

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, January 14, 2025

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Foreman, Vice Chairman Lenney, Senators Lakey, Guthrie, Nichols, Bernt, Zito, Ward-Engelking, and Ruchti

**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 Foreman** called the Senate Commerce and Human Resources Committee to order at 1:30 p..m.

**PASSED THE GAVEL:** Chairman Foreman passed the gavel to Vice Chairman Lenney.

**DOCKET NO. 09-0101-2401** **Rules Administrative Procedure of the Idaho Department of Labor (IDOL) (ZBR Chapter Rewrite) - Pending Rule, p. 4. Jani Revier**, Director, IDOL, explained the proposed rule changes. She stated it was anticipated that rulemaking stakeholders proposed and advocated for rulemaking changes as part of the negotiated rulemaking process. She noted the IDOL intended to carefully consider all changes presented by the public and proposed certain changes so long as they were consistent with the rules' statutory authority and the Governor's Executive Order. **Ms. Revier** stated the IDOL reviewed the documents currently incorporated by reference and updated the list as applicable. There was no fiscal impact to the General Fund. **Ms. Revier** indicated there were no specific changes to the rules, but outdated rules and rules that restated state or federal statute were eliminated, simplifying the language for better understanding.

**Ms. Revier** remarked part of the IDOL review revealed that some rules should have been codified in statute rather than existing solely as administrative rules. The IDOL planned on bringing legislation that moved significant portions of rule into statute. The intent of the legislation was to ensure the unemployment insurance program remained functional while making it more transparent and accessible to the public. If the rule changes were approved and the legislation passed, approximately 75 percent of the IDOL rules would be eliminated. The statute would be revised to clearly outline eligibility for benefits, business taxation and appealed processes. Rules would focus on agency guidance for implementing the law.

**DISCUSSION:** **Senator Guthrie** queried what was the default if the proposed legislation replacing the rules failed. **Ms. Revier** stated if the legislation did not move forward, the rules remained the same. She noted the IDOL's efforts aligned with legislative direction from the prior years to make the rules more transparent by embedding them in statute where appropriate.

**Senator Lakey** pointed out on page 11 where "judicial review of wage claim decisions" was removed, he assumed that was not necessary because the IDOL did not need a rule that specified compliance with the Administrative Procedures Act (APA). **Ms. Revier** answered that was correct.

**MOTION:** **Senator Guthrie** moved to approve **Docket No. 09-0101-2401**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 09-0130-2401** **Unemployment Insurance Benefits Administration Rules (ZBR Rewrite), Pending Rule, p. 12.** **Jani Revier**, Director, Idaho Department of Labor (IDOL), reported there were no changes to the pending rule. Outdated rules and rules that restated state or federal statute were eliminated. It was adopted as originally proposed. There was no fiscal impact to the General Fund. Legislation was proposed to move many of the rules into statute.

**DISCUSSION:** **Senator Lakey** queried why some definitions were removed. **Ms. Revier** replied some definitions were in statute and some were updated.

**Senator Ruchti** asked why the definition of "material" was removed. **Ms. Revier** deferred to **Josh McKenna**, Determinations Administrator, IDOL. **Mr. McKenna** remarked the change was made because this term was applied in case law. He pointed out legislation was being crafted related to fraud and "material" would be included in that legislation.

**MOTION:** **Chairman Foreman** moved to approve **Docket No. 09-0130-2401**. **Senator Ruchti** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 09-0135-2401** **Unemployment Insurance Tax Administration Rules (ZBR Chapter Rewrite) - Pending Rule, p. 50.** **Jani Revier**, Director, Idaho Department of Labor (IDOL), stated there were no changes to the proposed docket. She noted outdated rules and rules that restated state or federal statute were removed. The rule was adopted as originally proposed. She stated there was no fiscal impact to the General Fund.

**DISCUSSION:** **Senator Lakey** referred to page 35 and the portion that replaced "determinations" with "reports." He asked what the interplay was between a "determination" and a "report" and why that was removed. **Ms. Revier** deferred to Joanna Henry, Unemployment Insurance Compliance Bureau Chief. **Ms. Henry** stated she oversaw the administration of the U.S. tax program. She explained that in cases where an employer did not report and did not submit a quarterly report as required, the IDOL in statute had the authority to issue an assessment or determination of how much was owed based on the best estimation for that quarter. If an employer provided a factual report, the IDOL replaced that estimated determination with factual information. Statute provided an opportunity for an employer to protest. This process eliminated an extra step not outlined in rule to eliminate the extra step of going through the appeals process and could be done internally. **Senator Lakey** remarked he worried when a statute was replaced with a rule or policy. He queried if there was a problem in not eliminating that section. **Ms. Henry** replied there was not a problem.

**Senator Guthrie** stated he agreed with Senator Lakey. He noted the default put

more of a burden on the person submitting the report because they had to file an appeal. **Ms. Henry** noted the employer had to communicate with the IDOL.

**MOTION:**

**Senator Lakey** moved to approve **Docket No. 09-0135-2401** with the exception of rejecting the deletion of .011 subsection .07.a and .b under general provisions of Docket 09-0135 and those provisions remained in the rule. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
17-0101-2301**

**Administrative Rules Under the Workers' Compensation Law (ZBR Chapter Rewrite) - Pending Rule, p. 50.** **Paul Jefferies**, Referee, **Idaho Industrial Commission (IIC)**, gave an overview of the Workers' Compensation Law. **Mr. Jefferies** reported the law was established to provide relief for injured workers and their families in the form of indemnity benefits and coverage of medical expenses due to a work-related injury. He stated the mission of the IIC was to fairly administer the Idaho Workers' Compensation Law and seek to cultivate a system that was cooperative, supportive, and equitable for workers and employers in addressing the effects of workplace injuries and illnesses.

**Mr. Jefferies** reported the IIC approved and adopted only one relatively minor change to this pending rule from the previously proposed rule, based on comments the IIC received at the Public Hearings on the Zero-Based Rewrite (ZBR) of the chapter. In the proposed rule, the IIC added a provision to Docket 17.0101.601.07 that imposed a timeline of seven days for sureties or self-insured employers to provide requested information to the IIC to process a claim. **Mr. Jeffries** stated some stakeholders expressed concern that the seven-day time limit to provide the requested information placed a heavy burden on sureties, particularly if the surety did not have regular communication with or a well-established relationship with the injured worker's employer. He noted to address this concern, the IIC amended the subsection to clarify that the IIC simply expected the surety or self-insured employer to respond to the IIC's request for information within the seven-day timeline. The IIC amended Docket 17.0101.601.07 by striking the language "provide the requested information promptly" and replaced it with "respond." The rewrite streamlined the requirements and regulations for sureties to pay injured workers' compensation benefits via electronic transfer payments or via an Automated Teller Machine (ATM) or credit card. There was no fiscal impact to the General Fund.

**DISCUSSION:**

**Chairman Foreman** pointed out that on page 65, paragraph 305.01 the rule addressed the issue of having a claims office. Idaho Code § 72-305 did not require a brick-and-mortar office. He asked Mr. Jefferies to explain the stance of the IIC. **Mr. Jefferies** remarked this issue was raised and debated at negotiated rulemaking and public hearings. The IIC considered that the statute did not mandate a so-called brick-and-mortar office within the State of Idaho. He stated the statute required there be some kind of physical presence by the surety, either through an office or officers that were doing in-state adjusting. He referred to page 65, paragraph 305.01.a noting the IIC did not consider that the rule required a brick-and-mortar office. The IIC had a broad interpretation of the term "office," to include physical addresses in the State or remote setups, such as working from home.

**Chairman Foreman** stated there was confusion in the field as to whether or not a brick-and-mortar building was required. He asked if the IIC was willing to do a slight rewrite on that particular part of the rule which assertively stated a brick-and-mortar office was not required. **Mr. Jefferies** explained the IIC had been clear throughout the years via memos and communications. Based on feedback the IIC received, they attempted to clarify that the office did not necessarily need to be a brick-and-mortar building, a large operation with many employees, but simply that instead the adjusting was done at the physical

address.

**Senator Zito** referred to page 53 and queried what was the International Association of Industrial Accident Boards and Commissions (IAIABC), who decided on the rules, and where did that come from.

**Mr. Jefferies** deferred to Patti Vaughn, Benefits Administration Manager, IIC. **Ms. Vaughn** explained the IIC used the IAIABC, which was an international organization where the stakeholders in workers' compensation came together. The standards in the Electronic Data Interchange (EDI) allowed the parties to communicate claim data between one another. The EDI allowed for the electronic submission of claim information so the IIC no longer needed to accept, process, and maintain those paper reports and the committees that came together to adopt these standards. The committees were comprised of jurisdictional members, meaning the states. They would be those who reported the claim information from the insurance companies. Those who handled the claims must report to the jurisdictions, the events in the claim, and the status of the claims for monitoring.

**Senator Zito** asked for clarification of how the data was collected and disseminated. **Ms. Vaughn** explained the data was protected by statute and could only be accessible by the parties involved in the claim. She further clarified that while the standards allowed for discussions about the claim when the data was reported, one state could not access the data of another state or nation. The IIC maintained the data from the insurance companies handling claims in Idaho.

**Senator Lakey** pointed out that the rule mandated all insurance carriers to maintain an office in Idaho. He referenced Idaho Code § 72-305, which required claims must be processed in the state and asked whether the same requirements applied under § 305.a. **Mr. Jefferies** responded that he did not believe the rule contradicted statute. **Senator Lakey** and **Mr. Jefferies** then discussed requirements for Idaho-licensed, in-state adjusters, specifically those with an Idaho address, and the notion of a brick-and-mortar office for insurance operations.

**Senator Ruchti** asked if the IIC could add a sentence to make it clear that a brick-and-mortar office was not required. **Mr. Jefferies** deferred to George Gutierrez, Director, IIC. **Mr. Gutierrez** stated the IIC could make the suggested revision, but noted that the information was already outlined in code. He cautioned that the IIC had not vetted the change yet and that it might cause issues down the road.

**Senator Guthrie** and **Mr. Gutierrez** discussed providing clarity to the rule since it was confusing and how statute took precedence over rule.

**Senator Lakey** commented the IIC did not have the ability to add words, but the Committee could add statute or reject that portion of .a and the IIC could come back next year with a revision.

**TESTIMONY:**

**Elizabeth Criner**, American Property Casualty Insurance Association, stated they took part in the rulemaking process and provided verbal and written comments. She noted they raised the same concerns about the confusion in the rule about a brick-and-mortar office requirement. She mentioned she thought the rule was changed. She thanked the IIC for eliminating the sentence that referenced adequate staffing. She asked the Committee to strike 305.01.a.

**DISCUSSION:** **Senator Guthrie** noted that if that section of the rule was rejected the remaining part would be confusing. **Ms. Criner** suggested that the confusing section of the rule could be removed. **Senator Guthrie** pointed out, however, that the Committee could not simply strike a part of the rule. **Senator Lakey** clarified that the Committee was striking the entire subsection .a.

**Chairman Foreman** concurred with Senator Lakey. **Senator Ruchti** then asked Mr. Jefferies to explain the IIC's reasoning for striking the part of the rule that required offices to be staffed with adequate personnel to conduct business. He emphasized that it seemed important, whether the IIC was referring to a brick-and-mortar or adjusters working from home. He asked if the IIC still wanted the personnel in the state to be adequately staffed. **Mr. Jefferies** responded that the IIC had received several comments requesting either the removal or further clarification of that section, specifically regarding what "adequate personnel to conduct business" meant. Instead of providing a definition, the IIC ultimately proposed eliminating the sentence altogether. He explained that the IIC had the ability to audit securities and had mechanisms in place to ensure claims were promptly serviced, without the need for a vague requirement that businesses be staffed with sufficient personnel to conduct operations.

**Senator Lakey** commented that prompt claim service was in code but he wanted the IIC to define what that meant.

**TESTIMONY:** **Barbara Jorden**, Director, Idaho Trial Lawyers Association, testified in support of keeping the in-state adjustment requirement. She noted there was confusion about what that meant relating to an office. She asked that "prompt claim services" be added to the rule rather than eliminating some of the confusing wording.

**DISCUSSION:** **Senator Bernt** commented this rule was confusing and asked Brad Hunt, Administrative Rules Coordinator, to provide guidance for the Committee. **Mr. Hunt** suggested the Committee first take up a motion on the docket itself, which had the amendments, with the exception of 305.01.a. He also said the Committee had the authority to review final rules. The second motion was to take up that particular provision of law and vote on rejecting that part or not. With two separate motions things were made cleaner to take action on the docket itself and then the second motion addressed the final rule.

**Senator Guthrie** asked for clarification on the motions and asked if there was a concern about leaving adequate staffing remaining in the rule.

**TESTIMONY:** **Chris Wagener**, Intermountain Claims, a local third party administrator of workers' compensation claims, explained the problem with striking some of the terms, such as "resident Idaho adjuster" was slightly misleading. If an adjuster practiced in another reciprocal state they simply paid a fee, they would be a licensed Idaho adjuster, and they could practice in any of those states. By striking the requirement that offices be in the State of Idaho, it could create a belief that there was no longer a need for an in-state office that now required that there was someone physically in the State. Sureties were not required to have licensed adjusters. Third party administrators had to have the resident adjusters and sureties could hire them. He noted there was a concern that in-state people were to be slowly phased out.

**DISCUSSION:** **Senator Ruchti** asked what it meant to be an Idaho-licensed resident adjuster. **Mr. Wagener** explained that as an adjuster, his designated home state was Idaho but he had an office in Portland, Oregon. If there was a staffing shortage, he could go online, pay a fee to Oregon, and receive an Oregon license, since Oregon required in-state adjusters. He could then drive to Oregon, sit in a Starbuck's, handle claims, and return home. He pointed out that if the phrase regarding residency was removed, it would allow for clarification that the adjuster had to be licensed in the state, as Oregon required. **Mr. Wagener** further explained that most of the 30 states who had reciprocating licensing agreements allowed a licensed adjuster from another state to process claims by paying a fee for a license. A discussion followed between **Senator Ruchti**, **Senator Lakey**, and **Mr. Wagener** about whether the adjuster had to actually live in the state where the business was conducted. **Mr. Wagener** clarified the key issue was the terminology of being a licensed adjuster did not necessarily mean the adjuster was a resident of Idaho, only that they were licensed in the State.

**MOTION:** **Chairman Foreman** moved to approve **Docket No. 17-0101-2301** with the exception of Section 305.01.a. **Senator Bernt** seconded the motion

**DISCUSSION:** **Senator Ruchti** commented on the importance of having in-state adjuster. He noted that in insurance liability cases, adjusters were frequently from out of state, depending on the insurance company. However, he emphasized workers' compensation cases were supposed to be handled promptly and efficiently within the state. **Senator Ruchti** stated he would vote in support of the motion because the way the rule was written, it required in-state adjusters in Idaho. He further noted that while these adjusters did not need a brick-and-mortar office, they had to be in-state residents processing claims promptly. He mentioned that comments from other members of the Committee seemed to suggest agreement with this interpretation of the relevant statute and rule, but asked that if anyone disagreed that they let it be known. None indicated they disagreed.

**Senator Lakey** expressed his support for the motion as well. He pointed out that the Committee needed to address how the rule was not in compliance with the intent of the code. He explained that subsection a was not in alignment with Idaho Code § 72-305. However, he noted that subsection .b still addressed the issue of Idaho-licensed resident adjusters or an in-state office.

**Senator Nichols** stated she was in support of the motion. She remarked the Committee's job was to make sure the rules aligned with statute with no conflict.

**VOICE VOTE:** The motion to approve **Docket No. 17-0101-2301** with the exception of Section 305.01.a carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Lenney passed the gavel back to Chairman Foreman.

**GUBERNATORIAL REAPPOINTMENT:** **Committee Consideration of the Gubernatorial Reappointment of Steve Landon of Chubbuck, Idaho, to the Idaho State Insurance Fund (ISIF), to serve a term commencing May 1, 2024 and expiring May 1, 2028.** **Mr. Landon** gave a brief overview of his background. He noted he had been a Board member of the ISIF for 12 years. He pointed out the ISIF had upgraded to the digital world. The fund was growing and stable. He said he was looking forward to another term as he considered it a great way to serve and learn.

**DISCUSSION:**

**Senator Ruchti** asked Mr. Landon to share some of his experiences and skills in his career that helped him. **Mr. Landon** stated that during his 43 years working at Simplot, he began his career in union activities, where he learned the importance of talking to and listening to people. He gained extensive experience with workers' compensation cases, learned about case law and how laws were decided in Idaho. He also became skilled at explaining the outcomes of claims that could not be changed.

**Senator Lakey** mentioned that he had a potential conflict of interest under Senate Rule 39(H), but he still intended to vote. He then asked Mr. Landon to explain how the digital program had improved customer service. **Mr. Landon** responded that with the current management team, they had created a system to quickly process claims, a significant improvement from the old days of paperwork. He noted that the ISIF had allowed the Board to compete and provide better service.

**Senator Nichols** asked Mr. Landon about his goals and priorities. **Mr. Landon** stated that his reason for wanting to be involved was that there was still much to be done, and he wanted to have an impact on those participating in the ISIF. He expressed a desire to be part of the ongoing discussions.

**Chairman Foreman** announced the vote on the Gubernatorial Appointment would take place on Thursday, January 16, 2025.

**MINUTES  
APPROVAL:**

**Minutes of January 9, 2025** approval of the Minutes were moved to the next meeting due to lack of time.

**ADJOURNED:**

There being no further business at this time, **Chairman Foreman** adjourned the meeting at 2:56 p.m.

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Senator Foreman  
Chair

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Linda Kambeitz  
Secretary