and last year S 1168 permanently reduced the premium tax from 2.5 percent to 2 percent. The premium tax is collected semi-annually. The Commission receives no revenue from the General Fund.

**Mr. Maynard** said the Commission is comprised of five departments: the Adjudication Division; the Employer Compliance Division; the Claims and Benefits Division; the Rehabilitation Division; and the CVCP. The Commission

is staffed by 138.25 Full-Time Employees (FTE).

**Mr. Maynard** commented that 2017 marks the 100-year anniversary of Workers' Compensation in Idaho. The Idaho Workers' Compensation Act was passed by the fourteenth Legislature of the State of Idaho and signed by Governor Moses Alexander on March 16, 1917. This Act brought with it the grand bargain between employers and employees of creating workers' compensation as the exclusive remedy for workplace injuries. The Commission will be coordinating events throughout the year to celebrate this 100-year anniversary.

**DISCUSSION:**

**Senator Martin** wanted to know what Mr. Maynard had accomplished while being on the Commission for the last 25 years. **Mr. Maynard** stated that when he first started on the Commission, workers' compensation cases were 2.5 years in arrears. The Commission was on the verge of losing funding due to the backlog. **Mr. Maynard** said the process was reformed and streamlined. Another accomplishment was implementing the Citizens' Advisory Board (Board) in 2000. The Board has been very effective and functions well. All legislation and rule changes are considered by the Board.

**MOTION:**

**Senator Burgoyne** moved to send the gubernatorial appointment of R. D. Maynard to the Industrial Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**

Chairman Patrick passed the gavel to Vice-Chairman Guthrie.

**DOCKET NO.  
28-0207-1601**

**Rules Governing the Administration of the Idaho Global Entrepreneurial Mission (IGEM) Grant Program.** **Megan Ronk**, Director, Department of Commerce (DOC), said the proposed rule changes were to ensure the language between Idaho Code and the program rules are consistent; to correctly cite responsibilities for the DOC; to define "industry partner," a term that was introduced into Idaho Code during the last legislative session; and, to provide grammatical corrections and other program clarifications. There is no fiscal impact to the state.

**Ms. Ronk** said that negotiated rulemaking was not conducted because the DOC held informal negotiation sessions with officials representing the State Board of Education, Boise State University (BSU), Idaho State University, and the University of Idaho, in which all parties agreed with the proposed rule changes and language submitted in this notice.

**DISCUSSION:**

**Chairman Patrick** asked how the intellectual rights are divided. **Carmen Archibald**, Manager, IGEM, indicated that IGEM contracts with BSU and BSU has a contract with industry partners. Revenue, which could be 10 percent of net sales, is distributed back to the State Fund and IGEM.

**Senator Burgoyne** asked why the phrase, "and return all unspent IGEM funds to the Department" was taken out of the rule. **Ms. Archibald** replied IGEM pays awards funds based on a cost reimbursement basis. There are no funds to be returned.

**Senator Guthrie** asked if the funds were matching and was the model flexible. **Ms. Ronk** said the model was flexible and part of the evaluation process but there is no set amount recognizing that sometimes the match is actual cash or equipment and other times the match is in-kind contributions.

**MOTION:** **Senator Anthon** moved to adopt **Docket No. 28-0207-1601**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**Senator Anthon** commented the IGEM program is excellent and a continued success story. The program brings research opportunities for students at the universities.

**DOCKET NO. 18-0110-1601** **Producers Handling of Fiduciary Funds.** **Dean Cameron**, Director, Department of Insurance (DOI), said the pending rule seeks to add language amending a rule concerning insurance producers handling fiduciary funds. The rule specifically relates to bail bonds to provide deposit rules for cash collateral similar to that of other funds that insurance producers receive from clients; namely, to treat cash collateral as fiduciary funds. There is no fiscal impact to the state. Negotiated rulemaking was conducted.

**MOTION:** **Senator Lakey** moved to adopt **Docket No. 18-0110-1601**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 18-0148-1601** **Rule to Implement the Privacy of Consumer Financial Information.** **Dean Cameron**, Director, Department of Insurance (DOI), said this rulemaking provides language that relieves insurers and producers (licensees of the DOI) from having to send their customers an annual privacy notice where they comply with other requirements concerning any disclosure of personally identifiable financial information. This notice is only sent in situations where the licensee's practices and policies regarding disclosure have changed since the last notice was sent to their customer. The rulemaking will also benefit consumers by relieving them from receiving duplicative annual notices, because only new or changed notices will be received. The Governor has found that temporary adoption of the rule is appropriate because it will confer a benefit upon insurers, producers, and consumers.

There is no fiscal impact to the state. Negotiated rulemaking was not conducted because the rulemaking is brought based on a request from multiple industry groups establishing a consensus of support, is not viewed as controversial.

**DISCUSSION:** **Senator Burgoyne** wanted to know if there was any legal reason why the State of Idaho would be required to conform its rules to changes in federal law. **Mr. Cameron** said he did not think there was any legal ramification and he stated he was not sure the DOI wanted to have a stricter rule than federal law. He said notifications need to happen when a relationship begins and if there is any change, the consumer has to be notified. **Senator Burgoyne** wanted to know the rationale behind the change in the federal law, which is not necessary and practical. **Mr. Cameron** said it was his understanding that the change was part of the rationale of redundancy and budgeting.

**TESTIMONY:** **Bob Ricketts**, Ricketts and Associates, spoke in support of the proposed rule change. He remarked the issue was redundant and there was no need to notify the consumer on an annual basis as the notification process was costly. He stated this issue was brought to the DOI by his organization.

**MOTION:** **Senator Anthon** moved to adopt **Docket No. 18-0148-1601**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**Adoption of the International Fire Code.** **Dean Cameron**, Director, Department of Insurance (DOI), said the pending rule seeks to amend the 2015 International Fire Code to match the anticipated adoption of the 2015 International Building Code by the Division of Building Safety. The pending rule adds new Section 020 (and renumbers current Section 020 as 019). The new section addresses the subject of sky lanterns by replacing the current prohibition of release of untethered sky lanterns with new language requiring a permit for their release and authorizing the local fire jurisdiction to restrict or place conditions on their release. There is no fiscal impact to the state. Negotiated rulemaking was conducted.

**Mr. Cameron** said the State Fire Marshall falls under the jurisdiction of the DOI. The DOI felt this issue was best-served by having the local jurisdiction determine whether or not the sky lantern festival would be appropriate.

**DISCUSSION:**

**Senator Burgoyne** said he was interested in what the differences were between the 2012 and 2015 International Fire Code (IFC). He recalled that in statute some exceptions have been made that might govern untethered sky lanterns. **Knute Sandahl**, Idaho State Fire Marshall, said the majority of the changes deal with existing provisions and related items, in conjunction with the IFC. Sky lanterns were not specifically addressed in the 2012 edition of the fire code. The sky lanterns were a new addition in 2015. The local jurisdictions were given a better opportunity to have local control.

**Senator Burgoyne** asked if there were any other changes to note between 2012 and 2015 besides the sky lanterns and existing provisions. **Mr. Sandahl** reported there were a number of small changes throughout the entire code that were added for additional clarifications. He remarked that Title 39 dealing with fire sprinklers has not been altered.

**Senator Burgoyne** said he was interested in the rule promulgation process and wanted to know if anyone, including consumers, employers or property owners, had any problems with adopting the 2015 IFC. **Mr. Sandahl** said the negotiated rulemaking process was posted as required by the Legislature and only one comment was received. He spoke with a number of fire safety individuals who were all in favor of adoption.

**Senator Lakey** clarified that those who work in construction or deal with the fire code are also notified as far as the negotiated rule process is concerned and **Mr. Sandahl** said that was correct. **Senator Lakey** said that the intent was to have local jurisdictions regulate the sky lanterns. He cited an example of students conducting a science experiment and he wanted to make sure a state official would not be asking a student if they had a permit for the sky lantern. **Senator Lakey** said he assumed the language in the Idaho Fire Code means that type of activity does not require a permit. **Mr. Sandahl** said a permit was not required for that specific activity unless the local jurisdiction required one.

**Vice Chairman Guthrie** remarked that once a rule is adopted, the rule could be changed next year.

**Senator Burgoyne** asked what kind of risk a sky lantern would pose in the hot months and was wondering if there was enough wording in the rule for protection. **Mr. Sandahl** said sky lanterns pose a significant threat in Idaho. These devices go wherever mother nature takes them and that is why the local fire marshall has been encouraged to make decisions at the local level. **Senator Burgoyne** said he felt this rule was counterintuitive in a state that

has had many disastrous fires. He wanted to be reassured that sky lanterns had risk control. **Mr. Sandahl** stated this is very workable and the Idaho State Fire Marshall's office has worked with the industry who proposed these amendments.

**Mr. Cameron** added that in most cases there is a local event holder who does a test run with the local fire official so they know the landing proximity. This rule gives the local fire marshal to cancel at the last minute, which is better protection. Fire lantern festivals bring in millions of dollars and the DOI is formalizing the process for sky lanterns.

**MOTION:**

**Senator Lakey** moved to adopt **Docket No. 18-0150-1601**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
18-0154-1601**

**Rule to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards.** **Dean Cameron**, Director, Department of Insurance (DOI), said the pending rule seeks to amend the existing rule to require all Medicare Supplement (aka Medigap) carriers to offer coverage to pre-65 Medicare eligible individuals; clarify the requirement to account for interest in projections; require experience and rate increases to be pooled among all plans offered by a company; and clarify rating/underwriting factors that can be used and when (e.g. smoking and pre-65).

**Mr. Cameron** stated that 25 states now require insurance companies to sell Medigap to all ages enrolled in Part B. Under age 65 Medicare beneficiaries have limited options for payment of Medicare deductible and co-payments. The DOI seeks to expand Medicare beneficiaries' options. Carriers have not included interest because Idaho's rule does not state it is required. In reviewing rate increases, the DOI has requested that rate increases be applied equally to all of a carrier's plans, rather than varying the increases based on the more variable experience of specific plans. This keeps the premiums more representative of the benefit differences, rather than reflecting the morbidity of the enrollees of specific plans.

The proposed changes will require an equal rate increases approach for future rate increases. Current rule disallows gender and geographic area as rating factors, but other factors are not clearly allowed/disallowed during open enrollment or outside of open enrollment, other than disallowing broad terms of "health status, claims experience, receipt of health care, or medical condition." There is no fiscal impact to the state. Negotiated rulemaking was conducted.

**DISCUSSION:**

**Senator Lakey** wanted to know what comments and inputs did the DOI receive from providers. **Mr. Cameron** said there were 46 carriers who offer supplemental plans. The DOI heard from some carriers offering to transfer to a medicare supplement plan and they were very supportive. **Mr. Cameron** stated every concern was addressed and there was no opposition.

**TESTIMONY:**

**Mike Reynoldson**, Vice President of Governmental Affairs, Blue Cross of Idaho, spoke in support of this rule.

**MOTION:**

**Senator Martin** moved to adopt **Docket No. 18-0154-1601**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
18-0156-1601**

**Rebates and Illegal Inducements to Obtain Title Insurance Business Rules.** **Dean Cameron**, Director, Department of Insurance (DOI), explained the reasons for the change. He said this existing rule concerns rebates and illegal inducements in title insurance and provides limits on what items of value may be provided to producers of the title business.

**Mr. Cameron** stated that changes in technology have increased efficiencies of operations for title agents such that items of value can be produced much more quickly, easily, and inexpensively. Additionally, some of the limitations in the rule have not been changed in many years.

**Mr. Cameron** said the text of the pending rule has been amended in accordance with Idaho Code § 67-5227. Only those sections that have changes that differ from the proposed text are printed in this bulletin. **Mr. Cameron** said the following changes are how the pending rule differs from the proposed rule: Subsection 010.05 defining social media is being removed, and Subsection 014.02 clarifying the use of social media is being removed. The agency is making these changes because there was not consensus. The existing rule provides some guidance on advertising. It is understood that if future issues arise related to any co-branding or co-advertising between title entities and producers of title business or trade associations, the agency may elect to conduct future rulemaking. There is no fiscal impact to the state. Negotiated rulemaking was conducted.

**DISCUSSION:**

**Senator Burgoyne** wanted to know who wanted to restrict advertising and why. **Mr. Cameron** said the industry wanted this restriction to avoid and to protect smaller title companies from larger companies. There was a concern about the appropriate distinction between the title and a realtor. **Senator Burgoyne** commented there are existing rules that restrict advertising and in his opinion, free trade is discouraged. Anti-competitive activity has been sanctioned. **Mr. Cameron** said the rule was a challenge for the DOI, but the changes in this rule make for a better situation than the current rule.

**Senator Martin** stated the industry is trying to self-govern themselves and they should be allowed to do so.

**MOTION:**

**Senator Lakey** moved to adopt **Docket No. 18-0156-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**PASSED THE  
GAVEL:**

**Vice Chairman Guthrie** passed the gavel back to Chairman Patrick.

**ADJOURNMENT:**

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:45 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary