

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 14, 2016

SUBJECT	DESCRIPTION	PRESENTER
RULES REVIEW	Assignments	Vice-Chairman Fred Martin
<u>RS24125</u>	Relating to Manufactured Home Residency Act	Representative Mike Moyle Jack Lyman, Idaho Housing Alliance

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Martin
Sen Lakey
Sen Guthrie
Sen Heider

Sen Rice
Sen Thayn
Sen Schmidt
Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, January 14, 2016
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting to order at 1:32 p.m. and welcomed everyone to the first meeting of the Commerce and Human Resources Committee (Committee).
- INTRODUCTION:** **Chairman Patrick** introduced the new page, Hayden Rogers, and asked him to tell the Committee about himself. **Hayden Rogers** said he attends Centennial High School in Boise, is a senior and is sponsored by Senator Martin. He said he is excited about being a page and learning how everything works at the Legislature.
- RULES REVIEW:** **Chairman Patrick** announced the assignment of the rules was postponed due to a couple of changes. He said the assignment sheet would be emailed to all Committee members later in the afternoon.
- RS 24125:** **Relating to Manufactured Home Residency Act. Jack Lyman**, representing the Idaho Housing Alliance, was the presenter. He gave a brief history of the Mobile Home Park Landlord Tenant Act (Act) and mentioned the Act had been revised. He said mobile homes have not been manufactured since 1976. He noted that this type of home is now called manufactured housing. He said the term "park models" refers to recreational park trailers intended for temporary occupancy. This legislation deletes a definition of "park model" in the Manufactured Home Park Landlord-Tenant Act and removes park model homes from the provisions of that Act. He referred to line 2 on page 2 of the Routing Slip (RS), pointing out the language that is being stricken pertaining to a "park model," meaning a vehicular type unit that has a floor area of 400 square feet or less, meets the American National Standards Institute (ANSI) recreational standard A119.5, is primarily designed for permanent or semipermanent installation and is used as a residence.
- Senator Schmidt** wanted to know what small houses or micro houses that are 400 square feet would be called and if they met the national standard for recreational vehicles. **Jack Lyman** explained there are concerns about "tiny homes" and that they should meet Housing and Urban Development (HUD) code. He went on to say that "tiny homes" are being manufactured using park models on a single chassis and they are being marketed for permanent occupancy. There could be an exemption from building codes; however, if people live in them permanently, the homes should be subject to code.

MOTION: **Senator Schmidt** moved to send **RS 24125** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 1:40 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 19, 2016

SUBJECT	DESCRIPTION	PRESENTER
Docket No.		
<u>07-0301-1501</u>	Rules of Building Safety	Steve Keys, Deputy Administrator, Division of Building Safety
<u>07-0203-1501</u>	Rules of Governing Permit Fee	Steve Keys. Deputy Administrator, Division of Building Safety
<u>07-0301-1502</u>	Rules of Building Safety	Steve Keys. Deputy Administrator, Division of Building Safety
<u>09-0106-1501</u>	Rules of the Appeals Bureau - Department of Labor	Amy Hohnstein, Chief, Appeals Bureau
<u>09-0130-1501</u>	Rules of Unemployment Insurance Benefits Administration	Joshua McKenna, Benefits Bureau Chief
<u>RS24012</u>	STEM Action Center	David Fulkerson, Interim Director, Division of Human Resources

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 19, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting to order at 1:30 p.m.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to introduce the presenters for the rules review being heard. **Vice Chairman Martin** gave a brief history of the administrative rules in Idaho. He said it is the job of elected Idaho Legislators to create laws. However, it is impossible to provide for every situation and outline every detail of how those laws will be carried out. He said the Idaho legislature creates statutory frameworks for programs and policies and then delegates its legislative authority to an administrative agency. He explained the administrative agency then plans out implementation and writes rules to carry out the Legislature's intent. The State Legislature annually reviews the rules that State agencies had created to make sure they complied with the Legislature's intent. The Idaho Legislature has been reviewing agency rules since 1969.

DOCKET NO. 07-0301-1501: **Rules of Building Safety. Steve Keys**, Deputy Administrator of Operations, Division of Building Safety (DBS), presented this docket. He stated the proposed docket would liberalize the requirement for fire alarm systems in some building occupancies by raising the threshold for the requirement in a Group E occupancy to match that contained in the latest, unadopted version of the International Building Code (IBC); the threshold would increase from 30 to 50 occupants before the fire alarm system is required. The rulemaking also amends the 2012 International Residential Code (IRC) to clarify the methods that can be used to establish fire-resistive wall assemblies in townhouses to avoid the need for fire sprinkler systems; the current language is confusing. **Steve Keys** added the International Energy Conservation Code (IECC) is amended to exempt buildings that are heated or cooled solely to be suitable for equipment, not personnel, from the building envelope provisions that would otherwise apply; IECC code reference corrections are required.

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

Senator Schmidt and **Steve Keys** discussed the requirement of raising the threshold for fire alarm systems when children occupy a building with between 30 and 50 occupants. **Senator Schmidt** wanted to know how many facilities would be affected by this change. **Steve Keys** said he did not know.

MOTION: **Senator Heider** moved to adopt **Docket No. 07-0301-1501**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** and **Senator Ward-Engelking** requested being recorded as voting **nay**.

**DOCKET NO.
07-0203-1501:**

Rules Governing Permit Fee Schedule. **Steve Keys**, Deputy Administrator of Operations, Division of Building Safety (DBS), presented this docket. **Steve Keys** stated there are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015, "Idaho Administrative Bulletin", volume 15-10, pages 22-25. He said this rule increases the inspection fee for a separate water or sewer inspection from \$38 to the standard DBS base inspection rate of \$65. This increase will result in a revenue increase of approximately \$9,500 to the dedicated fund, based on an average of 350 of these types of inspections annually. There is no effect on the General Fund.

Negotiated rulemaking was conducted and there was no opposition.

Senator Heider asked if this rule was brought forward by city government. **Steve Keys** replied this was brought forward by the Plumbing Board. There is no impact on city government.

MOTION:

Senator Guthrie moved to adopt **Docket No. 07-0203-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1502:**

Rules of Building Safety. **Steve Keys**, Deputy Administrator of Operations, Division of Building Safety (DBS), presented this docket. **Steve Keys** stated there are no changes to the pending fee rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015, "Idaho Administrative Bulletin", volume 15-10, pages 35-40. A fee for inspections performed on annual permits will be charged at the rate of \$100 per hour. A slight decrease in dedicated fund revenue is expected as permit fees are aggregated at a lower compensation rate than would be realized through individual permits.

Negotiated rulemaking was not conducted because the rulemaking is simple in nature and only affects a few larger state entities that obtain building permits from the DBS and regularly employ qualified trade persons who perform minor building alterations on their own buildings or premises for which a permit is necessary. Additionally, the topic was addressed and discussed at several Building Code Board meetings and no opposition to an annual permit was expressed.

Senator Lakey wanted to know if the rule would increase the scope of things that required a permit. **Steve Keys** replied the rule did not increase the scope that requires a permit. The rule facilitates the process and makes it easier. **Senator Schmidt** and **Steve Keys** discussed negotiated rulemaking. **Steve Keys** said the rule only applies where the state has jurisdiction. He stated this concern was brought forward by the University of Idaho (UI). **Senator Schmidt** asked if the UI could do remodeling without a permit. **Steve Keys** said that some UI buildings were considered state buildings and others were not. He said that in general all state-owned buildings fall under the permitting fee. **Senator Heider** asked how the rates were determined and **Steve Keys** said the rates were \$100 an hour, which is a base fee that is not pre-paid.

MOTION:

Chairman Patrick moved to adopt **Docket No. 07-0301-1502**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:**

Vice Chairman Martin passed the gavel back to Chairman Patrick.

RS 24012: **Science, Technology, Engineering and Math (STEM) Action Center.** **David Fulkerson**, Interim Administrator, Division of Human Resources, presented this Routing Slip (RS). He said this proposal modifies Idaho Code § 67-5303(v), to include the STEM Action Center, Office of Species Conservation, Office of Drug Policy, and the Office of Energy Resources to the list of agencies in the Executive Office of the Governor that have all non-classified employees. There is no fiscal impact to the State of Idaho because all employees in the agencies are currently non-classified.

Senator Thayne asked David Fulkerson to confirm the lack of ability for a non-classified employee to appeal his or her case when terminated. **David Fulkerson** indicated this was correct.

MOTION: **Senator Heider** moved to send **RS 24012** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin.

DOCKET NO. 09-0106-1501: **Rules of the Appeals Bureau, Department of Labor (DOL).** **Amy Hohnstein**, Chief, Appeals Bureau, presented this docket. She said this rule will allow the DOL to send notices of hearing to interested parties by mail or by electronic transmission. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2015, "Idaho Administrative Bulletin". There is no fiscal impact to the General Fund or to any dedicated fund.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0106-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0130-1501: **Unemployment Insurance Benefits Administration Rules.** **Joshua McKenna**, Benefits Bureau Chief, Department of Labor (DOL), presented this docket. He said a public hearing was held and all public comments were in support of adopting the pending rule. This rule change benefits employers by allowing them to retain skilled workers who are laid off for short periods of time. It also benefits seasonal workers with confirmed return-to-work dates by waiving the work-search requirement. This waiver would allow workers to receive unemployment insurance benefits for a maximum of 16 weeks while they are laid off if they meet all the remaining eligibility requirements of the unemployment insurance program. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 4, 2015, "Idaho Administrative Bulletin", volume 15-11, pages 33-36.

There is no fiscal impact to the General Fund or any dedicated fund.

Senator Rice wanted to know what kind of fiscal impact there would be by extending the period four weeks. **Joshua McKenna** said there was no impact on the trust fund, but this was merely a computer change. **Senator Rice** wanted to know if an employee was coded in the computer to be attached to an employer for 16 weeks or was the employee shown as employed. **Joshua McKenna** said the employee has to seek work, but the work search is currently waived for 12 weeks. He said the rule would change the waiver from 12 weeks to 16 weeks. **Senator Lakey** stated the code deals with how the rule is administered. **Joshua McKenna** indicated that an employee who does not return to their job within 12 weeks still receives unemployment. He said the incentive is on the employee, but employees tend to go back to their employer and are considered attached to that employer. The employer wants the employee to return because they are trained for their job.

Senator Guthrie asked why the rationale was for 16 weeks and not 20. **Joshua**

McKenna said the DOL received feedback from employers who hired seasonal workers. These employers said in some cases they would lose a trained employee to other jobs.

Senator Rice and **Josh McKenna** discussed the costs associated with unemployment insurance premiums for employers who hire seasonal employees. The longer an employee is unemployed, the rates may increase for the employer, depending on the length of time. Other employers who are not laying employees off could be subsidizing this proposed rule change.

TESTIMONY: **Wayne Hammon**, representing the Idaho Associated General Contractors, spoke in support of this rule. He explained that construction is a seasonal industry in which employees are without work during the winter months. He said laid-off employees are forced to go out to search for jobs that do not exist, or they end up taking an unskilled job. If the period is extended to 16 weeks, the employee is exempt from a job search. The construction industry is helping to cover the costs of this extension.

Seneca Hall, President, Franz Witte Nursery, said that her company employs 100 people most of the year, depending on the season. Many times during the winter when snow needs to be removed, or if the weather is inconsistent, employees can be laid off. She said having an employee attached to their company helps retain their skilled labor force. It costs the company more money if they have to continually retrain new employees. In most years, unemployment does not exceed 12 weeks.

Senator Guthrie asked Joshua McKenna if an employee who is laid off is required to find a job outside of his or her skill set. **Josh McKenna** said that is up to the employee. The DOL requires an employee make two new contacts per week. Potentially, an employee could be denied if they fail to make those contacts. He said an interview counts towards two new contacts.

MOTION: **Senator Lakey** moved to adopt **Docket No. 09-0130-1501**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel back to Chairman Patrick.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:18 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 21, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of January 14, 2016	Vice Chairman Martin
Docket No. <u>12-0110-1501</u>	Rules Pursuant to the Idaho Residential Mortgage Practices Act	Michael Larsen, Consumer Finance Bureau Chief
<u>10-0101-1501</u>	Rules of Procedure	Keith Simila, Executive Director, Board of Professional Engineers and Professional Land Surveyors
<u>10-0104-1501</u>	Rules of Professional Development	Keith Simila
<u>17-0206-1501</u>	Employers' Reports	Scott McDougall, Benefits Administration Manager, Industrial Commission
<u>17-0207-1501</u>	Procedures to Obtain Compensation	Scott McDougall
<u>17-0208-1501</u>	Miscellaneous Provisions	Scott McDougall
<u>17-0210-1501</u>	Administrative Rules of the Industrial Commission Under Workers' Compensation Law - Security Compensation Insurance Carriers	Scott McDougall

17-0209-1502 Medical Fees

Patti Vaughn, Medical
Fee Analyst, Industrial
Commission

17-0209-1503 Medical Fees

Patti Vaughn

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick

Vice Chairman Martin

Sen Lakey

Sen Guthrie

Sen Heider

Sen Rice

Sen Thayn

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 21, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of January 14, 2016. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to begin hearing the rules.

DOCKET NO. 12-0110-1501 **Rules Pursuant to the Idaho Residential Mortgage Practices Act. Michael Larsen**, Consumer Finance Bureau Chief, Department of Finance (Department), said the proposed rule updates references to incorporated federal laws and regulations (Truth in Lending Act and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) and eliminates duplicative disclosure requirements and unnecessary paperwork for mortgage brokers and lenders. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015, "Idaho Administrative Bulletin", volume 15-10, pages 183-185. There is no fiscal impact.

Michael Larsen said if approved, the effect of this rule would be to promote consistent, uniform and familiar industry standards in the marketplace by updating references to federal laws and regulations (Truth in Lending Act and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) as amended through January 1, 2016. In 2015 four overlapping mortgage disclosure forms were streamlined into two forms as a part of the federal Truth in Lending Act-Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure Rule, or Truth in Lending Disclosure (TRID), also known as the "Know Before You Owe Rule." These changes eliminate the need for the disclosures formerly required by Rule 50. Updating references to federal laws and regulations and eliminating redundant mortgage disclosure forms is an effort by the Department to avoid exposing Idaho's mortgage licensees to inconsistencies in federal and state requirements.

This pending rule has the support of the Idaho Mortgage Advisory Board and the Idaho Association of Mortgage Professionals, who said, "the Board of Directors of the Idaho Association of Mortgage Professionals (IAMP) unanimously approved to support the rule changes to the Idaho Mortgage Practices Act." The Department is not aware of any opposition to the pending rule.

MOTION: **Senator Rice** moved to approve **Docket No. 12-0110-1501**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Board of Professional Engineers and Professional Land Surveyors - Rules of Procedure. **Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said the need for the rule came about because of law changes made in the last session of the Legislature and the Board's desire to make technical corrections, clarify wording related to basic issues such as various fees required, examination failures, the reinstatement process for retired and expired licenses and to describe basic experience expectations for land surveyors. A temporary rule was implemented on July 1, 2015. The pending rule adopts the provisions of the temporary rule.

In the last legislative session, law changes were made that allowed engineering and surveying students easier access to the fundamentals examination (first examination required for licensure). The rule change brings the rules in alignment with the law which now allows students to take the fundamentals examination without first applying to the Board. The new process enables students or graduates to apply to the Board for their intern certificate once they have passed the examination and graduated.

Keith Simila explained that technical corrections were made to align the rule with existing law regarding examination failures and because some fees are no longer charged and others are inadequately described. No new fees were added and some fees were removed. The rule is now updated to reflect the removal of examination and reexamination fees collected by the Board. Other fees described in the law are clarified in the rule, such as reinstatement of licenses and related late fees.

Keith Simila said another law change made in the last session was a change to the definition of land surveying. The updated definition now includes all the various types of surveying, whereas the previous law was limited to property boundary surveying. The law still requires a minimum of four years of land surveying experience prior to licensure. The previous requirement was four years of boundary surveying experience prior to licensure as a professional land surveyor. The rule change reduces the boundary experience requirement to two years and allows other types of surveying experience to count toward the total four-year experience requirement.

The National Council of Examiners for Engineering and Surveying (NCEES) changed the engineering educational requirements to align with the National Accrediting Standards. The rule adopts the NCEES standards, which expand the options of courses to include the biological sciences and more business and law courses. The rule also now allows survey programs accredited by any of the Accreditation Board for Engineering and Technology (ABET) commissions to be unconditionally approved.

Keith Simila said the pending rule brings clarity to the requirements for reinstating a retired or expired license. A new section was added because the prior rule listed the requirements under section 013 publications, which has no relation to the reinstatement process. The new section clarifies the basic requirements for license reinstatement and describes that a late fee for retired license reinstatement is no longer required. The late fee now only applies for expired license reinstatement. The prior practice was to charge a late fee for reinstatement of both retired and expired licenses. All other fees are unchanged.

Senator Guthrie asked for clarification on page 27, number .07, referring to the double underlining of "shall require a minimum of two years boundary survey experience" and wanted to know if this was a mandatory requirement since in the past the discretionary requirement was four years. **Keith Simila** explained the Board had a strong desire to make this a "hard" requirement because property line surveying affects the public more directly than any other kind of surveying. **Senator Guthrie** said the requirement was two years in the past, with the Board having some latitude. **Keith Simila** said the requirement in the past was a mandatory four years, but the requirement was changed after going through the negotiated rulemaking process.

Vice Chairman Martin asked for clarification on the double underlining of the word "shall" on page 27. **Keith Simila** indicated the information was on page 25 in the middle of the page where a double underscore denoted new text being added to a pending rule. He said the word "may" was replaced with the word "shall."

Senator Schmidt questioned the wording of "a passing score on a written ethics questionnaire." **Keith Simila** explained that as part of the application questionnaire, this is a test of the applicant's knowledge of the Board's ethical requirements of professional responsibility. This is a normal part of the application but has never been put in the rule. **Senator Lakey** questioned the wording on page 27, indicating an applicant must have a passing score on the written ethics questionnaire or the Land Surveying Examination; he wanted to know why the word "or" was being used. **Keith Simila** said the ethics questions are incorporated into the Idaho-specific land surveying exam. The land surveying examination was mostly an examination on the laws and rules of Idaho related to land surveying. He said engineers do not need to know that information. The questionnaire was separated for engineering applicants. The examination is an open-book exam; it is more expansive than ethics and also includes all of the laws specific to land surveying. **Senator Lakey** and **Keith Simila** discussed the two-year requirement and how it applies to other states with regard to comity.

Senator Guthrie asked about the wording at the bottom of page 30 regarding reexamination. He stated that in the past, an applicant could retake the test and be required to take only the portion they failed. Now the applicant who fails a portion must retake the entire test. **Keith Simila** said the requirement has always been that the applicant who fails any portion must retake the entire test. The NCEES writes the test, and the requirement is nationwide. **Keith Simila** said he is trying to update the rule in accordance with current practice,s and this portion of the rule has to be cleaned up.

MOTION:

Senator Schmidt moved to approve **Docket No. 10-0101-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
10-0104-1501**

Board of Professional Engineers and Professional Land Surveyors - Rules of Continuing Professional Development (CPD). **Keith Simila**, said the purpose of the rule change is to remove obsolete language, improve readability of the rule, clarify CPD requirements related to licensure reinstatement and allow the use of a national register to make it easier for licensees in multiple states to keep track of CPD requirements and records. He indicated the number of CPD hours required has not changed, but the rule now clarifies what they are without cross-referencing the requirements described in other sections of the rule. Much of the rule is the same. The rule replaces the term "biennium" and other language and describes the requirements more clearly. **Keith Simila** said the NCEES has decided to create a national repository where licensees from any state can upload and save documentation associated with CPD requirements at no charge. Most states have a requirement for CPD, but they differ slightly from state to state. Individuals

licensed in multiple states have the difficult task of figuring out each individual state requirement and complying with that state or face disciplinary action. A national standard now exists that is substantially similar to Idaho's requirement. A new section has been added that allows licensees the option of complying with the requirements of Idaho or with the national standard. Licensees in multiple states now have another tool that makes it easier to retain a license in multiple states.

MOTION: **Senator Schmidt** moved to approve **Docket No. 10-0104-1501**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0206-1501 **Idaho Industrial Commission - Employers' Reports.** **Scott McDougall**, Benefits Administration Manager, Industrial Commission (Commission), gave an overview of all of the rules for the Commission. He said the Commission intends to proceed with implementation of Electronic Data Interchange (EDI) Claims Release 3.0, a secured, electronic interchange of documents. EDI would allow the submission of all relative workers' compensation claims information to be reported electronically to the Commission and would alleviate repetitive data entry. The rule change removes the Summary of Payments (SOP), Idaho Code Form 6, and directs constituents to the Commission's website at www.iic.idaho.gov to obtain a similar format for electronic submission of an SOP. The deadline for this rule to take effect is July 1, 2017. **Scott McDougall** pointed out that if a claim is reported on June 30, 2017, that it would be regarded as a paper claim and the Commission would accept the paperwork. There is no fiscal impact.

Senator Lakey disclosed for the record that he is the Senate representative on the Idaho Insurance Board dealing with workers' compensation.

Senator Schmidt and **Scott McDougall** had a conversation about changing online forms and the idea that the change should not be in the rules. **Scott McDougall** said that if there were extensive changes to the forms, the Commission would bring those items forward.

Vice Chairman Martin and **Scott McDougall** talked about paper claims versus electronic claims, the cut-off date of July 1, 2017, and the potential of being a hardship for those who have to file electronically. **Scott McDougall** mentioned that insurance companies already file electronically. He mentioned the Commission conducted negotiated rulemaking and there was no opposition.

MOTION: **Senator Schmidt** moved to approve **Docket No. 17-0206-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0207-1501 **Idaho Industrial Commission - Procedures to Obtain Compensation.** **Scott McDougall**, said the Commission intended to proceed with implementation of EDI Claims Release 3.0

Scott McDougall said the rule amendments would allow the Commission to adopt and incorporate by reference in rule the industry standard of the current "International Association of Industrial Accident Boards and Commissions (IAIABC) EDI Claims Release 3.0 Implementation Guide" (EDI Implementation Guide), published January 1, 2015, and located on the IAIABC website; and version 1.2 of the "Idaho Commission Claims EDI Implementation Guide and Tables" (EDI Guide and Tables). Updates to the EDI Guide and Tables would be made available on the Commission's website. The rule amendments would further set forth the requirements of sureties to provide information in accordance with EDI reporting standards. There is no fiscal impact. Negotiated rulemaking was conducted.

MOTION: **Senator Thayn** moved to approve **Docket No. 17-0207-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0208-1501**

Idaho Industrial Commission - Miscellaneous Provisions. Scott McDougall said the Commission intends to proceed with implementation of EDI Claims Release 3.0. The rule change would allow the electronic submission of a notice of Change of Status (COS) in a workers' compensation claim be submitted to the Commission through EDI, rather than the submission in the current paper form. There is no fiscal impact. Negotiated rulemaking was conducted.

MOTION:

Senator Lakey moved to adopt **Docket No. 17-0208-1501**. **Senator Thayn** seconded the motion.

Senator Rice and **Scott McDougall** discussed the note to claimants by employers, the reporting of a COS and EDI. **Senator Rice** indicated he thought from the wording in the rule that the party giving notice could make it any way they wanted. **Vice Chairman Martin** noted the effective date was July 1, 2017, and said he agreed with Senator Rice. **Scott McDougall** said there would be modifications and clarifications to the rule.

The motion carried by **voice vote**.

**DOCKET NO.
17-0210-1501**

Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers. Scott McDougall said the Commission intends to proceed with implementation of EDI Claims Release 3.0. The proposed rule amendment defines a Claims Administrator who adjusts workers' compensation claims in the State of Idaho and clarifies the adjuster is a resident of Idaho. The proposed rule amendment would also clarify the reports by Claims Administrators to the Commission. The rule amendment would be necessary to comply with EDI rules. There is no fiscal impact. Negotiated rulemaking was conducted.

MOTION:

Senator Guthrie moved to adopt **Docket No. 17-0210-1501**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0209-1502**

Industrial Commission - Medical Fees. Patti Vaughn, Medical Fee Schedule Analyst, Industrial Commission (Commission), said the following changes were adopted as a result of formal, negotiated rulemaking to consider updates to the physician and facility medical fee schedules. Although no change to the physician fee schedule is proposed at this time, the negotiated rulemaking sessions were informative and will serve as the foundation for ongoing discussion. The deletion of the definition for rehabilitation hospital, along with the insertion of the rehabilitation term to the hospital definition, are related to the proposed change to eliminate the reimbursement standard for rehabilitation hospitals covered under the next section. She said critical access hospitals and rehabilitation hospitals are allowed 90 percent of a reasonable charge and the larger hospitals are paid according to a fixed payment method. Under Section .02(a), the exemption for rehabilitation hospitals is eliminated, so that rehabilitation hospitals will now be subject to the same reimbursement standard as the larger hospitals. Small, rural critical access hospitals are unchanged. The two main factors that brought consensus on the change to rehabilitation hospitals are:

1. Frustration among payers that the same outpatient rehabilitation services could be reimbursed three different ways depending on which provider type is billing those services.
2. Changing market conditions resulting from the acquisition of one of Idaho's few rehabilitation hospitals by a larger health system.

Patti Vaughn said consensus was reached addressing hospital outpatient services affected by major changes made by Medicare. These are primarily orthopedic procedures where payment for ancillary services is included in a single bundled payment under the primary procedure. Medicare assigned a new status indicator code to these procedures, which results in significantly inflated payments when paid according to the existing language in our rule. Consensus was reached to

create a conditional standard determined by the presence or absence of the new status indicator on the bill.

Finally, the coding guidelines published by Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA) are adopted. This same language appears in the section for the physician fee schedule but had not previously been included in the facility section. This will provide a reference resource for payers and providers when clarification is needed about how a medical encounter should be paid.

Senator Rice pointed out a clerical error on page 65 and said "hospitals" should not be crossed out. **Patti Vaughn** said she would have the error corrected.

Senator Lakey wanted to know what a J-1 code meant. **Patti Vaughn** said the code refers to orthopedic procedures and came about when Medicare started bundling a broader group of services. **Senator Lakey** then wanted to know what a T code referenced. **Patti Vaughn** said it is a procedure status indicator and accompanies some procedures that are billed with a status J. She explained there could be a J1 billed at 100 percent. She explained that 50 percent primarily comes from Medicare policy and how the values are weighted. She pointed out the Commission mirrors Medicare's policy.

MOTION: **Senator Rice** moved to adopt **Docket No. 17-0209-1502** and for the noted correction be made regarding "hospitals." **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0209-1503 **Idaho Industrial Commission - Temporary Rule - Medical Fees.** **Patti Vaughn** said the Idaho workers' compensation hospital outpatient fee schedule is modeled after the Ambulatory Payment Classification (APC) system created by CMS. In most cases, reimbursement is calculated by multiplying a base rate set by the Commission by a relative weight value assigned by CMS. The Commission adopted this temporary rule after Medicare made changes to the relative weights, resulting in significantly inflated payments when applied with the language that existed in the rule. This temporary rule extended the use of the 2014 relative weights to keep payments stable while the Commission worked with stakeholders to address the conflicts. Consensus was reached during negotiated rulemaking and the new language appears in Docket 17-0209-1502. **Patti Vaughn** asked that this rule be approved and extended until July 1, 2016.

Senator Schmidt asked if there was a significant fiscal impact made by this rule or by the previous rule. **Patti Vaughn** said she knew of no fiscal impact and noted the Commission was trying to stabilize payments.

MOTION: **Senator Thayne** moved to adopt **Docket No. 17-0209-1503**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

PASSED Vice Chairman Martin passed the gavel back to Chairman Patrick.

GAVEL:

ADJOURNMENT: There being no further business, **Chairman Patrick** adjourned the meeting at 2:47 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 26, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>RS24057</u>	Relating to Licensing	Dean Cameron, Director, Department of Insurance
GUBERNATORIAL APPOINTMENT	Committee consideration of Gubernatorial appointment of Dean Cameron, Director, Department of Insurance	Dean Cameron
DOCKET NO. <u>18-0144-1501</u>	Relating to Schedule of Fees, Licenses and Miscellaneous Charges	Dean Cameron
<u>18-0127-1501</u>	Relating to Self-Funded Employee Health Care Plans	Dean Cameron
<u>18-0160-1501</u>	Relating to Long-Term Care Insurance Minimum Standards	Dean Cameron
PRESENTATION:	Idaho Health Exchange	Patrick Kelly, Executive Director, Your Health Idaho
<u>24-2501-1501</u>	Relating to Rules of the Idaho Driving Business Licensure Board	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses
<u>24-0001-1500</u>	Relating to the Licensing Board Served by the Bureau of Occupational Licenses	Mitch Toryanski
<u>49-0101-1501</u>	Relating to Rules of Procedure of the Idaho Certified Shorthand Reporters Board	Mitch Toryanski

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 26, 2016
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

RS 24057 **Relating to Licensing. Dean Cameron**, Director, Department of Insurance (DOI), gave a brief history. He said the proposed legislation accomplishes three things relating to producer, agent, surplus and lines broker licensing in Idaho:

1) Idaho Code § 41-1016(2) currently provides summary order authority to suspend or revoke the Idaho nonresident license where the resident license has been suspended or revoked in the licensee's home state. The proposed legislation amends this section of code adding additional circumstances of terminating a nonresident Idaho license, where the resident license in another state has been voluntarily surrendered or lapsed. This amendment streamlines the process for terminating the license of a nonresident producer who no longer meets a prerequisite to hold this license.

2) Amends Idaho Code § 41-1026(3) to provide that a former licensee whose license has been revoked may not reapply for a license until not less than one year and up to five years have passed rather than the current one-year waiting period.

3) Amends Idaho Code § 41-1026 to provide a new subsection (4) where a person whose application for a producer license has been denied must wait one year before reapplying. Currently, there is no specific time period in which a person must wait before reapplying for a producer license. Individuals who reapply quickly following a denial or revocation waste their time and that of the DOI in processing and denying the application.

There is no fiscal impact.

Chairman Patrick reminded the Committee that this was a print hearing.

Senator Rice indicated he wanted to pursue the idea of constitutionality of this change for a producer who lives in a nearby state but sells insurance in Idaho only, the producers would have to hold a license in their state of residence. **Director Cameron** said he would be happy to meet and discuss this item. He stated the current code states that in order to obtain an Idaho insurance license, the producers would have to possess a valid insurance license in their state of residency.

Senator Thayne referred to Section 3 and asked for an explanation. **Director Cameron** responded that those sections are referring to other code sections that are applicable.

MOTION: **Senator Heider** moved to send **RS 24057** to print. **Senator Lakey** seconded the motion.

Senator Guthrie questioned page 3, Section 4, and wanted to know if the revised language would allow producers to make an application for reinstatement prior to a year. **Director Cameron** explained there would be certain circumstances where producers would need to gather information prior to reapplying. He praised the licensing team in Idaho for being nationally recognized for their good work.

The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Dean Cameron of Rupert, Idaho, as Director of the Department of Insurance (DOI), to serve a term of four years subject to early removal by the Governor.

Director Cameron thanked the Committee for their time, support and consideration. He said he missed the Committee, but felt it was time for a change. He outlined his qualifications and said he holds several insurance licenses. He noted he has been honored to serve in his new position. He introduced his wife, Linda, and several other members from the DOI. **Director Cameron** disclosed he had to sell his insurance agency and divest himself of any affiliations. **Senator Rice** said he was looking forward to working with Director Cameron on the Health Insurance Exchange Board.

GUBERNATORIAL APPOINTMENT: **Senator Rice** moved to send the gubernatorial appointment of Dean Cameron, Director, DOI, to the floor with the recommendation that he be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to review the rules.

DOCKET NO. 18-0144-1501 **Schedule of Fees, Licenses and Miscellaneous Charges.** **Director Cameron** said the pending fee rule changes fees consistent with recent statutory changes; removes from the fee rule a specific enumerated fee paid by applicants to a third party vendor and references the amount by contract; and makes technical changes. He stated there are no changes to the pending rule and it is being adopted as originally proposed. The fiscal impact of the changes is expected to be revenue neutral. Negotiated rulemaking was conducted.

Director Cameron reiterated that even though the bill initially connected to this rule did not pass through the House, adjustments were made in order to satisfy those requirements. The purpose of the rule is to clarify that registration of self-funded student health plans is subject to the licensing/renewal fee of \$500, which is the same as self-funded employer plans, by removing the specific reference to "employee" plans. A licensing/renewal fee was added for public adjusters of \$80.

Director Cameron explained there was a change to the provision regarding the cost paid to a third party vendor by an applicant for a producer, public adjuster or adjuster license to take an examination by eliminating the \$60 fee referenced. It also provides that the applicant will pay an amount to the vendor as indicated by contract between the DOI and the testing vendor. Fees were eliminated for solicitation permits in Section 18.01.040 because related code sections have been repealed. Technical corrections were made to update terminology and

include catchall language regarding service of process fees, and to eliminate unnecessary language in Section 18.01.020.04.

Chairman Patrick asked Director Cameron if he had any indication that the House would be accepting this rule. **Director Cameron** replied he was meeting with House members tomorrow and he was hopeful the modifications would be acceptable.

MOTION:

Senator Guthrie moved to approve **Docket No. 18-0144-1501**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0127-1501**

Self-Funded Employee Health Care Plans Rule. **Director Cameron** stated the pending rule makes changes consistent with recent code changes, adds clarity and removes duplicative language. He remarked the DOI is revising language in Section .027, narrowing the scope of required fidelity bonds or equivalent coverage based on comments received. There is no fiscal impact. Negotiated rulemaking was conducted and modest questions were asked. **Director Cameron** remarked the main purpose of the rule was to remove duplicative language in statute and to clarify issues.

Director Cameron reported that all contributions must be paid in advance and must be deposited in and disbursed from a trust fund. Some conflicting language was removed for clarification. A third party administrator is defined. He pointed out that the contribution rates in Section .028 were the most controversial, but they have been in Idaho Code since 1974. He specifically mentioned 028.01, stating contribution rates shall be calculated at least annually by a qualified actuary. The contribution rate calculations should be broken down and designated as the rate for the employer and the rate per employee, or the rate for the postsecondary educational institution and the rate per student. **Director Cameron** explained contracts and agreements valued at greater than \$500 entered into by the plan need to be in writing and approved by resolution of the Board of Trustees (Board) and placed in the minutes and records of the plan. By entering into contracts and agreements, the trustees are not permitted to transfer or otherwise avoid their statutory fiduciary responsibilities.

Senator Lakey disclosed for the record that he has a government self-funded plan as a client. He asked if the actuary was required to be qualified and who determines those qualifications. **Director Cameron** replied there is a current code provision and typically a qualified actuary is someone who has the appropriate education and ability.

Wes Trexler, Bureau Chief and Actuary, DOI, stated an actuary is someone who has experience setting rates for health plans, is a member of the American Society of Actuaries or is an enrolled actuary.

Senator Lakey asked how many types of private plans are handled by the DOI. **Director Cameron** replied there are three active plans that fall under Chapter 41, Idaho Code, Rule 28, and eight plans that fall under Chapter 40, Idaho Code, Rule 27. Some plans are no longer active. **Director Cameron** said approximately 10 or 11 are inactive.

Senator Lakey referred to contracts for services and noted all contracts for services including, but not limited to, accounting legal services, legal services, custodial agreements and agreements for lease, rent or insurance coverage to be performed or entered into on behalf of the plan will be directly with the plan as agreed to by the Board and the other party. He wanted to know the definition of a

custodial agreement. **Georgia Siehl**, Company Activities, Bureau Chief, DOI, explained that a custodial agreement was an agreement between a bank or an investment company that has certain qualifications and is charged with the custody and safekeeping of the investments of a trust.

Senator Guthrie referred to contribution rates that must be calculated annually by a qualified actuary. He wanted to know if it would be financially problematic for those who have not had contribution rates calculated annually. **Director Cameron** explained that the majority of companies are doing an annual contribution rate calculation with a qualified actuary. He said some did not realize they had to calculate contribution rates annually. This way the DOI will make sure these companies are not overcharging. Companies should be making an evaluation prior to the knowledge of claims based on expectations and have money set aside in case a claim should occur. This is especially important for government entities to prevent bankruptcy.

Senator Lakey and **Director Cameron** discussed the annual contribution rate calculations by a qualified actuary and the discretion of the Board to establish rates. **Director Cameron** stated the Board has the responsibility to follow the actuary's recommendation.

MOTION:

Senator Thayn moved to approve **Docket No. 18-0127-1501**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0160-1501**

Relating to Long-Term Care Insurance Minimum Standards. **Director Cameron** said the pending rule will clarify that while inflation protection must be provided for long-term care partnership policies, no minimum inflation levels are established. The pending rule also clarifies and standardizes references to documents by reference. There are no changes to the pending rule and it is being adopted as originally proposed.

Qualifying long-term care partnership policies allow consumers who buy them to qualify for the Medicaid asset disregard as provided for in Idaho Code, Title 56, Chapter 13. For long-term care partnership policies, the DOI has required a minimum of 5 percent compound inflation protection for policyholders less than age 61, and 5 percent simple inflation for those ages 61 to 75, or alternatively benefit guarantees of not less than the annual change in the Consumer Price Index (CPI). The rule will clarify annual inflation protection requirements applicable to long-term care partnership policies, but will not require any minimum level of inflation protection. This may promote more purchases of such policies. There is no fiscal impact. Negotiated rulemaking was conducted.

Director Cameron pointed out that Medicaid would disregard \$50,000 of a person's assets to determine Medicaid long-term care. A federal law was passed in March 2007 and many states adopted the program. The federal government requires an inflation protection rider to keep up with inflation. The DOI made a 5 percent requirement, which made the plan too expensive. Then the DOI proposed to reduce the percentage from 5 to 3. However, through the negotiated rulemaking process, the State learned that many states moved to a 0 percent requirement. There is an inflation protection offer for insurers. Insurers may offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. **Director Cameron** indicated the addition of wording made the rule a consumer-friendly piece. **Senator Schmidt** wanted to know if the flexibility in this rule would satisfy

the federal requirement. **Director Cameron** said it would. There is no specific percent that is specified in federal regulations.

MOTION: **Chairman Patrick** moved to approve **Docket No. 18-0160-1501**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel back to Chairman Patrick to introduce the next presenter.

PRESENTATION: **Idaho Health Exchange**. **Patrick Kelly**, Executive Director, Your Health Idaho (YHI) ,said the mission was to maintain maximum control of Idaho's health insurance marketplace at a minimal cost to its citizens. The goals are being met that were put into place less than three years ago. He reported YHI is providing Idaho-based resources to thousands of Idahoans who choose to use YHI to find health insurance. He explained YHI establishment costs are the lowest in the country among state-based exchanges. More than 84,000 Idahoans found coverage through YHI. Idaho ranked fourth in the nation in per capita enrollments. **Director Kelly** outlined the improvements made in 2015, including strengthening partnerships with agents, brokers and enrollment entities, investing in more training for call center staff and transitioning from outsourced staffing to in-house resources. Idahoans saved more than \$10 million in federal assessment fees. He mentioned the significant accomplishments for 2015. Consumer choices continue to expand; Idaho's conservative business model became the focus of a Leavitt Partners case study; advanced training was conducted for agents and brokers; and enrollment counselors expanded YHI's outreach and engagement. He pointed out the Centers for Medicare and Medicaid granted YHI an extension to use previously awarded grant funds for establishment activities in 2016.

Director Kelly talked about the solid foundation set for agents and brokers through YHI. There were more than 1,000 agents and brokers across the State to help Idahoans make informed decisions. After open enrollment, YHI staff traveled around the State to hear feedback and provide additional training. Using the feedback, YHI reworked the training program to include more face-to-face, hands-on system training. He described the sustainability of YHI. In 2015 assessment fees were set at 1.5 percent. The Board of Directors (BOD) voted to increase assessment fees to 1.99 percent in 2016. He explained that operational expenses are funded by assessment fees from plans sold on the YHI Exchange. YHI has built a healthy cash reserve and currently has more than six months of operating costs set aside.

Director Kelly explained the most popular plan among enrollees is the Silver plan, with 70 percent enrollment. Eighty-nine percent of enrollees received a tax credit. **Director Kelly** said that \$34.8 million was spent on technology solutions, \$24.2 million on operational expenses and \$11 million on outreach and education. Grant fund expenditures to date have been \$84.4 million with \$19.9 million funds remaining.

The projection for the year ahead includes YHI and stakeholders reviewing future technology improvement and the evaluation of all improvements based on return on investment to ensure that Idahoans are offered the best tools at the lowest cost to support access to affordable insurance. **Director Kelly** summarized the benefits of the State-based Exchange (Exchange). He remarked that YHI offers plans for sale that are regulated and managed by Idaho; agents and brokers are the primary resources for consumers; the assessment fee is determined by Idaho; YHI is governed by a Board from Idaho; and YHI makes security a priority.

Senator Rice praised Director Kelly for the outstanding job he has done with YHI.

Senator Guthrie asked about the increase of 1.99 percent and would it sustain YHI for the foreseeable future? **Director Kelly** responded in the affirmative that the projections show that with a 1.99 assessment fee and the enrollment growth this year, this increase is exactly within the plan for sustainability. YHI has \$5 million in cash reserves. YHI does not anticipate utilizing the cash reserves, but if something unforeseen were to happen, the funds are there. He said the cash reserves could actually grow.

Senator Schmidt remarked that if the marketplace is being established for people to competitively look for insurance, the price will go down. He wanted to know if there was any comparison between insurance products bought on the Exchange versus not. **Director Kelly** replied that a policy sold via the Exchange would be sold for the same cost outside the Exchange. There is no difference. YHI has no control over the rates set by the carriers. YHI will continue to educate Idahoans about their options and to ensure the plan selected meets family needs and budgets.

Vice Chairman Martin said he wanted to make sure that YHI is utilizing the model of navigators and agents. He asked for clarification regarding when someone calls into the office or uses the website, what is the final process of them actually obtaining the insurance? **Director Kelly** said that if a client needs help selecting a plan, the client would work with an agent. If a consumer wants general information about the process, how to apply for a tax credit, or how to apply for insurance, the consumer would work with an enrollment counselor. This year YHI has expanded and has tried to strengthen the relationship between the enrollment counselor and the agents to ensure there is a strong referral and that the consumers who seek general information are passed to an agent or a broker so they can choose a plan that fits them best. Not everyone on the Exchange chooses an agent. There is no cost to the consumer.

Senator Rice indicated the 1.5 percent assessment fee was actually set before there was any idea of what the enrollments would be. The BOD wanted to set something that would allow the Exchange to create a reserve and would be somewhere in the ballpark that could be adjusted based on actual experience. Actual experience indicated the appropriate level was at the 1.99 percent. He remarked there will be changes with more money being spent on advertising in the future. The adjustment was not because the Exchange was losing money, it was because the Exchange was still operating under grants.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to continue hearing the rules.

**DOCKET NO.
24-2501-1501**

Relating to Rules of the Idaho Driving Business Licensure Board (BDLB). **Mitch Toryanski**, attorney for the Idaho Bureau of Occupational Licenses, stated there are no changes to the pending rule and it is being adopted as originally proposed. Applicants for licensure as a driving instructor must undergo a medical examination and obtain a new medical certificate 30 days before applying for the instructor apprenticeship training program and before applying for an instructor license. Because the apprenticeship program normally takes more than one month to complete, applicants usually must undergo two medical exams in a short period of time to obtain an instructor license. This redundancy is expensive and is unnecessary for the protection of the safety, health and welfare of the public. Extending the period to two years will eliminate this waste of time, money and other resources. There is no fiscal impact. Negotiated rulemaking was not conducted because the amendment will benefit the applicants and it was discussed during a noticed, open meeting of the Board.

MOTION: Senator Heider moved to approve **Docket No. 24-2501-1501**. Senator Schmidt seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0001-1500 **Relating to the Licensing Board Served by the Bureau of Occupational Licenses.** Mitch Toryanski reported there are no changes to the pending fee rule and it is being adopted as originally proposed. He said he represented eight boards, including the Boards of: Drinking Water and Waste Waters Professionals, Occupational Therapists, Landscape Architects, Physical Therapists, Real Estate Appraisers, Liquefied Petroleum Gas Dealers and Massage Therapists.

Mr. Toryanski explained the rule sets the fees that licensees pay when they do not renew their license and it expires and they want to reinstate it. The licensee has five years to reinstate their license. The boards operate solely on dedicated funds derived primarily from licensing and registration fees. This rulemaking increases the reinstatement fee for five boards from \$25 to \$35; it will have no effect on one board and will reduce the fee for two other boards from \$75 and \$50 to \$35. The number of annual renewal fees collected will be capped at just one rather than one for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. There will be no fiscal impact to the State General Fund since licensing and registration fees collected are dedicated funds. Negotiated rulemaking was not conducted because regulatory boards decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

MOTION: Senator Ward-Engelking moved to approve **Docket No. 24-0001-1500**. Senator Thayn seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 49-0101-1501 **Relating to Rules of Procedure of the Idaho Certified Shorthand Reporters Board (ICSRB).** Mitch Toryanski indicated there are no changes to the pending fee rule and it is being adopted as originally proposed. This rule will increase the reinstatement fee from \$25 to \$35. The number of annual renewal fees collected will be capped at one rather than one for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. Negotiated rulemaking was not conducted because the ICSRB decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

MOTION: Senator Thayn moved to approve **Docket No. 49-0101-1501**. Senator Ward-Engelking seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel back to Chairman Patrick.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 3:01 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 28, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of Minutes for January 19, 2016	Senator Lakey
DOCKET NO. <u>17-0211-1501</u>	Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation	Scott McDougall, Benefits Administration Manager, Industrial Commission
<u>38-0301-1501</u>	Department of Administration - Rules Governing Group Insurance	Jennifer Pike, Administrator, Office of Group Insurance
<u>38-0501-1501</u>	Department of Administration - Rules of the Division of Purchasing	Sarah Hildebrand, Administrator, Division of Purchasing
<u>59-0103-1402</u>	Public Employee Retirement System of Idaho (PERSI) - Contribution Rules	Don Drum, Director, PERSI
<u>59-0103-1403</u>	Public Employee Retirement System of Idaho (PERSI) - Contribution Rules	Don Drum, Director, PERSI
<u>59-0201-1601</u>	Public Employee Retirement System of Idaho (PERSI) - Rules for the Judges' Retirement Fund	Don Drum, Director, PERSI
GUBERNATORIAL APPOINTMENT:	Committee Consideration of Gubernatorial Appointment of Jeff Cilek, Public Employee Retirement System of Idaho (PERSI) Board	Jeff Cilek
<u>RS24158:</u>	Relating to a Benefits Corporation	Senator Chuck Winder
<u>S1202:</u>	Personnel System/Non-Classified Employees	David Fulkerson, Interim Administrator, Division of Human Resources

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick

Vice Chairman Martin

Sen Lakey

Sen Guthrie

Sen Heider

Sen Rice

Sen Thayn

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 28, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting to order at 1:30 p.m.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to review the rules.

DOCKET NO. 17-0211-1501 **Administrative Rules of the Industrial Commission Under Workers' Compensation Law - Security for Compensation - Self-Insured Employers. Scott McDougall**, Benefits Administration Manager, Industrial Commission (Commission), reported there are no changes to the pending rule and it is being adopted as originally proposed. He stated the Commission intends to proceed with implementation of Electronic Data Interchange (EDI) Claims Release 3.0, a secured, electronic interchange of documents that would allow the submission of all relative workers' compensation claims information to be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency. The proposed rule amendment defines a Claims Administrator who adjusts workers' compensation claims as Claims Administrators to the Commission. The rule amendment would be necessary to comply with EDI rules, and it "mirrors" the proposed amendments of Docket No. 17-0210-1501. Negotiated rulemaking was conducted. There is no negative fiscal impact.

Manager McDougall outlined the changes and referred to the misnumbering of the rules on page 76, that he had already called this to the attention of the State Administrative Rules Coordinator. He pointed out that some words were changed for clarification. **Senator Thayn** asked why, in the descriptive summary, there was no reference to the electronic exchange of documents. **Manager McDougall** replied that it was because definitions were already included in the rule.

MOTION: **Senator Thayn** moved to approve **Docket No. 17-0211-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 38-0301-1501 **Rules Governing Group Insurance. Jennifer Pike**, Administrator, Office of Group Insurance, reported there are no changes to the pending rule and it is being adopted as originally proposed. She said this rule revises the definitions for seasonal employee and part-time temporary employee and removes obsolete definitions. There is no fiscal impact from the rule change. Negotiated rulemaking was not conducted because the proposed rule change will provide conformity with federal law.

MOTION: **Senator Heider** moved to approve **Docket No. 38-0301-1501**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
38-0501-1501**

Rules of the Division of Purchasing. Sarah Hildebrand, Administrator, Division of Purchasing (Division), pointed out this rule was a housekeeping rule based on items approved last year. There are no changes to the pending rule and it is being adopted as originally proposed. She said the term "purchasing authority" is used in the rules that were revised by the 2015 legislative session. The term "purchasing activity" remains in the rules where revisions were not approved. This temporary and proposed rule provides a consistent definition for both terms and blends the revised and unrevised rules. This rulemaking establishes a definition for the terms "purchasing activity" and "purchasing authority." There is no fiscal impact. Negotiated rulemaking was not conducted because temporary rulemaking was required.

Vice Chairman Martin pointed out an error on page 158, indicating that Bill Burns was no longer the Administrator.

MOTION:

Senator Ward-Engelking moved to approve **Docket No. 38-0501-1501**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0103-1402**

Public Employee Retirement System of Idaho (PERSI) - PERSI Contribution Rules. Don Drum, Executive Director, PERSI, reported the purpose of this pending rule was to eliminate contribution rate increases for employers and employees. He said this rule was a temporary rule in 2015. He said that in 2009, the PERSI Board (Board) authorized a series of three rate increases. The first increase went into effect in July 2013, but with market recovery, the Board was able to delay the second and third increases. In October of 2014, the Board determined, based on the actuarial valuation, that it could eliminate the next two scheduled increases and authorized that elimination.

Senator Guthrie asked if the volatile stock market is a concern to the Board. **Director Drum** remarked that is always a concern, but he did not see the market affecting this fund.

Vice Chairman Martin asked how the 110 percent funding benchmark was determined. **Director Drum** remarked the Board settled on that figure, but it is not in code.

Senator Schmidt asked what kind of agreement was in place in order to lower or raise the rate? **Director Drum** said this was only an agreement and the Board did not agree to never raise the rate. All 22 employers understood the Board could raise the rate if necessary.

MOTION:

Senator Schmidt moved to approve **Docket No. 59-0103-1402**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0103-1403**

Public Employee Retirement System of Idaho - PERSI Contribution Rules. **Director Drum** said the purpose of this pending rule was to reduce the excess merger cost portion of the Firefighter Retirement Fund (FRF). That rate is paid by employers that are responsible under statute to pay the added costs associated with paying down the liability in the FRF. He gave a brief history of the FRF and indicated this fund was closed in 1980 and moved to PERSI. He noted the FRF was not well-funded at that time. The excess merger rate was at 17.24 percent and had been at that rate since 1997. During 2014, the Board determined that it could lower 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 of the excess cost rate while at the same time providing a cushion against market volatility. He said the excess merger cost was reduced last year. The July 1, 2014 actuarial valuation showed the FRF was funded at 110.9 percent. The 2015 actuarial valuation showed the

FRF at 119.6 percent funded. Based on this information, the Board authorized lowering the rate from 17.25 percent to 5 percent, effective January 1, 2015. There is no negative fiscal impact to the General Fund. Negotiated rulemaking was not conducted because it would be inconsistent with the Board's exclusive fiduciary responsibility for plan operations. The Board had significant and ongoing discussions with the fire districts and city fire departments employers and they supported the Board's action.

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

DOCKET NO. 59-0201-1601 **Public Employee Retirement System of Idaho (PERSI)- Rules for the Judges' Retirement Fund.** **Director Drum** indicated this is a temporary rule. These rules apply to the Judges' Retirement Fund (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. **Director Drum** indicated the JRF was moved to PERSI July 1, 2014.

Director Drum pointed out statutes changed to coincide with PERSI. The Board has acted to adopt the rate increase as required by Idaho Code § 1-2004A to bring the amortization period to 25 years or less. The rate increase becomes effective July 1, 2017. Employer contribution rates will increase from 55.28 percent to 62.53 percent of salaries, and employee rates will increase from 10.23 percent to 11.57 percent of salaries, beginning July 1, 2017. This will affect the General Fund to the extent the contributions required of the employer (Supreme Court) are made from General Fund dollars. Negotiated rulemaking was not conducted because it is not feasible as it would be inconsistent with the Retirement Board's need to bring the amortization rate to 25 years or less and with the Board's exclusive fiduciary responsibility for plan operations. The proposed rate increase is in line with current law.

Vice Chairman Martin and **Director Drum** had a conversation about proposed rate changes and another evaluation being conducted next fall.

TESTIMONY: **Barry Wood**, District Judge, Idaho Supreme Court, said that from 1947 to 2014 the JRF was funded by civil filing fees and employer and employee fees. In 2012, the fund was set up for PERSI to administer. He explained the previous civil filing fees that had to go into the plan went to the General Fund and back out to PERSI.

MOTION: **Senator Heider** moved to approved **Docket No. 59-0201-1601**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel to Chairman Patrick.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of January 19, 2016. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Jeff Cilek of Boise, Idaho, as a Board member of PERSI, to serve a term commencing July 1, 2015 and expiring July 1, 2020. **Jeff Cilek** gave a brief background of his experience. He mentioned he had worked for ten years in Washington, D.C., for United States Senators James A. McClure and Mark O. Hatfield and was Legislative and Staff Director of the United States Senate Appropriations Subcommittee. Currently, he is Vice President of St. Luke's Health System External/Governmental Relations. **Chairman Patrick** asked **Mr. Cilek** if he enjoyed being on the PERSI Board. He said he enjoys the great opportunity of being on the Board.

Vice Chairman Martin asked Mr. Cilek to describe his major accomplishments. **Mr. Cilek** said he has been involved in the investment community, specifically to include a management firm called Longview.

Senator Schmidt asked Mr. Cilek about the composition of the Board and that two members should be appointed who have at least 10 years of credited service. **Mr. Cilek** confirmed he was one of the other three who satisfy the obligation.

MOTION: **Senator Heider** moved to send the gubernatorial appointment of Jeff Cilek, PERSI Board Member, to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor.

RS 24158 **Relating to a Benefits Corporation.** **Senator Chuck Winder** said the purpose of this bill is to amend current code regulating Benefits Corporations by removing the requirements of filing an annual report to the Idaho Secretary of State. He said this was a housekeeping bill.

MOTION: **Senator Lakey** moved to send **RS 24158** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1202 **Personnel System/Non-Classified Employee** was rescheduled for the meeting of February 2, 2016.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:09 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 02, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of Minutes of January 21, 2016	Senator Guthrie
<u>S 1202</u>	Personnel System/Non-Classified Employees	David Fulkerson, Interim Administrator, Division of Human Resources
GUBERNATORIAL APPOINTMENT:	Committee Consideration of Gubernatorial Appointment of Megan Ronk, Director, Department of Commerce	Megan Ronk, Director, Department of Commerce
PRESENTATION:	Department of Commerce	Megan Ronk
DOCKET NO.	Department of Commerce - Idaho Community Development Block Grant Program (ICDBG)	Megan Ronk
<u>28-0201-1501</u>		
<u>24-2101-1501</u>	Rules of Occupational Licenses - Rules of the Idaho State Contractors Board	Rob Pilott, Chairman, State Contractors Board
<u>24-0801-1501</u>	Bureau of Occupational Licenses - Rules of the State Board of Morticians	Roger Hales, Attorney, Bureau of Occupational Licenses
<u>24-1801-1501</u>	Bureau of Occupational Licenses - Rules of the Real Estate Appraiser Board	Roger Hales
<u>14-0101-1501</u>	Board of Registration for Professional Geologists	Roger Hales
<u>14-0101-1502</u>	Board of Registration for Professional Geologists	Mitch Toryanski, Attorney, Bureau of Occupational Licenses

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Martin
Sen Lakey
Sen Guthrie
Sen Heider

Sen Rice
Sen Thayn
Sen Schmidt
Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 02, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Rice, Thayn, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Heider

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

MINUTES APPROVAL: **Senator Guthrie** moved to approve the Minutes of January 21, 2016. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1202 **Personnel System/Non-Classified Employees.** **David Fulkerson**, Interim Administrator, Division of Human Resources (DHR), said that this proposal modifies Idaho Code § 67-5303(v) to include the Sciences, Technology, Engineering and Math Education (STEM) Action Center, Office of Species Conservation, Office of Drug Policy and the Office of Energy Resources to the list of agencies in the Executive Office of the Governor that have all non-classified employees. He mentioned that all agencies were set up to have non-classified employees and the list was amended to put everything in one section. This issue came up last year.

Senator Schmidt remarked that the acronym "STEM" Action Center was not capitalized. **Administrator Fulkerson** said he thought the change could be made to make it consistent. **Senator Schmidt** commented he had no objection to the revision.

MOTION: **Vice Chairman Martin** moved that **S 1202** be sent to the floor of the Senate, capitalizing the acronym STEM, with a **do pass** recommendation.

Senator Thayn asked about the process for making the amendment to correct the capitalization of STEM. **Chairman Patrick** said he thought the correction could be made, since it appeared to be a typographical error.

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

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Megan Ronk of Meridian, Idaho, as Director of the Department of Commerce (DOC), to serve a term at the pleasure of the Governor, not to extend beyond the term of the Governor.

Director Ronk gave a brief overview of her career. She said it was an honor and a privilege to be before the Committee. She studied international business and management at the College of Idaho. After college she worked with former Governor Kempthorn, where she was responsible for advising the Governor on commerce, labor and criminal justice policy issues. She worked with state agencies to develop budget priorities and implement various programs and initiatives. **Director Ronk** led implementation of major Governor-led initiatives such as the creation of Idaho's Amber Alert System, Criminal Justice Commission, Rural Initiative for Economic Development and the Offices of Science and Technology. She was Executive Director for the Idaho Meth Project. Over the past 3.5 years, she had the privilege of serving with Idaho Commerce Director Jeff Sayer as they worked through a major reorganization of the DOC to ensure it was efficient and responsive to business, and brought online new tools to promote business growth and expansion. She remarked that the DOC is on a positive trajectory.

MOTION:

Senator Guthrie moved to send the Gubernatorial appointment of Megan Ronk, Director, DOC, to the floor with the recommendation that she be confirmed by the Senate. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Lodge will carry the appointment on the floor of the Senate.

PRESENTATION:

Department of Commerce. **Director Ronk** did a PowerPoint presentation on the DOC, a copy of which can be found on the website, www.commerce.idaho.gov. She pointed out that Idaho is number one in the United States for the largest percentage gains in private-sector employment in the last year. Idaho has had the fifth highest growth rate and outpaced the nation in 10 out of 15 industry categories. **Director Ronk** affirmed what others are saying about Idaho. Thumbtack, a consumer-service website, reports that Boise is the second best city for Millennial entrepreneurs. Heartland Institute reports that Idaho has the fifth best economic outlook. Bloomberg acknowledged Idaho was fifth in the nation for the economic health index. And, finally, Entrepreneur Magazine reported that Idaho is the sixth best state to start a small business.

Within Accelerate Idaho (the State's commitment to being a national leader and global leader for economic growth and prosperity) there are three components: 1. advance individuals; 2. elevate industry; and 3. strengthen communities. She explained that in order for individuals to advance, the DOC needs to make sure Idaho invests in careers, workers are available to meet jobs and a world-class workforce must be created that can lead Idaho into a new global economy. The DOC strives to advance the earning capabilities of Idahoans throughout the State.

Idaho's industries are already key contributors to national and global economies. By further supporting industries and creating consistent business environments and embracing innovation, the DOC believes they can accelerate Idaho's economy even more.

Communities are the foundation of the State. Strong and resilient communities are the backbone of the State's heritage. Idaho has inspired even more positive changes by offering community training, anticipating infrastructure needs and routing neighbors for regional collaboration.

Idaho annual exports have decreased due to the strong U.S. dollar. The Idaho Lodging Tax has increased, with half of the revenues returning to local communities.

Director Ronk spoke about the Idaho Global Entrepreneurial Mission (IGEM) Program which, she explained, is a comprehensive strategy to enable Idaho's stakeholders to collaborate and leverage resources with the goal of increasing the State's knowledge-based economy. Successful implementation of IGEM strategies will increase the research capacity of Idaho's universities in strategic areas, develop a world-class talent pool, and develop a dynamic consortium of industry, university and government partnerships. These economic drivers will generate globally competitive technologies, high-paying jobs, new startups and an expanded tax base. IGEM will create an innovation ecosystem to sustain a thriving and top-performing economy. She outlined the accomplishments of state universities in 2016, including the development of a new sensor adapter for the machine-to-machine market. The sensor adapter will drastically improve data collection and modification and delivery of remotely sensed Global Positioning Systems (GPS), vehicle diagnostics and other related field data at Boise State University (BSU). She noted a fish vaccine and a system integrating pavement marking and traffic were developed at the University of Idaho (UI); and the Unmanned Aircraft Sensors (UAS) for Precision Agriculture at Idaho State University (ISU) are progressing.

The Idaho Opportunity Fund showed \$3.2 million awarded to date with several projects in the works. The recipients of the awards were Alternative Molding Concepts and Jacklin Land Company in Post Falls; Specialty Sales in Jerome; and Fabri-Kal in Burley.

The Tax Reimbursement Incentive (TRI) showed a 423 percent return on investment. **Director Ronk** pointed out this information is also available on the DOC website. There were 25 approved projects with 4,138 jobs created. The capital investment was \$504 million with total wages of \$1.68 billion. This generated a new direct State revenue of \$171.5 million. She said that of the 25 approved TRI projects, there were 13 existing Idaho companies and 12 companies new to Idaho. Fourteen of the companies were in rural communities and 11 in urban communities. The average award was 21 percent for nine years.

There is legislative support through the Governor's K-Career, STEM Action Center, college and career advising, community college in Eastern Idaho and expanded access to Professional-Technical Education (PTE) programs. She said the DOC works closely with the communities and businesses.

Chairman Patrick commented this was a way to raise revenues.

Vice Chairman Martin asked why the Idaho lodging tax has increased significantly since 2010. **Director Ronk** commented that tourism is a leading business in the State due to the recreational activities available in Idaho. This is an indication that people are willing to spend money in an improved economy.

Senator Schmidt said he appreciated the report on the TRI. He referred to tables of companies and estimated wages, stating there was a requirement that wages be a certain percentage; he wanted those figures included in the table as a baseline. **Director Ronk** confirmed that all wages have to be

above the average county wage. The DOC verifies on an annual basis that the jobs have been created and the wages are at the level committed to by the company.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to hear the rules.

DOCKET NO. 28-0201-1501 **Idaho Community Development Block Grant (ICDBG) Program . Director Ronk** indicated there were no changes to this pending rule and it is being adopted as originally proposed. There is no anticipated fiscal impact. Negotiated rulemaking was not conducted because the ability to communicate proposed rule changes and come to a consensus with 237 Idaho cities and counties is not feasible. However, some of the rule changes are based on city and county feedback from a September 2014 survey regarding the ICDBG program. The survey and public hearings were held in order to develop the ICDBG program's Five-Year Consolidated Plan. This plan is the guiding document of the ICDBG goals and method of funding distribution. **Director Ronk** went over the changes indicating they were minor and there was some cleanup language and deletion of duplicative words.

Senator Schmidt commented on the section entitled "Aid in Prevention/Elimination of Slums and Blight" and wanted to know the general intent.

TESTIMONY: **Dennis Porter**, DOC, said that the idea was to create more flexibility. The DOC wanted to address buildings and vacant properties that impair the sound growth of a community, constitutes an economic liability or a social liability to the community, or contains conditions which are a menace to public health, safety or welfare.

MOTION: **Senator Schmidt** moved to approve **Docket No. 28-0201-1501**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-2101-1501 **Bureau of Occupational Licenses (BOL) - Rules of the Idaho State Contractors Board (ISCB)**. **Rob Pilott**, Chairman, ISCB, said there are no changes to the pending fee rule and it is being adopted as originally proposed. The expenses have been exceeding its revenues. This change will help balance the annual budget while maintaining the services necessary to protect the public. Rule 175 is being amended to increase the application fee from \$30 to \$35; the reciprocal fee from \$25 to \$35; the renewal fee from \$25 to \$35; and the reinstatement fee from \$25 to \$35. The proposed rule will have no impact on general funds. The rule change will result in an annual increase of approximately \$156,020 in the ISCB's dedicated fund, based on the current number of licensees and an estimate of original applications received in a year. Negotiated rulemaking was not conducted because the ISCB operates on dedicated funds and negotiating the fees was not feasible. The proposed rule is needed because the ISCB's expenses have been exceeding revenues. The change was discussed during noticed, open meetings.

Senator Schmidt wanted to know when the fees were last raised. **Chairman Pilott** indicated this was the first time the rates have been raised.

TESTIMONY: **Tyler Mallard**, Lobbyist, testified in support of the fee increase. He thanked the Committee for their support.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 24-2101-1501**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0801-1501**

Bureau of Occupational Licenses - Rules of the State Board of Morticians (Board). **Roger Hales**, Attorney, Idaho Bureau of Occupational Licenses (IBOL), reported there are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact to the General Fund. Negotiated rulemaking was not conducted because the proposed revisions are simple in nature. The changes were discussed in a noticed, open meeting of the Board. This rule is being amended to allow for the termination of an application upon written notice when there has been no activity for 12 months. The rule amendment will also require a walk-through inspection for establishments to be arranged and completed within six months of the Board's review of the application.

Vice Chairman Martin referred to the lack of activity noted in 200.01 and asked if an applicant failed to respond to a Board request or an application has lacked activity for 12 consecutive months, is there a provision to contact the applicant or would it be obvious they were not interested? **Mr. Hales** responded that most applicants are very interested in moving forward; however, if there was a lapse of 12 consecutive months, the applicant could ask for an extension.

MOTION:

Senator Guthrie moved to adopt **Docket No. 24-0801-1501**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-1801-1501**

Bureau of Occupational Licenses - Rules of the Real Estate Appraiser Board. **Mr. Hales** indicated there were no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact. Negotiated rulemaking was not conducted because the changes to the rules are simple in nature and were discussed during noticed, open meetings of the Board. He said the rule was self-supporting and self-governing. The rule deletes certain standards incorporated by reference that relate to personal property tax. He noted the rulemaking was in response to an Idaho Certified Appraiser's concern that certain parts of the rules are ambiguous and in conflict. The rule is being amended to eliminate the uniform standards of professional appraisal practice that do not apply to real estate appraisals. The definitions are being amended to eliminate the definition of Specialized Appraisal Services which is not otherwise used in the rules. **Mr. Hales** said this rule is an effort to reduce regulation and will not affect appraisers or any other profession.

MOTION:

Senator Thayne moved to approve **Docket No. 24-1801-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
14-0101-1501**

Board of Registration for Professional Geologists (BRPG). **Mr. Hales** disclosed there are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact. Negotiated rulemaking was not conducted because the rules are being amended to comply with H 81, which passed in the 2015 Legislative Session. The rules were discussed in an open, noticed meeting of the BRPG. He noted the changes will allow applicants to take one of the required examinations while still in college. The rule also clarifies the examination, re-examination and examination scores.

MOTION:

Senator Schmidt moved to adopt **Docket No. 14-0101-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
14-0101-1502**

Board of Registration for Professional Geologists (Board). **Mitch Toryanski**, Attorney, Bureau of Occupational Licenses (BOL), remarked there are no changes to the pending fee rule and it is being adopted as originally proposed. The Board operates solely on dedicated funds derived primarily from licensing and registration fees. This rule will increase the reinstatement fee from \$25 to \$35. The number of annual renewal fees collected will be capped at just one rather than one for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. There will be no fiscal impact to the State General Fund since licensing and registration fees collected are dedicated funds. Negotiated rulemaking was not conducted because the Board discussed and decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

Mr. Toryanski said that during the 2015 Regular Legislative Session, the Legislature passed H 117, which amended Idaho Code § 67-2614, the IBOL section of renewal or reinstatement of licenses or registrations. H 117 simplified and standardized the license renewal process for licensing boards served by the BOL. Although boards have the option of maintaining their individual licensing requirements, this IBOL Board has decided to amend its rules to align them with the BOL's statute. Other boards are already in synch with the BOL's statute. The changes contained in this rule were discussed and decided upon by the IBOL board at a properly noticed open Board meeting.

MOTION:

Senator Schmidt moved to adopt **Docket No. 14-0101-1502**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL:

Vice Chairman Martin passed the gavel back to Chairman Patrick.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:48 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 04, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of January 28, 2016	Senator Heider
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Janice Fulkerson, Idaho Health Insurance Exchange Board	Janice Fulkerson
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Senator Todd Lakey, to the State Insurance Fund Board	Senator Todd Lakey
<u>S 1219</u>	Public Works Contracts	Wayne Hammon, Chief Executive Officer, Idaho Associated General Contractors
<u>RS24121</u>	Idaho Pharmacy Act	Senator Jim Guthrie, Representative Jeff Thompson
<u>RS24219</u>	Relating to Insurance Premium Tax Funding for the Idaho Individual High Risk Reinsurance Pool	Hyatt Erstad, Chairman, Board, High Risk Insurance Pool
<u>S 1221</u>	Insurance Producer Licensing	Dean Cameron, Director, Department of Insurance
DOCKET NO: <u>59-0201-1501</u>	Public Employee Retirement System (PERSI) - Rules for the Judges' Retirement Fund	Don Drum, Director, PERSI

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 04, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of January 28, 2016. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE The appointment of Janice Fulkerson of Meridian, Idaho, to the Your Health Idaho (YHI) Insurance Exchange Board (Board), to serve a term commencing August 27, 2015, and expiring April 10, 2017.

Janice Fulkerson briefly described her background. She said it was an honor to be given the opportunity to serve on the YHI Board. She said she has worked in the health care industry for the past 20 years and continues today as she works with payers and providers across Idaho. She remarked that keeping the individual in the forefront has been very important to her. Her focus has been on the individual seeking services in the health care system. She commented that as health care continues to become increasingly complex, ensuring consumer representation is also increasingly important.

In 2009, **Ms. Fulkerson** began serving on the State of Idaho's Individual High Risk Reinsurance Pool Board as the consumer representative. She emphasized that the position and her work experience align very well with the YHI Board position. Currently she is serving on the Marketplace Committee for YHI.

Vice Chairman Martin asked her what she thought her greatest accomplishments were as a YHI Board member. **Ms. Fulkerson** remarked that after attending two meetings she was up-to-date about current issues.

Senator Schmidt asked Ms. Fulkerson what category she filled on the YHI Board? **Ms. Fulkerson** said she was filling the Consumer Representative role.

MOTION: **Senator Ward-Engelking** moved to send the Gubernatorial appointment of Janice Fulkerson as a member of the YHI Insurance Exchange Board, to the floor with the recommendation that she be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the appointment on the floor.

**GUBERNATORIAL
APPOINTMENT &
VOTE**

The appointment of Senator Todd Lakey of Nampa, Idaho, to the State Insurance Fund Board, to serve a term commencing April 13, 2015, and expiring December 1, 2016.

Senator Lakey briefly described his background. **Senator Lakey** said he is a new appointee to the State Insurance Fund Board and the Senate representative. He mentioned he holds a Bachelor of Science degree in International Business with a minor in Spanish from Brigham Young University, Provo, Utah. He received his law degree from Lewis and Clark Northwestern. He was a Canyon County Commissioner from 1994 to 2000, serving two terms. He is now in private law practice.

MOTION:

Senator Martin moved to send the Gubernatorial appointment of Senator Todd Lakey as a member of the State Insurance Fund Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the appointment on the floor.

S 1219

Public Works Contracts. **Wayne Hammon**, Chief Executive Officer, Idaho Associated General Contractors (AGC), remarked this legislation adds guidelines to the construction managers and general contractors (CM/GC) law approved by the Legislature during the 2014 session. This proposed legislation will amend Idaho Code § 54-4511 to provide for compensation of construction managers and general contractors; to provide that certain costs may be incorporated into a contract; to provide that certain bids shall be handled in a particular manner; to clarify how construction managers and general contractors may bid; so certain terms shall be included in certain contracts; and to remove a provision relating to compensation. Since the law was enacted, AGC has identified areas where additional clarification may be needed. This bill accomplishes the following: 1. mandates the solicitation of bids from multiple contractors; 2. limits CM/GC self-performance; 3. requires written agreements for all fees and compensation; 4. makes all bids public record; 5. clarifies that the bidding can be done in phases. There is no fiscal impact.

Mr. Hammon gave a brief history of the AGC. He stated the newest form of public works contracting is through CM/GC bidding. Although new to public works, this is a standard form of contracting used all across Idaho and the rest of the nation to tackle large, complex projects. The AGC closely monitored how the CM/GC bidding process was used across the entire State. Should issues arise, the AGC would address those issues.

Mr. Hammon reported that in the 19 months that the CM/CG bidding has been available to public entities in Idaho, there have been approximately 20 or 25 projects contracted using this method. This represents approximately 10 percent of the total number of public works contracts awarded during this time period. Even though the AGC is not aware of any problems with any of the projects, 19 months of experience has brought a few areas of concern that should be addressed. This bill is an attempt to be proactive about the few areas of concern.

Mr. Hammon explained there were five significant changes to the current statute. First, he said that although the current law already requires all work to be competitively bid, it does not define what competitively bid means. This bill makes it clear that the CM/GC must solicit at least three bids. Second, while most of the 20 CM/GC contracts written over the past 19 months have included a limitation on the amount of work the CM/GC can self-perform, the current law

is vague on this issue. This bill clears up the issue and incorporates current practice into the statute. Third, many assumed that all parts of the agreement between the public entity and contractor would be in writing, but others have pointed out concerns with how the CM/GC is compensated. This bill spells out the requirement for all such agreements to be part of the written contract. Fourth, the bill clarifies that bids are public records. Fifth, the bill clarifies that bidding can be done in phases when it is more advantageous for the public entity to do so.

In conclusion, **Mr. Hammon** stated the CM/GC statute is working and these changes add clarification and guidelines in places where the law is vague without harming the overall process. He mentioned there were representatives of public entities and contractors who have used the CM/GC bidding process during the last 19 months.

TESTIMONY:

Rob Bousfield, City Engineer, City of Boise, testified in support of this bill. He said the City of Boise is using this method of bidding. He said there are other projects in the design phase using this contract method. He believes this process is valuable for more complex projects.

Senator Schmidt questioned line 24 (8), page 2, "when bidding for all phases of the project has been completed, a guaranteed maximum price for the entire project may be negotiated by the public entity" and wanted to know if that was after the bid had been awarded. **Mr. Hammon** answered that the final price is negotiated.

Senator Lakey remarked he appreciated the public entities and the agency being involved. He praised the AGC for being committed to making a couple of changes if there were questions.

MOTION:

Senator Lakey moved to send **S 1219** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

RS 24121

Idaho Pharmacy Act. **Senator Jim Guthrie** reported this act amends the Idaho Pharmacy Act with additional requirements before a vendor is issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy; the act also adds the definition of DME supplier and adds the requirement that the facility must be accredited in the State or within 150 miles of the Idaho border. It also adds that the supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact.

Senator Guthrie said this legislation will put the DME under the Board of Pharmacy. He briefly highlighted the changes.

MOTION:

Senator Martin moved to print **RS 24121**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

Relating to Insurance Premium Tax Funding for the Idaho Individual High Risk Reinsurance Pool (IIHRRP). **Hyatt Erstad**, IIHRRP Board Chairman, reported this bill corrects an inadvertent error in S 1014, which eliminated a long-time funding source to the IIHRRP established in Idaho Code § 55, Title 41. Since 2000, Idaho Code § 41-406(d) has provided that one fourth of the insurance premium tax, to the extent it exceeded \$45 million, was appropriated to the IIHRRP. Section 2 of the bill eliminated the funding, effective October 1, 2015, despite the fact that the bill's focus, as reflected in its title and statement of purpose, was on three unrelated health and welfare programs: Children's Health Insurance Program (CHIP) Plan B, Children's Access Card and the Small Business Health Insurance Pilot Program. The high-risk pool funding mechanism was not mentioned in the title or the statement of purpose.

This bill reinstates the high-risk pool's historical funding source and formula as it was before S 1014 passed. This bill has a retroactive effective date of October 1, 2015, correcting the error as if it had not occurred.

There is no fiscal impact to the General Fund. However, a technical fiscal note would also explain that, absent an amendment, S 1014 will result in a loss of revenue to the high-risk pool in the amount of \$5.7 million and a corresponding gain in revenue to the General Fund in the amount of \$5.7 million. A further technical interpretation of the fiscal impact to this bill's correction could show that, without the allocation of the \$5.7 million to the high risk pool, health care costs would be shifted to Medicaid, the Medically Indigent Fund, the property tax payers and ultimately to the consumer. Since inception, the IIHRRP has paid out \$100 million in claims and has served 10,656 Idahoans with severe, high-risk health conditions.

MOTION:

Senator Guthrie moved to print **RS 24219**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

S 1221

Insurance Producer Licensing. **Dean Cameron**, Director, Department of Insurance (DOI), indicated the proposed legislation accomplishes three things relating to producer/agent/surplus lines and broker licensing in Idaho: 1. Idaho Code § 41-1016(2) currently provides summary order authority to suspend or revoke the Idaho nonresident license where the resident license has been suspended or revoked in the licensee's home state. The proposed legislation amends Idaho Code § 41-1016(2), adding additional circumstances of terminating a nonresident Idaho license where the resident license in another state has been voluntarily surrendered or lapsed. This amendment streamlines the process for terminating the license of a nonresident producer who no longer meets a prerequisite for holding such license. 2. Amends Idaho Code § 41-1026(3) to provide that a former licensee whose license has been revoked may not reapply for a license until not less than one year and up to five years have passed rather than the current one-year waiting period. 3. Amends Idaho Code § 41-1026 to provide a new subsection 4 whereby a person whose application for a producer license has been denied must wait one year before reapplying. Currently, there is no specific time period in which a person must wait before reapplying for a producer license. Individuals who reapply quickly following a denial or revocation waste their time and that of the DOI in processing and denying the application.

There is no fiscal impact.

Director Cameron highlighted examples where five-year revocations would be appropriate. Some of those examples included issuing multiple fake policies, racketeering and money laundering, guilty plea to felony securities

fraud, falsification of liability insurance and filing fraudulent claims.

A lengthy discussion occurred between **Senator Rice** and **Director Cameron** regarding conflicting language in the bill relating to suspension of a license for 12 months and revocation of a license for five years. **Director Cameron** explained the DOI was suggesting a one- to five-year suspension for more egregious issues. Many states allow the Director to have broader discretion of more than a five-year period. Some states require that if a licensee has more than one violation, they are prohibited from ever holding a license.

TESTIMONY:

Lisa Tordjman, DOI, Producer Licensing, said many states have up to five years for revocation. Some are more serious violations or egregious. Some will allow for rehabilitation. The DOI wants to create a longer period of time for revocation.

Senator Rice remarked he was looking at Idaho Code, Title 41, and it seemed to him that Idaho Code § 1016 is revoking someone's license and Idaho Code § 1026 is the procedure to get a license reinstated. He asked Director Cameron if he would be more comfortable if this RS was sent to the amending order so it did not appear to have a conflict. **Director Cameron** agreed this legislation was not as clear as it needed to be and added the DOI would check with the Attorney General's office to find out if there was a conflict.

Senator Lakey asked if there was some flexibility in the one- to five-year suspension period or was that a set time. **Director Cameron** remarked that if the order declares a license is revoked for four years, then that stands. **Ms. Tordjman** commented the DOI would determine how many years the license would be revoked, based on an evaluation of the violation.

Senator Lakey asked Director Cameron how the existing language has been applied. He referred to the bill, line 22, page 3, and commented that after a license has been revoked, there is a presumption to bar the issuance of a new license. He said the punishment could be longer than the revocation. **Director Cameron** declared the person has to show they have been rehabilitated; they do not get their license back automatically. **Senator Lakey** wanted to know if there was an administrative review when someone reapplies for reinstatement and what happens if the DOI disagrees. **Director Cameron** stated that after a year, the licensee can approach the DOI. There are forms they have to complete and documents they have to provide. The DOI reviews the case and if deemed adequate, the licensee would be reinstated. However, they could be denied. The individual has the right to appeal or ask for a hearing. If the appeal fails, the individual has the right to appeal to Director Cameron. If there is still disagreement, the case can again be appealed.

Senator Schmidt referred to page 3 of the bill, Idaho Code § 41-1026(4), "the director shall not issue a license under Title 41, Idaho Code, to any person whose application for a license was previously denied until after the expiration of one year from the date of such license denial" and wanted to know what would happen if the director accidentally issued the license; was that in violation of the law? He thought this part could be changed. **Director Cameron** replied that Idaho Code says that all of the powers and responsibilities rest on the director, and the director issues or denies licenses. He said the bureau chief or supervisor signs for him. He remarked the licensing system is very comprehensive. He was not concerned since he thought the DOI would catch those types of things.

Senator Guthrie remarked that suspension and revocation are separate and

complete sanctions. When there is a violation, there is no requirement to necessarily revoke a license. However, on page 3 there is language referring to revoking or refusing a license; he said he was not so sure it is not as risky. Suspension is one year and revocation can be between one and five years.

Senator Rice asked if there was a list of violations that someone has engaged in prior to seeking a license, would that disqualify him or her from getting a license? For example, if someone has engaged in racketeering or money laundering, would that be a five-year revocation with a mandatory clause that the revocation could not be any longer than is deemed appropriate for the maximum suspension or would there have to be a requirement that the applicant prove rehabilitation? **Director Cameron** remarked the revocation would be from one to five years. The licensee would not automatically be reinstated. They would have to prove rehabilitation. To his knowledge, there was no list of offenders. He did say that in federal code if a licensee has committed a felony, there would be a special detailed application that would have to be used. On the regular application there is a question about ever being convicted of a felony or a misdemeanor. **Director Cameron** reported there were only four or six of those this year.

Senator Rice referred to Senator Schmidt's remarks and said it seemed to him that a revocation could not go beyond five years, even if the license had been revoked for serious moral turpitude. He said he did not see anything about rehabilitation or revoking a license beyond five years. **Director Cameron** said that was correct. He said there was another section of code that did not require the Director to issue a license to anybody within any period of time. If the DOI did not feel the applicant or licensee was of appropriate character, either at the initial application or after they have lost their license and want to reapply, the DOI has strong legal footing to continue to deny someone a license. He remarked he would be happy to clarify the language. This bill is limiting the issuance of a revocation longer than five years, but it does not mean the person would automatically get their license back after five years.

TESTIMONY:

Colby Cameron, Lobbyist, representing the Idaho Association of Health Underwriters, spoke in support of this bill.

Director Cameron thanked the Committee for asking questions and said he would do what the Committee desired.

MOTION:

Senator Rice moved to hold **S 1221** at the call of the Chair. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL:

Chairman Patrick passed the gavel to Vice Chairman Martin to hear the rules.

**DOCKET NO.
59-0201-1501**

Public Employee Retirement System of Idaho (PERSI) - Rules for the Judges' Retirement Fund. **Don Drum**, Executive Director, PERSI, said these rules apply to the Judges' Retirement Fund (JRF). The changes are proposed in anticipation of seeking for the JRF a determination letter of qualified status from the Internal Revenue Service (IRS). The changes are also designed to amend the rules in certain areas so that the language tracks the language in the rules for the PERSI Base Plan. That tracking will make for easier and more consistent administration and may also lessen the need for future revisions.

There are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact. Negotiated rulemaking was not conducted because it is not feasible as it would be inconsistent with the PERSI Board's exclusive fiduciary responsibility for plan operations and because several of the changes are required by federal law for qualified plan status.

Director Drum gave a brief background and history of the JRF. Basically, being enrolled in a qualified plan is what allows members to not pay taxes on contributions and gains on their money in the JRF. **Director Drum** defined the exclusive benefit rule that states clearly that the PERSI Board holds the moneys in the JRF for the exclusive benefit of the members and beneficiaries. He pointed out the plan is subject to federal laws affecting persons who serve in the military and is designed to ensure members are not negatively impacted in their retirement benefits by serving in the armed forces. Some rule changes were made to bring the rules into compliance with the management of the PERSI plan. These changes were made in consultation with PERSI's federal tax counsel. He said he appreciated the help he received from Judge Woods and the courts.

MOTION:

Senator Schmidt moved to approve **Docket No. 59-0201-1501**. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL:

Vice Chairman Martin passed the gavel back to Chairman Patrick.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:38 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 09, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of January 26, 2016	Senator Rice
PRESENTATION:	Hispanic Chamber of Commerce	Brent Olmstead, Lobbyist; Chairman Ivan Castillo, Hispanic Chamber of Commerce
<u>RS24002</u>	Issue Dockets that Prescribe Minimum Requirements for Plans and Records of Survey	Keith Simila, Executive Director, Board of Professional Engineers and Land Surveyors
<u>RS24016</u>	Issue of License to Engineering Faculty	Keith Simila
<u>RS24018</u>	Definition of Retired Relating to Professional Engineers and Land Surveyors	Keith Simila
<u>RS24017C1</u>	Civil Penalty - Clarification of Unlicensed Practices - Engineers and Surveyors	Michael Kane, Attorney, Board of Professional Engineers and Land Surveyors
<u>RS24231</u>	Workforce Development Training Fund	Ken Edmunds, Director, Department of Labor
PRESENTATION:	Idaho Industry Employment Projections	Ken Edmunds

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 09, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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: **Vice Chairman Martin** called the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Rice** moved to approve the Minutes of January 26, 2016. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Idaho Hispanic Chamber of Commerce (IHCC).** **Brent Olmstead**, Lobbyist, introduced the IHCC members and he gave a brief summary of the history of the IHCC and how it has evolved into the organization that it is today. He talked about the growth in Hispanic-owned businesses in the U.S. ranging from health care to construction. He pointed out that from 2012 to 2015 those businesses grew by 7.5 percent. In Idaho there are 7,188 Hispanic-owned businesses with \$1,084,537,000 in sales. One-third are female-owned businesses. There has been a 26 percent increase in Hispanic-owned businesses in Idaho. He said the IHCC supports an innovative and diverse educational system that will provide opportunities for all students to attain the knowledge that is necessary to become successful and productive citizens. These educational opportunities include adequate funding for public schools, better access to public charter schools and magnet programs and support for Science, Technology, Engineering and Math (STEM) programs in Idaho.

Mr. Olmstead reported the IHCC supports community colleges, technical and trade programs and adequate higher education funding by the State. The IHCC is in favor of an equitable and efficient tax policy that allows businesses the opportunity to function successfully while still providing the services that are needed. The IHCC acknowledges that tax policy in Idaho should be reviewed on a continuous basis to assure that the needs of the public are being met; at the same time it is important that citizens are not being subjected to an unnecessarily high tax burden. The IHCC supports quality, affordable health care that includes competition in the marketplace. The IHCC is in favor of reasonable ways to increase the availability of health care coverage and to reduce costs for both employers and employees, while avoiding programs that are overly complex and promote litigation. In addition, the IHCC also supports immigration reform to improve and promote job creation, economic growth and entrepreneurship. **Mr. Olmstead** stated the IHCC will work towards monitoring and fostering actions that maintain an efficient system that provides adequate statewide opportunities and benefits for individual citizens, agriculture and business.

Mr. Olmstead introduced Ivan Castillo, President of the IHCC.

Mr. Castillo said the mission of the IHCC is to promote, develop and assist Hispanic-owned businesses. He said the purpose is to foster an appreciation of the importance of Hispanic businesses and their concerns. The IHCC is working to promote Hispanic business development through economic programs designed to strengthen and expand the income potential of all businesses in Idaho. He mentioned some of the programs that are being sponsored and supported by the IHCC, including scholarships, micro-loans and IHCC events. **Mr. Castillo** remarked micro-loans promote and foster new and developing Hispanic-owned businesses by providing them with financial and educational resources to help them grow and succeed. He acknowledged the IHCC lends money for equipment, inventory, cash flow, bills, relocation and advertising.

PASSED GAVEL: Vice Chairman Martin passed the gavel to Chairman Patrick to continue the meeting.

DISCUSSION: **Chairman Patrick** stated micro-loans were providing an opportunity for businesses to do well. He and **Mr. Castillo** had a conversation about the source of funds, requirements and the interest rate charged for loans.

Senator Lakey asked how broad an area the IHCC covers. **Mr. Castillo** said the strategy for 2016 was to open a satellite office in Twin Falls.

Vice Chairman Martin and **Mr. Castillo** talked about the future of the IHCC and the idea of the IHCC being the source of training and development for small businesses.

Senator Schmidt and **Mr. Castillo** had a conversation about the future plans the IHCC had in order to integrate with other Chambers of Commerce.

Senator Thayne commented that there were at least three members of the Committee who speak Spanish. The IHCC was welcome to come visit with Legislators. **Mr. Castillo** remarked the IHCC was proud of what they have accomplished and he looked forward to receiving feedback.

RS 24002

Issue Dockets that Prescribe Minimum Requirements for Plans and Records of Survey. **Keith Simila**, Executive Director, Idaho Professional Engineers and Land Surveyors (IPELS Board), said the objective of the bill is to enable the IPELS Board to write rules to address changing technology.

The IPELS Board is currently working with the Idaho Association of Counties (IAC) and other stakeholders to evaluate the use of electronic filing of plats and records of survey. The use of this technology is not available to county clerks and recorders, but there is a desire by some counties and the IPELS Board to make this option available. For those counties who choose to adopt electronic filing and recording, rules are needed to address the technology and processes used. Since technology is continuously changing, the use of rule changes in lieu of statute changes is desired. The IPELS Board cannot anticipate all the technological changes that may come in the future, which is why the rulemaking language is general and not specific to one issue. Future rulemaking will be negotiated, and consensus will be pursued from the IAC and IPELS Board.

Senator Schmidt wanted to know if this statute was not printed, would the IPELS Board still have authority to write rules? **Mr. Simila** replied the IPELS Board would still have the ability to write rules, but the language addresses rules for plats and records of survey. This has never been in statute. This change would make electronic filing more enforceable.

MOTION: **Senator Schmidt** moved to print **RS 24002**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 24016 **Issue of License to Engineering Faculty.** **Keith Simila** said the objective of the bill is to authorize the IPELS Board to provide an alternative pathway to licensure without a written technical examination for Ph.D. faculty who teach upper division engineering courses at Idaho universities. The amendment also clarifies the requirements of professional examinations and the conditions concerning reexamination for those failing on prior attempts. Fees for reexamination are removed.

Faculty who teach upper-division engineering courses are required by law to be licensed professional engineers. At some universities, faculty may receive specialized education relating to technical fields for which no technical examinations are available. An example is materials engineering. There is no technical examination, yet some engineering faculty obtained a Ph.D. in this specialty area. The IPELS Board and the Deans of Engineering (Deans) desire to find a way to better address this concern and propose that a contingent license be available for this purpose. The contingent license process will allow a waiver of the technical examination, in lieu of other requirements such as a written examination on laws, rules and professional responsibility. The license would be contingent on certain requirements, such as remaining employed by the university. The exact process and requirements are proposed to be negotiated by rule with prospective stakeholders. The IPELS Board and the Deans believe this alternative pathway will assist in recruiting and retaining quality engineering faculty and provide a reasonable means for Ph.D. faculty in specialized technical engineering fields to obtain licensure without the requirement for technical testing.

MOTION: **Vice Chairman Martin** moved to print **RS 24016**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 24018 **Definition of "Retired" Relating to Idaho Professional Engineers and Land Surveyors Board** (IPELS). **Keith Simila** remarked the objective of the bill is to add a definition for a retired licensee. The purpose is to ensure licensees clearly understand that retiring a license means that they can no longer practice. While it may seem self-explanatory, not all licensees clearly understand. Since the IPELS Board now allows licensees to retire their license regardless of age, the IPELS Board has seen an increase in the number of retired licensees over the years. The temptation is to practice without reinstating to active status which puts the IPELS Board in a position to address the issue as a disciplinary action. The definition in statute gives the IPELS Board clarity that will avoid unnecessary violations.

Chairman Patrick wanted to know if a licensee retired and did not renew their license, would that be a violation? **Mr. Simila** indicated that if a licensee retired, did not renew their license, and still practiced, that would be a violation. He remarked there are benefits of retiring a license as there are no late fees if a licensee wanted to renew their license. However, the licensee would have to make up their professional hours requirement when they renewed. Many retired licensees are choosing this path. **Senator Lakey** inquired about the new definition for "retired professional engineers" and wanted to know if the definition was used somewhere else. **Mr. Simila** explained the definition is used in promulgated rules of procedure, but the term has never been defined.

MOTION: **Senator Ward-Engelking** moved to print **RS 24018**. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

Civil Penalty - Clarification of Unlicensed Practices - Engineers and Surveyors. **Michael Kane**, Attorney, IPELS Board, reported that engineers and land surveyors licensed in other states and unlicensed individuals sometimes attempt to practice in Idaho without first obtaining a license. The IPELS Board's first action upon learning of these violations is to issue a "cease and desist" letter informing the individuals they are in violation and must obtain a license to legally practice in Idaho. Most of the time, the cease and desist action is effective and the individuals will pursue obtaining a license or will cease to practice. There are occasions where the cease and desist letters are disregarded. In these cases, the only option the IPELS Board has is to pursue a criminal complaint through the Attorney General to enforce a misdemeanor charge, injunction and fine. The amendment will give the IPELS Board a better option than pursuing a criminal complaint by allowing a civil penalty. This is a less severe and less costly means of enforcing unlicensed practice and is expected to attain the same result. The amendment also clarifies what constitutes a violation of unlicensed practice by using the same language already described in Idaho Code § 54-1202. This change will remove ambiguity and ensure the enforceability of the law. The amendment clarifies that unlicensed practice of engineering or land surveying is a violation of the law. It adds a civil penalty of up to \$1,500 as another enforcement provision for a judge to consider, which is a lesser penalty than a criminal misdemeanor. There is no fiscal impact to the General Fund or the dedicated fund.

Vice Chairman Martin and **Mr. Kane** had a conversation about the term "professional" and the steps an engineer or a land surveyor has to go through to become a licensed professional. **Mr. Kane** remarked all engineers and land surveyors must be licensed in the State of Idaho.

Senator Schmidt and **Mr. Kane** discussed when a business hires someone who is retired and not licensed and why that individual would not be in violation of this section of the law. **Mr. Kane** stated sole-proprietorship companies are allowed to hire workers who do not necessarily have to become licensed. These companies fall under the industrial exemption. Theoretically, a retired person could be hired to do work for a company, would not have to worry about being licensed and would not be in violation of the law.

MOTION: **Vice Chairman Martin** moved to print **RS 24017C1**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Idaho Industry Employment Projections.** **Ken Edmunds**, Director, Department of Labor (DOL), asked that he do his presentation first and then hear **RS 24231** since the presentation leads into discussion of the legislation. He reviewed the State's economy from the perspective of the DOL. He commented that Idaho was the national leader in employment base and job growth. The cost of living in Idaho is 8 percent lower than the national average. He remarked the unemployment rate in Idaho is 4 percent. He went over the projected job growth over the next ten years explaining there is a gap of approximately 63,000 positions that go unfilled.

Director Edmunds gave an overview of the DOL, explaining the DOL is a federally funded agency. State unemployment cuts into reserves. General appropriations are less than .05 percent within the State. He remarked the Unemployment Insurance Fund was much more focused on workforce development. The DOL has received some grants, which helps. Unemployment insurance peaked at 3.3 percent and the rate is currently at 1.488 percent, which has saved more than \$160 million in taxes for employers. In the past, the DOL had to borrow money from the federal government as a backup fund. This year

the DOL will have \$700 million in reserves.

Director Edmunds said the proposed legislative changes to the State's unemployment insurance laws for 2016 are:

- Index Benefit Duration to the Unemployment Rate
- Correcting the Maximum Weekly Benefit Amount (fixing the ratio of benefits paid to income earned at 55 percent)
- Two housekeeping bills (H 396 and H 397)

Future considerations facing the workforce are the skills gap with a workforce shortage.

Director Edmunds talked about Idaho's Workforce Development Training Fund and the three-pronged approach being used by the DOL. The first one, employer grants, includes training reimbursement for new and expanding businesses. There is emphasis on transferable skills and structured training programs with an educational partner. Second, the industry sector grant involves education institutions partnering with three or more industry partners. Industry partners are involved in curriculum development and provide a cash match. Third, rural micro-grants involve a community-based partnership with business, education and others. There is a \$25,000 maximum award.

Director Edmunds showed a video that highlighted the successes of various businesses, schools and colleges who were the recipients of the Workforce Development Training Fund (WDTF) grants.

Director Edmunds said the proposed legislative changes to Idaho's WDTF were to expand the fund's use to include innovative training solutions; add retraining as an allowable activity; coordinate training fund activities with employers and Idaho Professional-Technical Education; eliminate unencumbered balance transfer requirements; transfer funds in excess of \$6 million to the employment security fund; and extend the program sunset clause to 2022. He asked that the cap be removed.

RS 24231

Workforce Development Training Fund . Ken Edmunds remarked this legislation amends the WDTF provision of the Employment Security Law by eliminating the transfer of training funds to the employment security reserve fund, broadening the purposes for which WDTF may be used and extending the sunset clause for the training tax on covered employers to the year 2022. There is no fiscal impact to the General Fund or to local government funds. If enacted, this legislation would continue to generate \$5.5 million in revenue per year with no impact on the Employment Security Fund's solvency. **Director Edmunds** stated the DOL wanted to be more creative and innovative with the funds to achieve better results.

Senator Schmidt and **Director Edmunds** had a conversation about the current \$6 million fund balance, removing the cap and examining the machinations of how all of that works with the reserve fund. They also discussed the timing of cash flow to address programs. **Senator Lakey** and **Director Edmunds** talked about the use of the reserve funds for WDTF and the security reserve fund. **Senator Lakey** wanted to know why the DOL wanted the cap removed. **Director Edmunds** explained the DOL needs to accumulate funds in order to give larger industry sector grants. The DOL needs to keep a certain balance available at any time for employer reimbursement. The DOL would like to have more flexibility in accumulating the money. Currently, the DOL is being forced into the situation where the largest maximum industry sector grant is \$250,000.

The DOL has several requests for \$500,000 to \$700,000 but is struggling to have enough cash available to address some of the vital programs in key industries.

Vice Chairman Martin asked for clarification between the WDTF, which is at \$6 million, and the employment security reserve fund. He wanted to know if there was a balance in the employment security reserve fund. **Director Edmunds** referred to his previous slides and said when the DOL has unemployment tax collection, the money (80 percent) is deposited into the federal fund, which has approximately \$500 million; the backup contingency fund (17 percent), which is State money (any money over the \$6 million cap is deposited into this fund for unemployment benefits); and 3 percent is deposited into the WDTF. Any excess in the state fund flows into the federal fund. **Director Edmunds** pointed out the problem is that once the money is deposited into the federal fund, the money cannot be transferred back to the WDTF. The DOL is trying to keep a reserve of one year in unobligated funds and has been trying to balance the cash flow for unobligated needs. The DOL is concerned because an artificial situation is created for cash management. The goal is to create more flexibility so as to not artificially manage the money.

Vice Chairman Martin wanted to know how much the WDTF is expected to grow. **Director Edmunds** said there was approximately \$500,000 to \$600,000 a month coming into the fund.

Senator Guthrie remarked it appeared to be a timing issue. Could the same thing be accomplished by having an average balance over several months and were there any other options? **Director Edmunds** stated the DOL looked at the three options (to remove the cap, to increase the cap to \$9 million or to use the average approach) and removing the cap was the most straightforward.

MOTION:

Senator Thayn moved to print **RS 24231**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

Senator Schmidt said he had a question about the presentation and wanted to know why wages were not going up. **Director Edmunds** said wage growth is always a factor. Growth has been seen at the lower end, and Idaho has moved up ten places nationally, which is expected to continue. The DOL predicts wages will come up on their own. There is a lot of pressure to make entry level high tech jobs in Idaho comparable to surrounding states and national averages.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:54 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 11, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of February 2, 2016	Senator Thayn
<u>S 1264</u>	Pharmacy Medical Act	Senator Jim Guthrie
<u>RS24390</u>	Repairing Damaged Vehicles	Senator Chuck Winder
<u>RS24199</u>	Idaho Trust Institutions Act	Trent Wright, President, Idaho Bankers Association
<u>RS24198</u>	Trust Sale	Trent Wright
<u>RS24395</u>	Life Insurers - Offer Lapse or Termination Protection to Holders of Life Insurance Policies	Senator Heider
<u>RS24443</u>	HOA Attorney's Fees	Senator Lakey
<u>RS24373</u>	Appraisal Management Company Registration and Regulation	Sarah Fuhriman, Real Estate Valuation Advocacy Assn.
<u>RS24169</u>	Workers' Compensation	Gary Strannigan, Vice President Public Affairs, Safeco and Liberty Mutual; Kent Day, Attorney
<u>RS24459</u>	Relating to Insurance Producer Licensing - Bail Bond Agents	Mark Estess, Eiguren & Ellis Public Policy Firm
<u>RS24439C1</u>	Relating to State Employee Health Plans - Health Savings Accounts (HSA's)	Senator Thayn
<u>S 1265</u>	Insurance Premium Tax	Hyatt Erstad, Board Chairman, Department of Insurance

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick

Vice Chairman Martin

Sen Lakey

Sen Guthrie

Sen Heider

Sen Rice

Sen Thayn

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 11, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Thayn** moved to approve the Minutes of February 2, 2016. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1264 **Idaho Pharmacy Act. Senator Jim Guthrie** reported this Legislation amends the Idaho Pharmacy Act with additional requirements before a vendor is issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy; the Legislation also adds the definition of DME supplier and adds the requirement that the facility must be accredited in the State or within 150 miles of the Idaho border. It also adds that the supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact.

Senator Guthrie said this legislation will put the DME under the control of the Board of Pharmacy. He introduced Jesse Taylor, Legislative Representative.

TESTIMONY: **Mr. Taylor** introduced Brent Seward, Vice President of Norco Medical, Incorporated. **Mr. Seward** explained the process for competitive bids regarding basic medical equipment. The bidding process is flawed as there are multiple winners. There is no cost to bid items in Idaho. The median bid is what sets the price. There is no obligation to award the bid. He said there were 325 out-of-state companies that applied for a DME license in Idaho. The purpose of the bill is to control who can receive a license for supplying DME in Idaho. Companies need to be available for the customer and not serve from afar.

Mr. Taylor testified there were a number of changes that cleaned up the current statute and he went over the changes. He said this bill does not affect a person or entity that supplies or provides insulin infusion pumps and related supplies or services; or a person or entity that supplies or provides products that are part of Medicare's National Mail Order Program; a pharmacy located in Idaho that has a current pharmacy accreditation exemption that is accepted and recognized by the national supplier clearinghouse that enables the pharmacy to be enrolled in Medicare to supply DME without having accreditation; a practitioner identified in 42 U.S. Code § 1395u(b) (18) (C) or a physician, if the practitioner or physician is supplying or providing DME to his or her own patients as part of the practitioner's or physician's own services; or a person or entity that supplies or provides devices directly to a practitioner identified in 42 U.S. Code § 1395u(b) (18) (C) or to a physician that require a prescription for dispensing to the patient as part

of his or her own services, whether mailed to the practitioner or physician for fitting or mailed directly to the patient.

Vice Chairman Martin wanted to know if the Idaho Department of Administration (DOA) Purchasing Department (Purchasing Department) was being used for bidding. **Mr. Taylor** said purchasing was separate and was not done through the State.

Senator Schmidt asked if a deposit could be required of the bidders so that if the bid is not fulfilled, the deposit would be forfeited. **John Gallagher**, Vice President, Government Relations, VGM and Associates, remarked this could be done with a surety bond.

Senator Rice remarked that in order to place a bid, a company would have to have a physical facility in Idaho or have a physical facility within 150 miles of the Idaho state border. **Mr. Gallagher** reiterated the Point of Service (POS) should be within 150 miles of the Idaho border. **Senator Rice** said it seemed a business would have to already have been established and it seemed to be a prohibitive restriction to those companies who wanted to get into the business. He wanted to know if anyone sought a legal opinion as to whether this legislation would cause an undue burden on interstate commerce. **Mr. Taylor** said he had spoken with a number of people and the 150-mile radius does not impact commerce laws. **Senator Rice** said he would be more comfortable if there was an analysis of decisional law.

Vice Chairman Martin remarked he is working on an interim committee regarding purchasing. The interim committee wrestled with the concept of companies that are doing bids to upset the system and he said he felt this bill was potentially imposing on the ability of the Purchasing Department to disqualify bidders under certain criteria. He wanted to know if there was a way to disqualify certain bidders through some parameters that would eliminate this problem. **Mr. Taylor** said this application has been done in several other states. The ultimate goal was not to stop any kind of commerce or stop anyone from being able to bid or participate. There should be a financial impact before a company could deliver a bid with lowball prices.

MOTION:

Senator Rice moved that **S 1264** be held at the call of the Chair for further information and discussion. **Vice Chairman Martin** said his intent was to hold this legislation until more information is received. His concern was the legislation may be imposing a restriction on the applicant that is unintentional.

DISCUSSION:

Senator Guthrie and **Mr. Gallagher** had a discussion about what other states are doing; if this was appropriate bidding practice; whether pricing has gone up or down; the relationship to the Centers for Medicare and Medicaid Services (CMS); and how this legislation dovetails at the federal level to move away from "suicide" bidding. ("Suicide" bidding is a response to a tendering exercise in which a potential supplier, anxious to win business, submits a proposal to carry out the work for less than it will cost.) Contracts are awarded to the Medicare suppliers who offer the best price and meet applicable quality and financial standards. Contracted suppliers will be paid the bid amount. The bid price amount is derived from the median of all winning bids for an item.

Mr. Gallagher explained the method of non-binding bidding was enhanced through the Affordable Care Act (ACA), which required 110 Competitive Bidding Areas (CBAs) bid in multi-competitive bid areas. Anyone from anywhere could bid. There were companies that bid with the only intention that if they won the contract they would sell the contract to someone who was local or they could try to do a sub-contract. Unfortunately, the suicide bids were so low, the company

could not sell the contracts. Because the bids were non-binding, when a hospital tried to discharge a patient and the hospital contacted a DME contractor, if the contractor was not awarded the bid, the hospital would have to contact the winner of the contract, which could have been in Texas or Florida. The winner of the contract could not provide the DME and turned the hospital down, since the contract was non-binding. Recently, 17 contracts in Boise were awarded for oxygen and only seven were within a 50-mile radius of the area.

Mr. Gallagher stated the other problem is once Medicare uses a set price, Medicaid and third-party payers follow. That has a triple impact to the local provider. There are only two states, Maryland and Tennessee, that have licensure laws. CMS did not follow the state of Tennessee or Maryland licensure laws. However, CMS was forced by the courts to go back and follow those licensure laws. Some of the contracts were thrown out, but not the lowball bids. Several states, namely Alabama, Colorado, Tennessee and Arizona, all looked at the Commerce Clause (its interpretation by the U.S. Supreme Court has played a key role in either promoting or hindering efforts to achieve landmark legislation affecting the public's health) and that is why the clause says within 150 miles of the state border to provide service to the patient. Alabama uses 40 miles as a POS to the patient to make sure there is not an issue with the Commerce Clause. **Mr. Gallagher** said this legislation is an effort to make sure the local providers and outside bidders are held to the same standards and have the proper licensure. There are seven states that have licensure signed into law and there are 19 others that are in the process.

Senator Rice and **Mr. Gallagher** discussed licensure in other states and possible approaches to bidding that help serve patients. They talked about what this legislation is trying to accomplish in that each state requires licensure, leveling the playing field.

TESTIMONY:

Mr. Seward mentioned the original intent of the competitive bid situation was to bid the 110 stakeholder markets (Medicare providers, government leaders and auction experts). Since then, the pricing has been taken from the 110 largest metropolitan markets in the country and moved to the rural areas of America. **Mr. Seward** remarked the State is in serious trouble and he is representing the small DME companies all over the states of Idaho, Montana and Wyoming. He said he is receiving phone calls on a regular basis from owners, privately-owned companies, that are going to have to sell their business as they are no longer profitable. There is some serious financial damage occurring because of the Claims Security of America (CSA) filing program the federal government has put into place. The purpose is to block the bids of those companies that are not intending to be here. The intention is not to block those businesses who truly want to do business in the State of Idaho. Businesses need to actually service the customers. The way the bid is administered now does not assure that will happen.

Vice Chairman Martin seconded the motion. The motion carried by **voice vote**

RS 24390

Repairing Damaged Vehicles. **Senator Winder** said the purpose of this legislation is to make it an unfair practice for an automobile insurance company not to follow all components of a standardized repair manual when appraising a damaged vehicle. The shops bid and do the repairs based on the repair manual. After approval from the insurance company and when it is time to get paid, the insurance companies try to lower the cost of repairs. The repair companies lose an average of 5 percent per bid. This is a significant loss to the automobile repair companies.

MOTION:

Vice Chairman Martin moved to print **RS 24390.** **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote.**

RS 24199 **Idaho Trust Institutions Act. Trent Wright**, President, Idaho Bankers Association, said the purpose of this legislation is to amend the Idaho Trust Institutions Act to clarify that an individual who does not engage in trust business may serve as a trustee of a trust without obtaining a state trust company charter.

MOTION: **Senator Rice** moved to print **RS 24199**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 24198 **Trust Sale. Mr. Wright** said this legislation relates to personal property left behind following a trustee's sale. Its purpose is to clarify the liability for disposition of personal belongings left at a property. There is no fiscal impact on state or local funds.

MOTION: **Senator Lakey** moved to print **RS 24198**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

RS 24395 **Life Insurers - Offer Lapse or Termination Protection to Holders of Life Insurance Policies. Senator Heider** said the purpose of this legislation is amend Idaho Code Chapter 18, Title 41, to ensure that life insurance companies notify policyholders of lapse or termination of their policy by certified mail within 30 days. **Senator Heider** explained that a notice could be sent to a second individual who would be responsible for an estate.

MOTION: **Senator Martin** moved to print **RS 24395**. **Senator Ward-Engelking** seconded the motion.

A discussion ensued with **Senator Heider** and the Committee about how the insurance company finds out who the other person is, what happens if the notice is not sent, and the idea of giving someone something they did not pay for. **Senator Heider** said that if the notice was not sent, the insurance company was still liable.

The motion carried by **voice vote**.

RS 24443 **Home Owners' Association (HOA) Attorney's Fees. Senator Lakey** said this legislation clarifies the HOAs may only seek attorney's fees and costs from a property owner and place a lien on an individual's property if those reasonable attorney's fees and costs have been awarded by the courts. There is no fiscal impact.

Senator Rice declared for the record that he had a conflict of interest as he has a number of clients who have been fined. He said this is a totally improper practice and a necessary bill.

MOTION: **Senator Thayn** moved to print **RS 24443**. **Senator Heider** seconded the motion. The motion carried by **voice vote**

RS 24373 **Appraisal Management Company (AMCs) Registration and Regulation. Sarah Fuhriman**, Real Estate Valuation Advocacy Association (REVAA), said this legislation is relating to Appraisal Management Companies (AMCs). This legislation creates an oversight system for AMCs that do business in Idaho. **Ms. Fuhriman** gave a brief history of REVAA's and AMCs.

Ms. Fuhriman remarked that in most residential real estate transactions, the lender must have an independent appraisal of the property to ensure an accurate, objective valuation. An AMC is often the entity that provides this independence, contracting with an appraiser to perform the appraisal. Without this legislation in place by December 2018, lenders in federally-related residential real estate transactions, such as the Veteran's Administration, Fannie Mae, Freddie Mac and others, will not be able to use most AMCs. The complexities of federally-regulated transactions will make it challenging to determine which lending transactions may

be completed by AMCs that are not federally regulated. A rough estimate from REVAAs members indicated they collectively facilitated more than 25,000 Idaho mortgage loan originations in 2015 alone. If lenders are not able to use these companies there could be negative implications for Idaho consumers. This could result in disruption and delays to consumers, realtors, appraisers and lenders in residential real estate loan transactions. There is no impact to the General Fund or local government.

Ms. Fuhriman acknowledged that lenders that currently use an AMC will have to spend money and resources to build internal appraisal boards and manage all of the compliance responsibilities to ensure appraisers are engaged independently and are not unduly influenced for each state. This could result in less access to consumer credit. Although this legislation does not require lenders to use AMCs, it does preserve them as an option for federally related transactions.

Ms. Fuhriman reported that in June 2015, a group of federal financial service agencies issued a final rule, pursuant to federal statute, establishing certain minimum standards for AMCs. This rule states that if an AMC oversees a panel of more than 15 state-licensed appraisers, or more than 25 in two or more states, they may not provide appraisal services for a federally related transaction unless they are registered with the state or are subject to federal oversight. Idaho is in a good position to ensure regulation of AMCs is not overly burdensome, since the State has waited for the final rule to establish the minimum standards.

The Real Estate Appraiser Board (REAB) operates solely on dedicated funds received from fees paid by appraisers regulated by the REAB. If this bill passes, an appropriation would be needed to provide spending authority for the fees collected. The REAB estimates that the Bureau of Occupational Licenses (BOL) would need spending authority for one full-time position (FTP) at a cost of \$45,000 and \$20,000 in operating expenditures to administer the provisions of the law, for an estimated total cost of \$65,000. The fees collected from AMCs registered under this law would cover these costs. No General Fund money would be appropriated to cover these costs.

Ms. Fuhriman pointed out the Idaho Bankers Association is strongly supportive of this legislation. Consultation has been done with the Idaho Realtors Association, the BOL, the REAB and appraisers throughout the drafting process and there is no known opposition.

MOTION: **Senator Rice** moved to print **RS 24373**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

RS 24169 **Workers' Compensation**. **Chairman Patrick** announced that **Kent Day**, Attorney, requested **RS 24169** be removed from the agenda earlier in the day.

RS 24459 **Relating to Insurance Producer Licensing - Bail Bond Agents**. **Mark Estess**, Eiguere & Ellis Public Policy Firm, said the proposed legislation allows the Director of the Idaho Department of Insurance (DOI) to penalize a bail agent or suspend or revoke a bail agent's license if the bail agent, his employees, his contractors or his agents acting under his supervision solicit or entice a person incarcerated in a prison, jail, courthouse or other place of detention to refer business to the bail agent. The proposed legislation requires the Director of the DOI to suspend a bail agent's license if the bail agent solicits business in or about a place where prisoners are confined or in or about any court. There is no fiscal impact to the General Fund.

Vice Chairman Martin referred to page 3 of the RS and said he understands "in" but wanted a clarification on the word "about." **Mr. Estess** said the wording

captured the intent. **Senator Rice** remarked he had a serious concern with the legislation. He gave an example of a business located across the street from the jail. **Mr. Estess** agreed that is a problem, but the intent was a physical proximity issue. **Senator Rice** indicated he thought it was a better idea to have a clean bill stating the intent.

MOTION: **Senator Rice** moved to return **RS 24459** to the sponsor. **Vice Chairman Martin** seconded the motion. **Senator Guthrie** remarked if the RS comes back it has to go through a privileged committee. **Chairman Patrick** said the RS can come back to this Committee for a hearing after it has gone to a privileged committee. The motion carried by **voice vote**.

RS 24439C1 **Relating to State Employee Health Plans - Health Savings Accounts (HSAs).** **Senator Thayn** said this legislation requires the State to offer State employees a health benefit plan that utilizes HSAs paired with high-deductible health plans. An HSA is a tax-free financial account that is designed to allow State employees to set aside money for current and future medical expenses. This legislation further requires that the employer cost of the HSA-compatible health plan does not exceed the average per-person employer cost of traditional insurance plans that the State is currently offering.

Senator Thayn stated HSAs, paired with high-deductible health plans, can create a win-win situation for taxpayers and public employees. The plans provide state employees more savings, choice and control over their health care needs and expenses, while offering an opportunity for the State to reduce its health insurance costs for employees. This bill will require a \$65,000 change in the State Controller's computer system. Funding of HSAs must be balanced with reduced costs by offering higher deductible health insurance products.

Vice Chairman Martin wanted to know the position of the Department of Administration (DOA). **Senator Thayn** said he has been working with the DOA for the last couple of years on this issue. **Senator Heider** wanted to know about the \$65,000 it would cost the State Controller's office to modify the computer system. **Senator Thayn** said that in working with the Controller's office, they indicated changes would be required. The \$65,000 is what it would cost to set up individual accounts.

MOTION: **Senator Martin** moved to print **RS 24439C1**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

S 1265 **Insurance Premium Tax.** **Hyatt Erstad**, Board Chairman, Department of Insurance (DOI), said this bill corrects an inadvertent error in S 1014 (2013 Session Laws, Chapter 90) that eliminated a longtime funding source to the Idaho Individual High Risk Reinsurance Pool (IIHRRP) established in Chapter 55, title 41, Idaho Code. Since 2000, Idaho Code § 41-406(d) has provided that one-fourth of the insurance premium tax, to the extent it exceeded \$45 million, was appropriated to the IIHRRP. Section 2 of S 1014 eliminated funding effective October 1, 2015, despite the fact that the bill's focus as reflected in its Title and Statement of Purpose was on three unrelated health and welfare programs: Children's Health Insurance Program (CHIP) Plan B, Children's Access Card and the Small Business Health Insurance Pilot Program. The IIHRRP funding mechanism was not mentioned in the Title or the Statement of Purpose. This bill reinstates the IIHRRP historical funding source and formula as it was before S 1014 passed. This bill has a retroactive effective date to October 1, 2015, thereby correcting the error as if it had not occurred.

In 2013, S 1014, which inadvertently repealed the IIHRRP appropriation, had a fiscal note providing that it would have no impact on the General Fund. Likewise,

the proponent believes that there is no fiscal impact to the General Fund in this bill, because the funds at issue have not yet reached the General Fund. However, a technical fiscal note would also explain that, absent amendment, S 1014 will result in a loss of revenue to the IHRRP in the amount of \$5.7 million and a corresponding gain in revenue to the General Fund in the amount of \$5.7 million. A further technical interpretation of the fiscal impact to this bill's correction could show that, without the allocation of the \$5.7 million to the IHRRP, health care costs would be shifted to Medicaid, the Indigent Fund, the property tax payers and ultimately to the consumer. Since inception, the IHRRP has paid out \$100 million in claims and has served 10,656 Idahoans with severe high risk health conditions

MOTION: **Senator Rice** moved that **S 1265** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

A discussion ensued between **Senator Schmidt** and **Mr. Erstad** about the number of high-risk people who have not migrated to Your Health Idaho (YHI). The IHRRP Board has made an exerted effort to encourage providers and carriers to follow up with clients in the IHRRP. CMS says coverage still qualifies and there is still a need to insure these clients.

Senator Thyan asked how the money was accumulated and did the money return to the General Fund? **Mr. Erstad** said there is no cap on the money and the monies are extremely liquid. In 2014, \$5.4 million was paid out. At this point there is no legislation that does away with the IHRRP. All of the federal government grants have been depleted. **Senator Schmidt** wanted to know the current balance. **Mr. Erstad** said it is over \$21,632,700. **Senator Schmidt** asked what the balance was last fall and **Mr. Erstad** said is more than \$22 million.

The motion carried by **voice vote** with Senators Thyan and Schmidt voting nay. **Senator Schmidt** remarked a more prudent approach should be taken regarding this large reserve. Senator Martin will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:35 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 16, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1221</u>	Relating to Insurance Producer Licensing	Dean Cameron, Director, Dept. of Insurance
<u>RS24459C1</u>	Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Insurance Producer Licensing - Bail Bond Agents	Mark Estess, Eiguren & Ellis Public Policy Firm
<u>S 1284</u>	Relating to Plats and Surveys	Keith Simila, Executive Director, Board of Professional Engineers and Land Surveyors
<u>S 1285</u>	Relating to Engineers and Surveyor Faculty Exams	Keith Simila
<u>S 1286</u>	Relating to Engineers and Surveyors - Definition of Retired	Keith Simila
<u>S 1287</u>	Relating to Engineers and Surveyors - Civil Penalty - Clarification of Unlicensed Practices	Keith Simila
HONORING OF PAGE:	Honoring of Page Hayden Rogers	Chairman Patrick

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 16, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Guthrie, Heider, Rice, Thayn, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Lakey

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: **Vice Chairman Martin** called the meeting to Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

S 1221 **Relating to Insurance Producer Licensing. Dean Cameron**, Director, Department of Insurance (DOI), remarked he wanted to address some of Senator Rice's concerns from the Committee's previous meeting. He pointed out this amendment streamlines the process for terminating the license of a nonresident producer who no longer meets a prerequisite to hold a license. The legislation in this bill amends Idaho Code § 41-1026(3) to provide that a former licensee whose license has been revoked may not reapply for a license until not less than one year and up to five years have passed, rather than the current one-year waiting period. This bill also amends Idaho Code § 41-1026 to provide a new subsection (4) where a person whose application for a producer license has been denied must wait one year before reapplying if judicial review of the license denial is sought one year from the date of a final court order or decree affirming the license denial.

Currently, there is no specific time period in which a person must wait before reapplying for a producer license. Individuals who reapply quickly following a denial or revocation waste their time and that of the DOI in processing and denying the application. **Director Cameron** said that when a license is revoked, in order to regain a license, the applicant has to reapply and show rehabilitation. It is not mandatory that the DOI reinstate a license.

MOTION: **Senator Guthrie** moved to send **S 1221** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. **Senator Rice** commented he appreciated Director Cameron, who worked to resolve all of his concerns. The motion carried by **voice vote**.

RS 24459C1 **Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Insurance Producer Licensing - Bail Bond Agents. Vice Chairman Martin** announced that **RS 24459C1** was removed from the agenda and held in Committee at the request of the sponsor.

S 1284

Relating to Plats and Surveys. Keith Simila, Executive Director, Idaho Professional Engineers and Land Surveyors (IPELS) Board, said the objective of the bill is to enable the IPELS Board to write rules to address changing technology.

Mr. Simila said the IPELS Board is currently working with the Idaho Association of Counties (IAC) and other stakeholders to evaluate the use of electronic filing of plats and records of survey. The use of electronic scanning is being used by counties. There are often legibility issues when mylar copies are posted to county websites. Some counties and the IPELS Board want to make electronic submittals an option in addition to the full-size mylar copies required by Idaho Code. For those counties who choose to adopt electronic submittals, rules are needed to address the technology and processes used. Since technology is continuously changing, the use of rule changes in lieu of statute changes is desired. The IPELS Board cannot anticipate all of the technological changes that may come in the future, which is why the rulemaking language is general and not specific to one issue. Future rulemaking will be negotiated and the IPELS will pursue consensus from the IAC and the IPELS Board.

Senator Schmidt said the county in his district does not have a website. He wanted to know if county clerks were able to transmit scans or would the scanning be shifted to another area. **Mr. Simila** remarked that if a county does not have a website, this change would not be of any use. For those counties that do have a website, copies can be uploaded into an electronic format. He said this is totally elective on the part of counties. The IPELS Board wants to make sure electronic filing is available to the counties.

TESTIMONY:

Bruce Mills said he is a licensed professional engineer in Idaho and the State of Washington and works for the Ada County Highway District (ACHD). He voiced a concern about this bill being too open-ended. He remarked that issues should be put into statute with the opportunity to be vetted. **Senator Schmidt** wanted to know if counties could choose not to participate. **Mr. Mills** said he did not see any language where counties could opt in or out.

Senator Thayne said he thought there was some language that would accomplish what the IPELS Board was trying to do so that the language in the bill would not be as open-ended. **Mr. Simila** said the changes were designed to be open-ended due to changes in technology. **Senator Rice** commented he was concerned that the authority exercised over the counties by the IPELS Board was too vague and inappropriate.

MOTION:

Senator Rice moved to table **S 1284**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

S 1285

Relating to Engineers and Surveyor Faculty Exams - Issue of License to Engineering Faculty. Mr. Simila said the objective of the bill is to authorize the IPELS Board to provide an alternative pathway to licensure for Ph.D. faculty who teach upper-division engineering courses at Idaho universities without a written technical examination. The amendment also clarifies the requirements of professional examinations and the conditions concerning reexamination for those failing on prior attempts. Fees for reexamination are also removed.

Faculty who teach upper-division engineering courses are required by law to be licensed professional engineers. At some universities, faculty may receive specialized education relating to technical fields for which no technical examinations are available. Also, some faculty practiced in exempt industries and did not previously obtain a Professional Engineering license. Obtaining a Professional Engineering license can sometimes be a barrier to recruitment and retention. The IPELS Board and the Deans of Engineering (Deans) want to find

a way to better address this concern and propose that a contingent license be available for this purpose. The contingent license process will allow a waiver of the technical examination in lieu of other requirements, such as a written examination on laws, rules and ethical responsibilities. The license would be contingent on certain requirements, such as remaining employed by the university. The exact process and requirements are proposed to be negotiated by rule with prospective stakeholders. The IPELS Board and the Deans believe this alternative pathway will assist in recruiting and retaining quality engineering faculty and provide a reasonable means for Ph.D. faculty in specialized technical engineering fields to obtain licensure without the requirement for technical testing.

TESTIMONY: **Mr. Mills** testified in opposition to Section 5 of this bill. He said he did not agree Ph.D. holders should have the exam waived, since they do not have the qualifications. **Senator Rice** stated the practical experience is not waived in this section of the bill. **Mr. Mills** remarked the Ph.D. holder should take the exam and have the practical experience required for the license.

DISCUSSION: **Senator Rice** and **Mr. Simila** had a conversation about whether or not the practical experience component had been waived. **Mr. Simila** remarked that teaching upper-division engineering classes counted toward the practical experience requirement, but the requirement was not waived.

Senator Schmidt wanted Mr. Simila to define the word "contingent" for purposes of this legislation. **Mr. Simila** stated "contingent" was defined in statute. If a Ph.D. holder leaves employment, the license is no longer valid. Statute says the contingency is employment at the university. **Senator Schmidt** referred to Idaho Code § 54-1215 and said there was a conflict. **Mr. Simila** replied he did not see a conflict because Section 5 of this bill says the license will be contingent as long as the professor is employed.

Senator Rice wanted to know what would prevent someone with a contingent license who works for a university from engaging in outside work. **Mr. Simila** said that nothing would prevent a professor from doing anything, but the IPELS Board was working to narrow the requirements. **Senator Rice** wanted more clarification.

Michael Kane, Attorney, representing the IPELS Board, summarized the history of this legislation. He stated the Deans approached the IPELS Board with the request to issue a license to Ph.D. professors who are teaching upper-division engineering courses. There are some courses that are so technical that there are no exams. The State has been forcing Ph.D. professors to take exams that do not apply to their specialty. He said the language cited by Senator Schmidt refers to using the engineering seal. He said doctoral professors are not expected to be stamping documents.

Senator Rice and **Mr. Simila** had a lengthy conversation about licensing professors who teach upper-division courses, what other states are doing, reciprocity and national exams.

Senator Schmidt remarked it seemed to him the goal is to allow doctoral professors to have a license so they can teach, but also so they can practice. He said if professors are going to practice they should have the same requirements as the rest of the profession. **Mr. Simila** said there needs to be a pathway for faculty to obtain a license so they can teach. If they are not going to practice, then a contingency license would be a restricted license. **Senator Schmidt** stated that the fact that there is no definition makes it difficult to understand. **Mr. Simila** said the IPELS Board is going to specify the type of exam the professors have to take. The exam will be on the laws of Idaho requirements, rules and ethics. He stated the

Deans like this proposal because the professors will have to follow the rules and will not have undue constraints placed on them from the technical exam standpoint. Bringing all of the faculty under the licensure umbrella puts them in the position of having to do continued professional development, abiding by the ethics clauses and rules in this State, and it sets an example to the undergraduates they are teaching. Professional licensure is a good thing.

Senator Rice wanted to know if the IPELS Board would think it appropriate to send this legislation to the amending order and to change the wording to a "restrictive" license. **Mr. Simila** said he thought the IPELS Board would support the change.

MOTION: **Senator Rice** moved that **S 1285** be referred to the 14th Order for amendment. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Rice** indicated he would be willing to help with the amendment.

S 1286 **Relating to Engineers and Surveyors - Definition of Terms - Retired.** **Mr. Simila** remarked the purpose of the bill is to ensure licensees clearly understand that retiring a license means they can no longer practice. The IPELS Board now allows licensees to retire their license regardless of age. There is an increase in the number of retired licensees in recent years. The temptation is to practice without reinstating a license to active practice, which puts the IPELS Board in a position to address the issue as a disciplinary action.

MOTION: **Senator Schmidt** moved to send **S 1286** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** will carry the bill on the floor.

S 1287 **Relating to Engineers and Surveyors - Licensing.** **Michael Kane**, Attorney, IPELS Board, reported that engineers and land surveyors licensed in other states and unlicensed individuals sometimes attempt to practice in Idaho without first obtaining a license. The IPELS Board's first action upon learning of these violations is to issue a "cease and desist" letter informing the individuals they are in violation and must obtain a license to legally practice in Idaho. Most of the time, the cease and desist letter is effective and the individuals will pursue obtaining a license or will cease to practice. There are occasions where the cease and desist letters are disregarded. In these cases, the only option the IPELS Board has is to pursue a criminal complaint through the Attorney General to enforce a misdemeanor charge, injunction and fine. The amendment will give the IPELS Board a better option than pursuing a criminal complaint by allowing a civil penalty. This is a less severe and less costly means of enforcing unlicensed practice and is expected to attain the same result. The amendment also clarifies what constitutes a violation of unlicensed practice by using the same language already described in Idaho Code § 54-1202. This change will remove ambiguity and ensure the enforceability of the law. The amendment clarifies that unlicensed practice of engineering or land surveying is a violation of the law. It adds a civil penalty of up to \$1,500 as another enforcement provision for a judge to consider, which is a lesser penalty than a criminal misdemeanor. There is no fiscal impact to the General Fund or the dedicated fund.

DISCUSSION: **Mr. Kane** and **Senator Rice** discussed the concern of a criminal action versus a civil action or misdemeanor. They talked about the costs involved and whether the fine of up to \$1,500 was appropriate. **Mr. Kane** said we can make sure this is civil and not criminal because it is not punitive. In this State the civil penalty ranges from \$10,000 to approximately \$50. A fine of \$1,500 falls more in the realm of a civil action. This bill decriminalizes the offense, which is a factor specifically referred to by the Supreme Court and a much better approach for the individual. **Senator Rice** asked that even though the State labels the violation as civil, what change would the court come up with? **Mr. Kane** said one question is would a jury trial be appropriate. According to his research, probably not. But there is nothing in this bill to prevent it. **Senator Rice** stated that if there is no jail time, no jury would be required. The most the court would say is that the infraction would have to be proven beyond a reasonable doubt. He thinks this discussion should always take place.

MOTION: **Senator Guthrie** moved to send **S 1287** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor.

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

HONORING OF PAGE: **Chairman Patrick** honored Page Hayden Rogers. **Mr. Rogers** shared what he has learned while being a Senate Page and said it is not easy to pass a bill. There are so many points to remember. He said he learned the Senators are fantastic and they have invaluable ideas. He plans on going to the University of Utah and major in political science. His goal is to become involved in politics some day. He thanked Senator Martin for sponsoring him.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:40 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 18, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of February 4, 2016 Minutes of February 9, 2016	Senator Schmidt Senator Ward-Engelking
INTRODUCTION OF PAGE:	Introduction of New Page	Chairman Patrick
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Representative Terry Gestrin to the State Insurance Fund Board	Representative Gestrin
<u>RS24531</u>	Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Health Savings Accounts	Senator Thayn
<u>RS24459C2</u>	Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Insurance Producer Licensing - Bail Bondsmen	Mark Estess, Eiguren & Ellis Public Policy Firm
<u>S 1318</u>	Relating to Appraisal Management Companies	Bill Scoggin, Attorney and Lobbyist; Sarah Fuhriman, Real Estate Valuation Advocacy Assn.
<u>H 432</u>	Relating to Insurance - Define Terms and Revise Procedures for How Insurance Policies Are Valued	Julie Hart, American Council of Life Insurers
<u>S 1264</u>	Pharmacy Medical Act	Senator Jim Guthrie; Jessie Taylor, Legislative Representative
<u>S 1314</u>	Relating to Idaho Trust Institutions Act	Trent Wright, President & CEO, Idaho Bankers Assn.
<u>S 1315</u>	Relating to Trust Sale	Trent Wright

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Martin
Sen Lakey
Sen Guthrie
Sen Heider

Sen Rice
Sen Thayn
Sen Schmidt
Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 18, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Schmidt** moved to approve the Minutes of February 4, 2016. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
Senator Ward-Engelking moved to approve the Minutes of February 9, 2016. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

INTRODUCTION OF PAGE: **Chairman Patrick** introduced Kennedy Jones to the Committee and asked her to tell the Committee about herself. **Kennedy Jones** said she is from Twin Falls and is excited about being here. She said she is involved in musical theater, which is going to be her major in college. She will also major in communications. She wants to learn how to be a good citizen.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Terry Gestrin, Donnelly, Idaho, to the State Insurance Fund Board, to serve a term commencing April 13, 2015, and expiring on December 1, 2016. **Representative Gestrin** said he lives in District 8 and was originally appointed to the State Insurance Fund Board in 2008. He attended Idaho State University, and he became an insurance agent in 1976. In 1995 he was elected to the Valley County Commission. He gave a short synopsis of his career. Currently, he owns and operates Long Valley Farm Service in Donnelly, which is a general store selling plumbing, hardware, electrical, feed, lawn, garden and oil supplies.

MOTION: **Senator Thayn** moved to send the Gubernatorial appointment of Representative Terry Gestrin to the State Insurance Fund Board to the Senate floor with the recommendation that he be confirmed by the Senate.
Senator Lakey commented that he appreciated Representative Gestrin and he is well qualified to serve on the State Insurance Fund Board.
Senator Ward-Engelking seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the appointment on the floor.

RS 24531 **Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Health Savings Accounts.** **Senator Thayn** gave a brief history of this proposed legislation and commented the Department of Administration asked for wording that would make it easier to administer the program. He remarked that rather than sending the bill to the amending order, the wording was revised.

MOTION: **Senator Rice** asked for unanimous consent to send **RS 24531** to the Senate State Affairs Committee for printing. **Vice Chairman Martin** seconded the motion. There were no objections.

RS 24459C2 **Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Insurance Producer Licensing - Bail Bondsmen.** **Mark Estess**, Attorney, Eiguren & Ellis Public Policy Firm, gave a brief background on this legislation. He said he was speaking on behalf of the Professional Bail Agents of Idaho, Inc. (PBAI). He said all of Senator Rice's concerns were addressed. He pointed out the language on page 2 was modified to read: "Compensating, employing or soliciting any person incarcerated in any courthouse, jail or prison for the purpose of the incarcerated person referring business to the licensee." **Mr. Estess** said he had consulted with the Department of Insurance (DOI), that should the Committee have a hearing on this bill, the DOI would be available to answer any questions. **Senator Rice** disclosed for the record that in the past he was a correctional officer and worked at the Idaho State Correctional Institution (ISCI) program. He said this Routing Slip (RS) addresses what can be a real problem in any kind of setting. He noted he liked the language.

MOTION: **Senator Rice** asked for unanimous consent to send **RS 24459C2** to the Senate State Affairs Committee for printing. **Senator Heider** seconded the motion. There were no objections.

S 1318 **Relating to Appraisal Management Companies (AMC).** **Sarah Fuhriman**, Lobbyist, introduced **Bill Scoggin**, Attorney and Lobbyist representing the Real Estate Appraiser Board (REAB), who said he supports this bill. He said in June 2015, a group of federal financial service agencies issued a final rule, pursuant to federal statute, establishing certain minimum standards for AMCs. This rule states that if an AMC oversees a panel of more than 15 state-licensed appraisers, or more than 25 in two or more states, they may not provide appraisal services for a federally related transaction unless they are registered with the state or are subject to federal oversight. Idaho is in a good position to ensure the regulation of AMCs is not overly burdensome, since the State has waited for the final rule to establish the minimum standards. States need to have a minimum structure oversight for appraisal companies. He said the Idaho Bankers Association (IBA) supported this bill. He received input from the REAB.

Senator Thayn asked if the State was setting up a new regulatory board. **Mr. Scoggin** remarked no, but this bill puts minimum oversight over appraisal companies. **Senator Thayn** asked if there was going to be a new member appointed from the appraisal companies to the REAB. **Mr. Scoggin** replied no and that rules will be written by the REAB.

TESTIMONY: **Scott Calhoun**, REAB, said the REAB would spend the next session preparing rules. **Senator Thayn** wanted to know what types of rules would be prepared. **Mr. Calhoun** said most rules are articulated in the legislation and address controlling persons and entities. He said he anticipated the rules would be to address how the application would be made and how the requirements would be affirmed before licensure would be granted to the appraisal management company.

Senator Lakey wanted to know what would happen if this legislation was not implemented. **Mr. Scoggin** said that at the end of 2018, which is the deadline, transactions that are federally related as part of the loan process, lenders cannot use AMCs unless they are federally regulated. Banks would have to decide whether to set up an independent process or withdraw from the residential real estate market and devote some of their business somewhere else. **Senator Lakey** remarked this helps keep an effective process. He wanted to know about banks that wanted to use their own independent appraisers. **Mr. Scoggin** pointed

out this is optional and allows lenders to use AMCs and will keep the system operating as smoothly as it is now.

Senator Schmidt commented he was looking for some place in the legislation where powers and duties of the REAB are changed. **Mr. Scoggin** said there could be some confusion, but the drafting from the Legislative Services Office (LSO) was outlined separately.

Trent Wright, President and CEO, Idaho Bankers Association, said he thought the appraisal management companies provide an avenue for banks, which is a huge benefit to the banks and consumers.

MOTION:

Senator Guthrie moved to send **S 1318** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Chairman Patrick will carry the bill on the floor of the Senate.

H 432

Relating to Insurance - Define Terms and Revise Procedures for How Insurances Policies Are Valued. **Julie Hart**, American Council of Life Insurers, remarked this legislation cleans up and adds definitions. She said that page 3 adds new subsections for Principle-Based Reserving (PBR) that will only go into effect after 42 states pass similar legislation and requires the DOI Director review reserve levels annually. The legislation will update the current valuation method used for life insurance premiums to PBRs. PBRs ensure consumers pay the appropriate premiums so reserve levels more accurately reflect assumed risk. **Ms. Hart** stated all life insurance companies are required to hold financial reserves in order to support payment of policy owner claims. The PBR method modernizes reserving to ensure the reserve and premiums match the risk being assumed by the insurance company.

Pages 4 through 17 add definitions from the National Association of Insurance Commissioner's (NAIC) Model Standard Valuation Law and replaces the National Association of Insurance Commissioners with NAIC.

Pages 18 through 25 add a new section of code on life insurance. The Valuation Manual is referenced throughout this legislation and spells out the steps companies and regulators will take to determine reserve levels under PBR. This section specifies what must be in the Valuation Manual. Some items are the type of policies subject to PBR; PBR reporting and corporate governance requirements must be specified; minimum standards are defined; commissioner's right to override the Valuation Manual, if, in the commissioner's opinion, it does not comply with the law; the operative date of the Valuation Manual is specified, which would be January 1 of the first calendar year following the first July 1 after all of which the following have occurred:

- 42 states have enacted the amended Standard Valuation Law and
- States with 75 percent of 2008 premiums have enacted the amended Standard Valuation Law.

Other items that are specified in this bill are: the commissioner's right to engage an independent actuary to review reserves; the director's right to require companies to increase reserves, if in the commissioner's opinion, the Valuation Manual was not followed; conditions under which companies must establish reserves for policies and contracts; confidentiality section provides that any investigation into companies and policies will remain exempt from public records due to the nature of the private policies and nature that these companies, contracts, etc. are by private companies not public governmental agencies subject to public records. These businesses are simply regulated by the State for their reserves, but remain private companies. It provides that all information

may be examined by the DOI, but that in those examinations and investigations the results might be shared and published; however, the details of products and personal information is not public. The operative date of the Valuation Manual is January 1 of the first calendar year that the Valuation Manual is effective. Policies issued prior to the operative date of the valuation manual may use ordinary mortality tables in nonforfeiture. There is a public records exemption for information submitted by private citizens to insurance companies for the purpose of obtaining life insurance ought not be in public records. The American Council of Life Insurers (ACLI) felt current exemptions might cover this issue, but wanted to make sure all private citizens have the coverage they deserve on private matters to remain exempt from public records.

DISCUSSION:

Vice Chairman Martin said this bill would give the NAIC the potential to align the pricing of products. **Ms. Hart** remarked overall premiums are expected to decrease 38 and 62 percent, as will the reserves. **Senator Lakey** said the concept is that a more focused group would be evaluated that is more applicable for the insured to get a better rate. **Ms. Hart** said the idea is to institute a principal-based reserve. The focus is being narrowed for the actuarial analysis to determine the reserves and the rate.

Director Cameron, DOI, addressed Vice Chairman Martin's and Senator Lakey's questions. He said the focus was on the product type, such as whole life, universal and term insurance products. Currently, the reserve process requires an insurance company to have a certain amount of volume and reserves. This allows the companies to set aside reserves comparable to those buying whole life products versus those buying term products. The products that would most likely go down in price would be term products. The amount of reserve required for a term policy is a lot less than for a whole life policy. The chances of a company paying out a claim is greater for a whole life insurance policy, which would require a larger reserve. What this bill does is allow the DOI to modernize the reserve requirements in line with the product type and not for the individual or for the risk. This will become an accreditation standard. The new reserve requirements are not being mandated, but being offered as an alternative.

Senator Lakey asked Director Cameron if the product was based on a national or a regional scale. **Director Cameron** replied the product type was on a national scale.

MOTION:

Vice Chairman Martin moved to send **H 432** to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. Senator Nonini will carry the bill on the floor of the Senate.

S 1264

Pharmacy Medical Act. **Senator Jim Guthrie** reported this act amends the Idaho Pharmacy Act with additional requirements before a vendor is issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy; the act also adds the definition of DME supplier and adds the requirement that the facility must be accredited in the State or within 150 miles of the Idaho border. It also adds that the supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact.

Senator Guthrie remarked this bill seeks to put DME license and suppliers under the Board of Pharmacy for the issuance of renewals and certificates of registration. He went over the changes in the bill. He said there are requirements the DME suppliers will have to meet in order to gain renewals and certificates of registration, which include complying with the requirements for a limited service outlet; physical presence in Idaho or within 150 miles of a service area; and most importantly, inventory and staff to service or repair products.

Senator Guthrie explained why these changes are being sought. When bids are taken, the Centers for Medicare and Medicaid Services (CMS) will identify a Competitive Bid Area (CBA) and the number of suppliers needed to meet the needs of that service area. Bids have been coming in from all over the United States, with the companies who bid on these contracts having no ability to service them. This creates the problem of suicide bidding. Concerns have centered around whether prices go up or if competition will be eliminated. He said the opposite is true. There was federal legislation passed in 2015 that will tend to lower costs, and pricing will become even more competitive, not less.

Senator Guthrie summarized the federal legislation. He said that bids will be taken from January of 2017 until January 2019. This time frame allows for up to three bids. Each time the bids are made, the notion is that prices will get lower and lower. If distant providers that cannot service these accounts are artificially deflating prices, this will make it extremely difficult for rural companies to remain viable. This bill will help give rural providers an equal chance at remaining viable if the model is transitioned from a drop-ship model to a point-of-service model and will be based on the true cost of doing business, not on suicide bidding practices. This bill does not preclude anyone from doing business, but levels the playing field for those willing to provide the service. This is only applicable to high-maintenance items. Items that do not require multiple touches or a high level of service are exempt. Rural providers will be under increased pressure to remain viable due to a tougher pricing model at the federal level.

DISCUSSION:

Senator Rice said he would like to have more clarity and wanted to know if the bond that is required under federal statute is forfeited if the DME supplier cannot serve customers. He wanted to know if that is an adequate way of addressing these problems since it is timely getting these items to Idaho customers. **Senator Guthrie** answered that if the DME supplier has a bond they default on, the State would have to take them to court. If the out-of-state companies bid at a higher price, they can sell the contract to another company for a lower price. Federal legislation says that it actually encourages states to accept bids, so if a state wants something specific, all the company has to do is be established in Idaho and they can do business. **Senator Rice** said he was trying to understand persons or entities that supply mail-order programs and what the difference is between that and the DME suppliers. **Senator Guthrie** explained the legislation addresses large items, such as oxygen, wheelchairs and hospital beds.

Jessie Taylor, Lobbyist, said the federal government requires no set up for smaller items that can be mailed to customers, such as catheters. He said continuous positive airway pressure (CPAP) machines, beds and walkers would be covered.

Senator Rice asked what kind of delays would there be if no CPAP machines were available. **Mr. Taylor** said it varied, depending on where a person lived. He said it could be days if one lived in a remote area.

TESTIMONY:

Jim Kissler, CEO of Norco Medical Supply, gave an overview. He said the bid sets the price for DME. There were 300 bids submitted in the Boise area from companies from outside the area who have no presence and cannot service the area. Prices have been reduced by 40 percent. Norco has stores to service most areas. Customers can pick up products and also have them shipped. This legislation is trying to eliminate bids that are undercutting the business.

Senator Rice declared a conflict of interest since he has a CPAP machine serviced by Norco. **Chairman Patrick** said he also has a conflict of interest since he has a CPAP machine.

MOTION: **Vice Chairman Martin** moved to send **S 1264** to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** asked to be recorded as voting nay. Senator Guthrie will carry the bill on the floor of the Senate.

S 1314 **Relating to Idaho Trust Institutions Act.** **Trent Wright**, President and CEO, Idaho Bankers Association (IBA), said the purpose of this legislation is to amend the Idaho Trust Institutions Act to clarify that an individual who does not engage in a trust business may serve as a trustee of a trust without obtaining a state trust company charter. This bill provides an exemption for "friends" acting as trustees but not engaged in the business of administering trusts as defined in Idaho Code § 26-3203 (30). This bill is "set-up" legislation for a larger conversation on minimum capital requirements for issuing a trust charter that the Idaho Department of Finance (IDOF) and the IBA Trust Committee will be preparing for the 2017 Legislative Session. IBA's friends' exemption legislation is supported by the IDOF and has been reviewed by the Trust and Estate Professionals of Idaho (TEPI). **Senator Rice** pointed out the exemption is cited in the bill on page 2, line 11, "acting as a fiduciary for relatives."

MOTION: **Senator Schmidt** moved to send **S 1314** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

S 1315 **Relating to Trust Sale.** **Mr. Wright** said this legislation relates to personal property left unclaimed following a trustee's sale. Its purpose is to clarify the liability for disposition of personal belongings left at a property. There is no fiscal impact on State or local funds.

Mr. Wright explained this bill provides that following the tenth day of the trustee sale the purchaser shall not be liable for disposing of all nontitled personal property that has been left unclaimed. Personal property is often left by the prior owner or a tenant following a foreclosure. Sometimes it is difficult to determine whether the personal property has been abandoned. There is often a question of what must be done with the personal property left behind once the creditor takes possession of an otherwise vacant property. Can the creditor discard the personal property, or is an eviction required to have the personal property removed? He said there were some concerns about due process.

Mr. Wright referred to line 11 in the bill and noted that subsequent to recording the notice of default and at least 120 days before the day fixed by the trustee for the trustee's sale, notice of the sale shall be given by registered or certified mail, return receipt requested. He said the IBA is seeking release of liability for personal property left on the premises. Anyone living in the home should be given notice that there is a foreclosure notice. **Mr. Wright** noted that at least three good-faith attempts shall be made on different days over a period of not less than seven days with each attempt made at least 30 days prior to the day of the sale to serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. He said that following 21 days there has to be another 30 days for the foreclosure to take place. He pointed out there are only ten states that offer further protection from the ten days following a foreclosure sale. The purchaser at the trustee's sale shall be entitled to dispose of any nontitled personal property remaining on the property on the tenth day following the sale without further notice and without liability to any party claiming any interest in such personal property. Titled personal property shall be disposed of pursuant to applicable law.

DISCUSSION: **Senator Lakey** clarified the intent of the IBA is to be able to dispose of property that is left behind. **Mr. Wright** said there would be overwhelming circumstances about abandoned property. There are fraudulent claims because the code is not clear. **Senator Lakey** voiced a concern about those who lack responsibility and who refuse to leave the property after ten days, resulting in eviction.

Kenneth Howell, IBA, said that if someone remains on the property they are called a tenant in sufferance. They must leave voluntarily or be evicted. He said the new property owner has to wait until the person has vacated the premises.

Senator Lakey said he was not sure the correct language is specified in the bill. He cited that after the tenth day, the purchaser, without further notice and without liability may dispose of the property. **Mr. Howell** said that what the language does not say is that the new owner of the property can do whatever they wish with the personal property. There are statutes in Idaho dealing with unclaimed property. **Senator Lakey** said he thought the language needed some more work. He and Mr. Howell had a conversation about the concept of abandoned property, how it is impossible to tell if a property has been abandoned, the ten-day notice and the idea of having to go to court to prove the property was abandoned and the legal problems surrounding abandoned property.

Senator Rice commented he had the same concerns as Senator Lakey. He and Mr. Howell had a conversation about a tenant in sufferance who does not move out and the purchaser having to go to court to have the person removed.

Senator Schmidt said he had a question about the removal of liability and wanted to know if a lawsuit has been a significant issue for this process. **Mr. Howell** said lawsuits have arisen, but in some cases this is of lesser concern. However, this issue has arisen with sufficient regularity over the past years by not having a provision to remove personal property. Some people have claimed their grandmother's diamond ring was among the belongings that were disposed of, which could be a fraudulent claim.

TESTIMONY: **Richard Eppink**, representing the American Civil Liberties Union (ACLU) of Idaho testified in opposition to the bill. He asked the Committee to hold the bill. He said these issues were raised ten years ago. He urged a peaceful, orderly process for family possessions. Due to lack of time, **Chairman Patrick** indicated the Committee would continue to discuss **S 1315** on February 23, 2016.

ADJOURNED: There being no further business, Chairman Patrick adjourned the meeting at 3:00 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #3
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 23, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1288</u>	Relating to Employment Security Law Training Funds	Kenneth Edmunds, Director, Department of Labor
<u>S 1346</u>	Relating to Health Savings Accounts	Senator Thayn
<u>S 1345</u>	Relating to Insurance Producer Licensing, Bail Bondsmen	Mark Estess, Eiguren & Ellis Public Policy Firm
<u>H 377</u>	Idaho Global Entrepreneurial Mission (IGEM)	Megan Ronk, Director, Idaho Chamber of Commerce
<u>RS24151</u>	Unanimous Consent for Referral to Senate Judiciary & Rules for Printing - Relating to Idaho Equipment Dealer Protection Statute	Roger Batt, Western Equipment Dealers Assn.
<u>RS24371</u>	Unanimous Consent for Referral to Senate Judiciary & Rules for Printing - Relating to Farm Implements and Equipment	Roger Batt
PRESENTATION:	Supreme Court Decision Regarding Regulatory Boards	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 23, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:31 p.m.

S 1288 **Relating to Employment Security Law Training Funds (TF). Kenneth Edmunds**, Director, Department of Labor (DOL), said Idaho is currently facing a labor shortage. With an annual estimated nonfarm job growth rate of 1.5 percent continued through 2025 and a projected population increase of 52,000 during that same timeframe, Idaho faces a gap of 63,000 unfilled positions. The proposed amendments will help address the labor shortage by providing the DOL greater flexibility in managing the Idaho Workforce Development Training Fund (IWDTF).

Director Edmunds said this legislation will help address the situation by eliminating the requirement to transfer unencumbered balances in excess of \$6 million to the Employment Security Fund (ESF). The appropriation will also be changed from "perpetual" to "annual." Retraining would be added as an allowable activity. The use of the TF would be expanded to include innovative training solutions. The importance of coordinating TF activities with employers and the Idaho Division of Professional-Technical Education would be emphasized by moving this requirement to its own section in the bill. The program sunset clause would be extended to 2022.

Director Edmunds remarked these changes are necessary because the demand for TFs fluctuates based on the level of economic activity for new or expanding businesses. Also, Idaho's aging workforce is creating a demand for incumbent worker training. Education and employer partnerships are creating a demand for new and innovative training programs. The benefit of these changes will result in increased opportunities to fund innovative and demand-driven Industry Sector Grants (ISG) that are usually \$500,000 to \$1 million for each project (such as the recently drafted Educational Improvement Tax Credit (EITC) Program Sector application. Another benefit is the ability to fund more than three industry ISGs per year. Other benefits would be the increased ability to fund customized training programs designed to meet the need of the projected 63,000 unfilled positions and a greater ability to fund rural workforce training and development projects through current microgrants.

TESTIMONY: **Dwight Johnson**, representing Idaho Division of Professional -Technical Education, testified in support of this bill. He said the recommended changes are important and will enhance opportunities for workers.

DISCUSSION: **Senator Schmidt** pointed out that on page 2, line 25, a training tax is imposed. **Director Edmunds** replied that it is a tax. **Senator Schmidt** wanted to know if this bill would be called a tax bill. **Director Edmunds** said the amount of the tax involved is unchanged and the only changes would be how the funds are used. They then had a discussion about raising or lowering the cap and how removing the cap does not affect tax calculations.

MOTION: **Senator Schmidt** moved that **S 1288** be sent to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Keough will carry the bill on the floor.

S 1346 **Relating to Health Savings Accounts (HSA).** **Senator Thayne** explained the intention of the bill is to increase access to care, reduce negative outcomes and stabilize costs. The plan is voluntary. **Senator Thayne** noted this bill was inspired by the state of Indiana. He said that Indiana launched their consumer-driven health plan in 2006. At that time, only 4 percent of the eligible employees enrolled in the plan. By 2014 the number of enrolled employees had continuously grown to 98 percent. Indiana has not found any evidence of employee avoidance of care; however, there has been a greater use of cost-effective treatments. These treatments include generic versus brand name drugs, fewer hospital admissions, less frequent use of emergency rooms, more outpatient versus inpatient procedure visits and the use of primary physicians instead of specialists when possible and appropriate. Preventative care has also increased. From 2006-2009 Indiana saved roughly \$28 million through the use of the consumer-driven health plans. Indiana projected savings in 2010 to be between \$17 million and \$23 million.

Senator Thayne remarked that medical costs in the United States consume approximately 17.5 percent of Gross National Product (GNP). The advantages of an HSA are reflected in the lowering of costs as employees take ownership and tend to shop around and make wiser choices when selecting medical care. The Idaho State Controller has indicated it will cost \$64,000 to make changes to the computer program.

TESTIMONY: **Michael Berry**, President and Executive Officer (CEO) of American Health Value (AHV), said that AHV is a national HSA administrator founded in 1996 and headquartered in Boise, Idaho. He noted his company works with insurance agents and account holders in 49 states. He testified in support of the bill. He said he understands the value HSA plans provide to both the individual participant and to the states that provide them to their public sector employees. The overwhelming evidence is that HSAs provide state employees with more savings choice and control over their health care expenses while reducing health care costs in the states where they have been created.

HSAs are one of the fastest growing options available in today's marketplace. As of December 2015, there are 16.7 million accounts with asset totals of \$4.2 billion. Projections by the end of 2018 show asset totals in excess of \$50 billion covering almost 30 million accounts.

Mr. Berry mentioned the positive impact HSAs have had in the state of Indiana. He said that with the passage of this bill, Idaho has the opportunity to put in place an HSA program that will make employee health insurance more cost-effective, turn Idaho's health program into a more consumer-driven plan, give the employees more choice and educate the consumer on the real cost of health care, while saving Idaho a significant amount of money.

DISCUSSION: **Senator Ward-Engelking** and **Senator Thayn** had a conversation about the idea that Idaho does not currently have a qualified HSA plan. **Senator Ward-Engelking** queried whether Senator Thayn had thought about having an interim committee look at the costs involved. **Senator Thayn** said the Change in Employee Compensation Committee (CECC) had suggested a task force be created to look at options. He stated that one of the main options was a high-deductible HSA plan. He noted the benefit of passing this bill now is that it would give the Department of Administration (DOA) a chance to make changes before the next session.

Senator Lakey wanted to know if there was going to be a single person administering the program. **Jennifer Pike**, Administrator, Group Insurance, DOA, said that having a third party administrator to facilitate the HSA can be explored. **Senator Lakey** commented that the amount determined by the DOA that does not exceed 60 percent of the deductible annually of the high-deductible health plan in the HSA sounded to him like the amount could vary. **Ms. Pike** replied the 60 percent allows the DOA some flexibility, and the deductible amount would be worked out with the carrier.

Senator Schmidt said it appeared the statute would allow the DOA flexibility in working out the deductible amount with carriers and he was wondering why this has not been done in the past. **Ms. Pike** said there was a study that was done in 2014, but she was not aware of any decision to negotiate deductibles. She said she could send a copy of the study to Senator Schmidt.

TESTIMONY: **Russ Hendricks**, representing the Idaho Farm Bureau, remarked that the Farm Bureau has a policy that supports legislation that would permit, promote or assist in individuals' HSAs. This is of interest to the members of the Farm Bureau. He testified in support of the bill.

DISCUSSION: **Senator Rice** referred to lines 36 and 37 of the bill and pointed out that the language regarding the amount deposited shall not exceed the United States Internal Revenue Service's (IRS) maximum allowable contribution to an HSA seemed vague. **Senator Thayn** said the plan was optional and it is important to have an HSA.

Senator Schmidt said there was an obvious cost implication and wondered if the State should move forward. He wanted to know if there was any estimate of projected enrollment. **Senator Thayn** referred to the study conducted in 2014 and pointed out the savings were estimated at \$1,500 to \$2,000 per enrollee. The main costs would be for the State Controller to make changes to the computer program. He was unsure of the fees for a third party administrator.

Senator Guthrie stated the intent was to be revenue neutral and asked if this would occur over time or immediately. He wanted to know if the provider would be willing to break out the program costs and work with a differential. **Mr. Berry** said he could not speak for a provider in Idaho. He said that typically in most states there is a bearing between a high-deductible and a low-deductible Preferred Provider Organization (PPO) plan. There is usually a flat fee that is charged. Any administrative fee can be paid out of an individual's HSA. The usual fee is a flat \$36 per account.

Senator Heider wanted to know if this was voluntary for State employees, then why do employees not go to their bank and set up their own account? **Senator Thayn** replied that Blue Cross is the current plan and an HSA is not currently available to employees.

MOTION: **Vice Chairman Martin** moved that **S 1346** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor.

S 1345 **Relating to Insurance Producer Licensing, Bail Bondsmen.** **Mark Estess**, Eiguren and Ellis Public Policy Firm, said this issue was initially brought up by the Kootenai Sheriff's office. The proposed legislation allows the Director of the Idaho Department of Insurance (DOI) to impose a fine on a bail agent or suspend or revoke a bail agent's license if the bail agent, his employees, contractors or agents acting under his supervision compensates, employs or solicits any person incarcerated in any courthouse, jail or prison for the purpose of the incarcerated person referring business to the licensed bail agent.

MOTION: **Senator Heider** moved that **S 1345** be sent to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. **Senator Rice** commented he worked in Corrections and when there is this kind of activity in a jail or prison setting, this creates problems. He said this was a good bill. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 377 **Idaho Global Entrepreneurial Mission (IGEM).** **Megan Ronk**, Director, Idaho Chamber of Commerce (IDOC), said this bill makes several important changes to the existing IGEM statute. She said these changes provide clarification on the program's administration and the distribution of commercialization revenue from sponsored projects. Revisions have been crafted in collaboration with Idaho's public universities: Boise State University (BSU), Idaho State University (ISU) and the University of Idaho (U of I). **Director Ronk** remarked there are three primary reasons behind these changes. The first one is program maturity. The IGEM program was originally established in 2012 and is now in its fourth year. It is time to make a few changes. The second reason is industry input. Industry partners have brought forward suggestions to make IGEM a more responsive program to private sector financial planning needs. The third reason is consistency. Some changes, while minor, ensure legislative language is consistent throughout various parts of Idaho Code. Some changes have been recommended by the Legislative Services Office (LSO) to clean up the statute.

Director Ronk went over the four main changes. She said the first change refers to the Innovative License Plate program. This program is now defunct and reference to this should be stricken since no funds will be received. The second change clarifies the designation of the IGEM Council chairman. She said current language states, "The Governor shall designate a chairman from the IGEM Council's private-sector membership and the IGEM Council shall designate such other officers from its membership as it deems necessary." By statute, there are only four members on the IGEM Council from the private sector. This limits the chairmanship to only 25 percent of the IGEM Council membership. The recommended language provides greater flexibility and provides an equal opportunity for any member of the IGEM Council to serve as chairman with the Governor's designation. Third, the IGEM Grant Program is founded on partnerships between Idaho's public universities and private sector industry. The inclusion of "industry partners" provides clarifying language on the necessity for the university-industry partnership. Fourth, clarification of commercialization revenue and distribution provides an outline of how the State of Idaho will recuperate its investments into IGEM projects. Previous language provided a very broad definition of commercialization revenue generated by the industry partner as a result of the IGEM grant funding to the university. This broad definition inappropriately reached into revenues that were not rightfully attributed to IGEM.

Director Ronk said that current language states "up to 25 percent" of remaining funds will be reimbursed to the General Fund. The proposed language eliminates

the subjectivity with a definitive amount of 25 percent to be reimbursed to the General Fund. The reimbursement amount is capped to equal the amount of the IGEM award, with these funds being returned to the General Fund. Current language states "up to 5 percent" of remaining funds will be deposited into the IGEM Grant Fund to support future IGEM grants. The proposed language eliminates the subjectivity with a definitive amount of 5 percent to be deposited in the IGEM fund for future grants.

Director Ronk said these changes are responsive to the maturing nature of the IGEM program support and ensure responsible and agreeable reimbursement to the State's General Fund and the IGEM Grant Fund.

DISCUSSION: **Vice Chairman Martin** referred to page 4 of the bill and wanted to know if faculty, staff or students would be compensated per university policies and what were those policies. **Carmen Achabal**, IGEM Program Manager, IDOC, said that BSU utilizes a 50/50 split, meaning 50 percent of any royalties would be put into the faculty, team or staff who participated in that particular project and 50 percent would go to the university. ISU and the U of I use a 40/40/20 split, meaning 40 percent goes to the university, 40 percent goes to the particular staff or team responsible for the project and 20 percent goes to a specific department that the project originated from. **Vice Chairman Martin** wanted to know if there was a history of revenue going to the General Fund from the IGEM program and if so how much. **Ms. Achabal** said not as of yet. There are products that are about to be commercialized to bring in some revenue.

MOTION: **Senator Thayn** moved that **H 377** be sent to the floor with a **do pass** recommendation. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

RS 24151 **Unanimous Consent for Referral to Senate Judiciary and Rules for Printing - Relating to Idaho Equipment Dealer Protection Statute.** **Roger Batt**, Western Equipment Dealers Association, gave a brief summary of the bill. He said the Idaho Equipment Dealer Protection Law was passed to protect equipment dealers from changes imposed by equipment suppliers if those changes are substantial and negatively impact the equipment dealer's business.

He pointed out that on page 1 of the Routing Slip (RS), this legislation provides clarity to the original intent of the law by making it a violation for an equipment supplier to substantially change the dealer's competitive circumstances or threaten to substantially change the dealer's competitive circumstances without good cause. **Mr. Batt** explained that substantially changing the dealer's competitive circumstances means the industry recognizes this as materially impacting a specific dealer's ability to compete with other dealers who sell the same brand and product line. Equipment dealers each have a geographic area of responsibility assigned to them by the supplier to sell and service that supplier's brand of equipment. Dealers purchase parts and special tools and invest in buildings and rolling stock, education and training, inventory and product support to promote the supplier's product. Idaho equipment dealers have understood that once they are assigned an area of responsibility by the supplier, this area belongs to them to sell equipment to customers and to meet market share requirements in their dealer agreement with the supplier. Dealers have also understood and recognize that a free-trade system is not to be restricted; someone from one area of responsibility may sell equipment or parts to someone in another's area of responsibility. He remarked that what dealers are not accustomed to is a supplier working with a dealer to build another dealership that sells the same product line within an existing dealership's area of responsibility. **Mr. Batt** pointed out that after decades of large capital investment, selling equipment and building a client base, the dealer is suddenly notified that another dealership has been given approval by that same supplier to

build a physical plant within the same area of responsibility to sell the same product line. This is viewed by equipment dealers as wrongful, harmful to existing business owners, against the intent of the Idaho Equipment Dealer Protection Law and it substantially changes the dealer's competitive circumstances.

DISCUSSION: **Senator Heider** asked Mr. Batt if this was the same legislation that was brought forward in 2015. **Mr. Batt** said it was the same but there was not enough time to finalize this and he was waiting for language from the equipment dealers.

MOTION: **Senator Schmidt** asked for unanimous consent to send **RS 24151** to the Senate Judiciary and Rules Committee for printing. There were no objections.

RS 24371 **Unanimous Consent for Referral to Senate Judiciary and Rules for Printing - Relating to Farm Equipment and Implements.** **Mr. Batt** went over the changes in this RS. He gave a brief background and said that whenever an equipment dealership sells farm implements, repair parts or equipment, it enters into a written contract with a manufacturer, wholesaler or distributor to do so. The dealer maintains a stock of parts for repairs, machines and attachments and may have demonstration and rental equipment as part of their business. If the agreement between the dealer and supplier is terminated, unless the dealer has a contractual right to keep such merchandise then the manufacturer, wholesaler or distributor shall pay the dealer 100 percent of the net cost of all unused, unsold and undamaged complete farm implements, equipment, machinery or attachments in new condition that were purchased from the supplier within 36 months preceding notification by either party of intent to cancel or discontinue the contract.

Mr. Batt said this legislation provides clarification that parts older than 36 months are eligible for return from the time the contract is terminated. The reason for this change is the current Idaho statute limits parts returns to parts purchased within 36 months prior to the termination of the contract. This is not consistent with surrounding state statutes or industry practices and a correction to this provision is requested.

MOTION: **Vice Chairman Martin** asked for unanimous consent to send **RS 24371** to the Senate Judiciary and Rules Committee for printing. There were no objections.

PRESENTATION: Supreme Court Decision Regarding Regulatory Boards. **Mitch Toryanski**, Attorney, Bureau of Occupational Licenses (BOL), briefed the Committee about a U.S. Supreme Court opinion that increases the legal exposure of Idaho's regulatory boards to federal antitrust claims.

He gave an overview of antitrust facts, procedural history, opinions and issues to consider. He said the ruling was that if a state uses active market participants as regulators, it must provide active supervision if the regulatory board is to qualify for state-action immunity from federal antitrust laws. He talked about the Sherman Act which prohibits restraint of trade agreements and monopolies. The Federal Trade Commission (FTC), established in 1914, prohibits unfair competition and deceptive practices. The Clayton Act prohibits price discrimination, tying arrangements and mergers and acquisitions that lessen competition.

Mr. Toryanski cited an example of the North Carolina State Board of Dental Examiners (NCSBDE) that petitioned the FTC about dentists and non-dentists who whiten teeth. The dentists complained about non-dentists whitening teeth at a lower price. The NCSBDE concluded that whitening is the practice of dentistry despite whitening's omission from the North Carolina Dental Practice Act. However, no one took action to amend the statute or rules. In 2006 the NCSBDE issued 47 cease-and-desist letters that state or imply that whitening is the practice of dentistry and warn that unlicensed practice is a crime. This case wended its way through the courts and finally ended up in the hands of the U.S. Supreme

Court. The primary question was whether the active market participants, acting as unsupervised state regulators, qualify for state-action immunity from antitrust law or is the NCSBDE truly a state agency. The majority opinion of the court said that because the "controlling number" of the Board's decision makers are "active market participants," the NCSBDE is treated as a private actor and must show active state supervision. On the dissenting side, North Carolina created a state agency and gave that agency the power to regulate. The decision was 6 to 3 with Justices Alito, Scalia and Thomas dissenting.

Mr. Toryanski pointed out that the government character of the NCSBDE is not enough. The NCSBDE must be more than a mere facade of state involvement to ensure political accountability. A "non-sovereign actor," controlled by active market participants, is immune only if anti-competitive state policy is clearly articulated and the state actively supervises the policy. State supervision does not mean day-to-day involvement in operations or micro-management of every decision. State policy must be promoted instead of personal interests. A state supervisor must review the substance of anti-competitive decision, not merely procedure. The state supervisor must have the power to veto or modify decisions and not be an active market participant.

Mr. Toryanski pointed out the Idaho Attorney General issued an opinion. Based on that opinion, the Governor is proposing **H 480** and **H 482** to reduce exposure of boards and board members to federal antitrust claims. He remarked that there is no State supervisor to review board decisions and that the Idaho boards do not qualify for state action immunity.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:54 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 25, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Minutes of February 11, 2016	Vice Chairman Martin
APPROVAL:	Minutes of February 16, 2016	Senator Guthrie
<u>HCR 36</u>	Recognizing National Apprenticeship Week	Representative Sue Chew and Representative Matthew W. Erpelding
<u>H 440</u>	Relating to Insurance - To Provide an Exception to Require that Every Domestic Insurer Must Have and Maintain its Principal Place of Business and Home Office in Idaho	John Mackey, United Heritage Mutual Holding Company
<u>H 367</u>	Relating to Morticians - Amends Existing Law to Revise License Eligibility	Roger Hales, Attorney, Idaho Bureau of Occupational Licenses
<u>H 369</u>	Relating to Funeral and Cemetery Merchandise and Services	Roger Hales
<u>H 341</u>	Relating to Patient Freedom of Information Act	Maurice Ellsworth, Attorney, Idaho Bureau of Occupational Licenses

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 25, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:32 p.m.

MINUTES APPROVAL: **Senator Guthrie** moved to approve the Minutes of February 16, 2016. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

Chairman Patrick remarked that the approval of the Minutes of February 11, 2016 was postponed until later in the meeting.

HCR 36

Recognizing National Apprenticeship Week. **Representative Chew** said this House Concurrent Resolution recognizes the critical importance of the registered apprenticeship program to Idaho and the nation with 130 apprentice programs serving approximately 950 apprentices in such industries as advanced manufacturing, energy, mining and timber. The Idaho State Legislature recognizes the significance of these programs in creating a qualified workforce. There is no fiscal impact on the General Fund.

Representative Chew reported there are more than 445,000 active apprentices across the country and this number continues to grow. Apprenticeship programs not only offer an education, in many cases at no or low cost, but also provide a clear career path through new skills, higher wages and opportunity for advancement. She noted that apprentices receive hands-on career training in fields such as health care, construction, information technology (IT) and many more. Apprentices received a national industry certification, which can be taken anywhere in the United States. Apprentices also receive a paycheck with built-in wage increases as new skills are learned over time.

Representative Chew said the skilled trades have led the way in developing and refining apprenticeships in America. Today, in addition to using expertise to apply apprenticeships to modern methods and skills, apprenticeship programs are partnering with businesses to offer programs that prepare workers with family-sustaining wages and the skills needed to keep pace with technology advances in today's economy.

DISCUSSION: **Senator Schmidt** asked if any Workforce Development Grants (WDG) are awarded to apprenticeship programs. **Jason Hudson**, Director, Idaho Workers' Opportunity Network, said that WDGs are not being awarded to existing apprenticeship programs in the State. Some WDG dollars are currently being used to help fund a pilot program using the models that have been developed in the traditional apprenticeship programs. Those areas are health care, high tech, IT and coding. Apprenticeships are being developed to serve some other areas of high need in the State, such as water and wastewater treatment operators.

MOTION: **Senator Ward-Engelking** moved to send **HCR 36** to the floor of the Senate with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the bill on the floor.

H 440 **Relating to Insurance - To Provide an Exception to Require that Every Domestic Insurer Must Have and Maintain its Principal Place of Business and Home Office in Idaho.** **John Mackey**, representing the United Heritage Mutual Holding Company, said that current Idaho Code requires domestic insurers to have and maintain their principal place of business, home office and assets in Idaho. **Mr. Mackey** said this Legislation establishes certain conditions which, if met, provide an exception to these requirements for stock insurers that redomesticate to Idaho. The exceptions will allow an Idaho domestic mutual insurance holding company to acquire stock insurers located in other states and redomesticate them to Idaho without having to move the principal place of business, home office or assets to Idaho. The exception is when the majority of the stock of the insurer is owned directly or indirectly by a mutual holding company that maintains its home office and principal place of business in this State. The insurer can and shall produce the accounts and records of the insurer in their entirety in this State upon request from the Department of Insurance (DOI) Director in a form satisfactory to the DOI Director. He stated material administration and financial activities of the insurer are conducted in this State, initial evidence of which is submitted by the insurer under oath to the Director as part of the insurer's application for a certificate of authority or certificate of redomestication. At least one officer and one director of the insurer must be residents of this State and shall not be the same person. In addition to examination expenses payable by the insurer, the insurer pays all examination expenses that exceed the costs and fees necessary to examine an insurer with its principal place of business and home office in this State including without limitation, actual travel expenses, reasonable living expense allowance and compensation of employees, agents and contractors of the DOI, as determined and approved by the DOI Director.

Mr. Mackey said that adoption of this bill will aid Idaho mutual insurance holding companies to expand their business externally by acquisition of stock insurance companies headquartered in other states. This legislation adapts a 55-year-old code to a more suitable statute given the business climate that exists today for the Idaho insurance industry. Local insurance industry leaders are determined to increase their footprint in the State, not only with internal growth, but with external growth as well.

Approval of this bill will allow the entrepreneurship of innovative visionary leaders within the Idaho insurance industry to bring new insurers to the State and not just for the benefit of their own company, but for the benefit of Idaho's economy.

Mr. Mackey pointed out that provision 5(c) requires "material administrative and financial activities," which include but are not limited to Human Resources, accounting, investing, actuarial, IT and legal to be conducted in Idaho. These are all career-type job opportunities that will be available to the Idaho workforce. All of this can be done without using a single dollar of the Idaho Incentive Fund for bringing new businesses to Idaho. This bill in no way diminishes the insurer's

accountability to the DOI. Subsection 5(e) assures that even excess examination costs by the DOI will be paid for by the insurer.

DISCUSSION: **Chairman Patrick** wanted to know that after the fact, what happened if stockholders were not in the State. **Mr. Mackey** responded that most likely the State would not let that happen. **Senator Heider** wanted to know who is the "director." **Mr. Mackey** said it is the Director of the DOI.

MOTION: **Senator Heider** moved to send **H 440** to the floor of the Senate with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Winder will carry the bill on the floor.

H 367 **Relating to Morticians - Amends Existing Law to Revise License Eligibility.** **Roger Hales**, Attorney, Idaho Bureau of Occupational Licenses (IBOL), said the Idaho Board of Morticians (IBM) wants to amend the law to change the total cumulative period in which a person may serve as a resident trainee for either a mortician or funeral director. **Mr. Hales** said this bill benefits applicants. It increases the total cumulative period of time in which a person may serve as a resident trainee for either a mortician or funeral director in order to obtain the necessary supervised experience to qualify for a license. One of the qualifications to be licensed as a mortician or funeral director is that an individual must obtain one year of supervised experience as a resident trainee. During their supervised experience, a funeral director trainee must also assist in 25 embalmings. This bill allows three years in which a person may serve as a resident trainee in order to meet the requirement. The IBOL may extend this three-year period for good cause. He cited an example of a resident trainee living in a small town and that there may not be 25 funerals or embalmings in two years. **Mr. Hales** said he thought this legislation will eliminate requests for an extension.

MOTION: **Senator Schmidt** moved to send **H 367** to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor.

H 369 **Relating to Funeral and Cemetery Merchandise and Services.** **Mr. Hales** remarked that in this bill the IBM is amending its law to require morticians or funeral directors to identify which funeral establishment is responsible to provide funeral goods or services and to maintain all documentation associated with pre-arrangement sales made by or sold by morticians or funeral directors. This change will require morticians or funeral directors to identify which funeral establishment is responsible to provide funeral goods or services at the time they are needed, and to maintain all documentation regarding pre-arrangement sales made or sold by morticians or funeral directors. This change will resolve the issue of who is responsible for the documentation for services in the event the selling mortician or funeral director sells, moves out of state or dies. Additionally, this change will provide clarification to the public regarding which establishment is ultimately responsible to provide the goods and services when they are needed.

DISCUSSION: **Senator Schmidt** wanted to know what problems were being solved by this bill. **Mr. Hales** said that a mortician is in possession of contracts (book of business) and could move out of town. This bill is an effort to be clear between a mortician and an establishment and who is ultimately responsible. Any establishment has to identify all pre-contracts they have entered into before a company can be sold. **Senator Schmidt** remarked he has seen mortuaries either sold or go out of business and pre-contracts were not honored. **Mr. Hales** said he suspects there are some violations of the law.

TESTIMONY: **James Opdahl**, IBM, said that a funeral establishment is a centerpiece in town and their records date back 100 years. Sometimes a mortuary will change hands seven or eight times during the 100 years, and each time the book of business is given to the new owner. The book of business is something to offer a prospective buyer.

Senator Schmidt wanted to know if the establishment and the mortician are one in the same. **Mr. Opdahl** said that if that person is the owner of the establishment, they could be the same. However, if the mortician wanted to retire, they would want the book of business to go with the establishment. Pre-arranged funerals is a unique piece that funeral homes work on to guarantee the future. A licensed mortician is the only one who can sell pre-arranged funerals.

DISCUSSION: **Senator Heider** said he made his own coffin and wanted to know if this legislation would preclude him from using his casket. **Mr. Opdahl** said that pre-arranging a funeral does not preclude one from building their own casket and storing it at home. Most establishments will not store a casket until it is needed. Funeral homes are not allowed to ban any family member from bringing their own casket or urn for a funeral. He reiterated this bill refers to pre-arranged funeral goods and/or services.

MOTION: **Senator Guthrie** moved to send **H 369** to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor.

H 341 **Relating to Patient Freedom of Information Act (PFIA).** **Maurice Ellsworth**, Attorney, IBOL, said this bill updates the PFIA, also referred to as IDACARE (Idaho Cares, which is the database). IDACARE was enacted in 1998 to create a publicly accessible database of information regarding specified licensed or registered health care professionals. At the time IDACARE was created, many regulatory boards did not have comprehensive publicly searchable websites. Since regulatory boards now have information about licenses available on their websites, this bill would eliminate the requirement for a separately maintained website. The bill also requires health-related regulatory boards to make certain information about licenses available on their website. This change will ultimately relieve the burden on health care professionals of reporting information in two different places and relieve the burden on the State of maintaining a separate database and website for IDACARE. The public will also be ensured access to certain information by requiring boards make it available on their websites.

Mr. Ellsworth stated that now individual boards maintain websites with certified licensure and disciplinary status. Board websites are more modern, robust, reliable and user friendly than IDACARE. Several health care professions are not listed in IDACARE. This bill requires all boards who license or register health care providers, not just those listed in IDACARE, to make health care providers' licensure status and disciplinary information available on their websites. Boards are given discretion to list other practitioner information, such as practice specialty, office address and phone, dates of original license and expiration of current license. The separate IDACARE website is eliminated by this legislation. The DOA records show that the IDACARE website has approximately 750 visits per month. The Board of Medicine reports 7,500 website visits per month, and the IBOL reports over 14,000 visits per month.

Mr. Ellsworth remarked there will be approximately \$1,700 in annual savings to the Department of Administration (DOA) and over \$12,000 in annual savings to the IBOL's dedicated funds due to elimination of the duplication of effort to support the IDACARE website. There also will be no need to redevelop the current IDACARE database and website, which is an estimated one-time cost of \$30,000 to the DOA.

Senator Schmidt declared a conflict of interest as he has to renew his medical license using IDACARE. He said this legislation is long overdue.

MOTION:

Senator Schmidt moved to send **H 341** to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor.

**MINUTES
APPROVAL:**

Vice Chairman Martin moved to approve the Minutes of February 11, 2016. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:15 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 01, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of February 18, 2016	Senator Heider
<u>S 1359</u>	Relating to Farm Implements and Equipment	Roger Batt, Western Equipment Dealers
<u>H 332</u>	Relating to Residential Care Facility	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses
<u>H 333</u>	Relating to Optometrists - License Renewal	Mitch Toryanski
<u>H 334</u>	Relating to Physical Therapy - License Renewal	Mitch Toryanski
<u>H 441</u>	Cosmeticians - Amends Existing Law to Provide for License Renewal	Mitch Toryanski
<u>H 396</u>	Employment Security Law - Amends Existing Law to Expand Department of Labor Notice Provision	Joshua McKenna, Benefits Bureau Chief, Department of Labor
<u>H 397</u>	Employment Security Law - Amends Existing Law to Clarify Notice and Appeal Provisions for Certain Determinations	Larry Ingram, Unemployment Compliance Bureau Chief
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Susan Buxton, Administrator, Division of Human Resources	Susan Buxton

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 01, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Senators Lakey, Guthrie, Heider, Rice, Thayn and Ward-Engelking

ABSENT/ EXCUSED: Vice Chairman Martin and Senator Schmidt

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 of the Commerce and Human Resources Committee (Committee) to order at 1:31 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of February 18, 2016. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

S 1359 **Relating to Farm Implements and Equipment.** **Roger Batt**, Western Equipment Dealers, stated the focus of this bill is on two sections of Idaho statute relating to the repurchase of farm machinery, equipment and parts. He said that under current law whenever an equipment dealership sells implements, repair parts or equipment, the dealership enters into a written contract with a manufacturer, wholesaler or distributor. The dealership maintains a stock of parts for repairs, machines and attachments, and may also have demonstration and rental equipment as part of the business. If the agreement between the dealer and supplier is terminated, unless the dealer has a contractual right to keep the merchandise, the manufacturer, wholesaler or distributor shall pay the dealer 100 percent of the net cost of all the unused, unsold and undamaged complete farm implements, equipment, machinery, attachments or parts in new condition that were purchased from the supplier within 36 months preceding notification by either party of their intent to cancel or discontinue the contract.

Mr. Batt remarked this legislation would remove the 36-month limitation and allow for parts older than 36 months to be eligible for repurchase (lines 29-30 were stricken). Idaho's 36-month limitation is not consistent with surrounding state statutes or industry practices, as parts can be older than three years. Many surrounding states do not have any limitations on repurchasing of parts including Oregon, Washington, Wyoming, Utah and California. Idaho's statute also says if the dealer has any rental or demonstration equipment that the return right on the equipment would be within 36 months immediately preceding notification by either party of their intent to cancel or discontinue the contract. Under this legislation, rental or demonstration equipment that has not been retailed to an end-user would now be adjusted and depreciated based on "activity" instead of a "sum equal to the depreciated value of the equipment." Oftentimes there are policy manuals that allow a certain amount of hours of rent on a piece of equipment that would determine whether the equipment was new or used. This would also play a role in determining the depreciation of the equipment. Returns on this type of equipment would also allow the dealer to be paid for transportation charges for implements, equipment, machinery or attachments.

Mr. Batt said that in addition, the language on page 2 of the bill would clarify that the manufacturer, wholesaler or distributor would pay the dealer a reasonable reimbursement for services performed in connection with the assembly and pre-delivery inspections of farm implements or machinery and attachments that are subject to repurchase. If the wholesaler, manufacturer or distributor is required to purchase farm implements or equipment, machinery and attachments, those entities would also be required to repurchase any hardware, software or computer communications hardware required by the manufacturer, wholesaler or distributor to meet its minimum requirements and purchased by the dealer in the prior five years and held by the dealer on the date of termination. The purchase price formula paid by the manufacturer, wholesaler, or distributor to the dealer for these items would be the original net cost to the dealer minus 20 percent per year. **Mr. Batt** stated with respect to the repurchase of specialized repair tools (which by definition are tools required by the supplier and unique to the diagnosis or repair of a supplier's products), these shall be considered to be in usable condition and shall be purchased based on the formula of the original net cost to the dealer less 20 percent per year depreciation, but not less than 50 percent of the original purchase price. The rest of the changes are to clean up the statute.

DISCUSSION:

Senator Lakey wanted to know if **Mr. Batt** thought the State was interfering with a contractual relationship. **Mr. Batt** and **Senator Lakey** discussed the positive aspects of contractual agreements between a dealer and a wholesaler, manufacturer or distributor.

Senator Thayn and **Mr. Batt** had a conversation about smaller equipment dealers, the limitations of bargaining power and repurchasing agreements on parts. They also discussed industry standards in other states.

Senator Rice wanted to know if these types of contracts are generally negotiated or do manufacturers have a standard contract? **Mr. Batt** remarked there are no real negotiations, but rather contracts of adhesions, or "take-it or leave-it" agreements in order to keep doing business. They discussed the maintenance of the contracts and how dealers must carry a certain inventory of parts for the entire time the contract is in place.

MOTION:

Senator Rice moved to send **S 1359** to the floor of the Senate with a **do pass** recommendation. He remarked that it is not an appropriate practice to require someone to buy something to perform a contract and require them to keep and pay for it until the contract is cancelled. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Chairman Patrick will carry the bill on the floor.

Chairman Patrick explained that **H 396** would be heard next due to a prior commitment for the presenter.

H 396

Employment Security Law - Amends Existing Law to Expand Department of Labor Notice Provision (DOL). **Joshua McKenna**, Benefits Bureau Chief, DOL, said the DOL is proposing to change the current statute, Idaho Code § 72-1368(5) to include the words, "written and digital communications from the department providing notice of an administrative or other deadline including, but not limited to" and also "and letters from the department requiring a response within a specified time."

Mr. McKenna stated this bill would allow the DOL to consider documents requesting information to be considered served and complete when the DOL mails documents to the claimant's last known address or email address. This law change arose as a result of an Idaho Supreme Court case involving the

DOL. A claimant had been sent a letter to their last known address, asking them to do an online assessment. The claimant failed to take the online assessment and was denied benefits. The Idaho Supreme Court overturned the decision on the basis that the current statute did not include language related to letters the DOL sends, only decisions or determinations. Because of the narrow wording of Idaho Code § 72-1368(5), uncertainty remains as to when service would be complete for any DOL communications other than determinations, revised determinations or special redeterminations decisions. The proposed legislation is intended to remedy that uncertainty. The law change allows the DOL to contact claimants electronically and via mailings to provide information and hold claimants accountable if they fail to respond to the DOLs request. Since claimants often move and fail to update their address, the electronic piece is needed as well so the DOL can contact them through email and in the future, the claimant portal. It should be noted the DOL only utilizes electronic communications when the claimant tells the DOL their preferred method of communication.

DISCUSSION: **Senator Thayn** asked Mr. McKenna how claimants indicate they want to be notified via email. **Mr. McKenna** replied they had to check a box on the assessment form.

MOTION: **Senator Thayn** moved to send **H 396** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor.

H 332 **Relating to Residential Care Facility (RCA).** **Mitch Toryanski**, Attorney, Idaho Bureau of Occupational Licenses (IBOL), said this bill concerns renewal and reinstatement of RCA licenses. Licenses are renewed every year. If they are not renewed, they expire. However licensees have their licenses reinstated if they apply for reinstatement within five years.

Mr. Toryanski stated the 2015 Legislature passed H 117, which simplified the IBOLs renewal and reinstatement of licenses statute as noted in Idaho Code § 67-2614. H 117 raised the license reinstatement fee from \$25 to \$35, but offset the increase by requiring just one renewal fee for every year the license was expired. In this case, RCA has two of their own license renewal and reinstatement statutes, Idaho Code § 54-4208 and § 54-4209.

H 332 consolidates the two statutes into one, Idaho Code § 54-4209, and adopts the new IBOL statute that was passed into law last year. The changes were approved by the RCA Board in an open meeting that was noticed to the public. The IBOL received no communication opposing this bill.

MOTION: **Senator Heider** moved to send **H 332** to the floor of the Senate with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 333 **Relating to Optometrists - License Renewal.** **Mr. Toryanski** stated this bill concerns renewal and reinstatement of optometrist licenses. Licenses are renewed every year. If they are not renewed, they expire. However, licensees have their licenses reinstated if they apply for reinstatement within five years. Last year, the Legislature passed H 117, which simplified the IBOL's renewal and reinstatement of licenses statute, Idaho Code § 67-2614. H 117 raised the license reinstatement fee from \$25 to \$35, but offset the increase by requiring just one renewal fee for every year the license was expired.

Mr. Toryanski said that in this case, optometrists's reinstatement fee (they are allowed to set their own) is set in their own statute and in their own rule at \$150. This bill will allow the IBOL to amend its rules to adopt Idaho Code

§ 67-2614 in its entirety and lower its reinstatement fee from \$150 to \$35. The changes contained in this legislation were approved by the Optometrist's Board in an open meeting that was noticed to the public. The IBOL received no communication opposing this bill.

MOTION: **Senator Thayn** moved to send **H 333** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 334 **Relating to Physical Therapy - License Renewal.** **Mr. Toryanski** stated this bill concerns renewal and reinstatement of physical therapy licenses. Licenses are renewed every year. If they are not renewed, they expire. However licensees have their licenses reinstated if they apply for reinstatement within five years. Last year, the Legislature passed H 117, which simplified the IBOL's renewal and reinstatement of licenses statute, which is Idaho Code § 67-2614. H 117 raised the license reinstatement fee from \$25 to \$35, but offset the increase by requiring just one renewal fee for every year that the license was expired.

Mr. Toryanski noted that in this case, the physical therapy license has two license renewal and reinstatement statutes, Idaho Code § 54-2214 and § 54-2215. This legislation consolidates the two statutes into one, Idaho Code § 54-2215, and adopts the IBOL's new license renewal and reinstatement statute. This mainly eliminates language that is redundant to other authority and duplicative of the IBOL's renewal and reinstatement statute, Idaho Code § 67-2614.

MOTION: **Senator Thayn** moved to send **H 334** to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 441 **Cosmeticians - Amends Existing Law to Provide for License Renewal.** **Mr. Toryanski** stated this bill concerns renewal and reinstatement of physical therapy licenses. Licenses are renewed every year. If they are not renewed, they expire. However, licensees have their licenses reinstated if they apply for reinstatement within five years. Last year, the Legislature passed H 117, which simplified the IBOL's renewal and reinstatement of licenses statute, Idaho Code § 67-2614.

Mr. Toryanski noted that many of the State's regulatory boards like the new statute, Idaho Code § 67-2614, and are adopting it in its entirety. The IBOL wants to adopt this statute as well. The new statute takes the license reinstatement fee from \$25 to \$35, but offsets it by requiring just one renewal fee upon reinstatement instead of a renewal fee for each year the license is expired. The changes were approved by the IBOL in an open meeting that was noticed to the public.

MOTION: **Senator Lakey** moved to send **H 441** to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 397

Employment Security Law - Amends Existing Law to Clarify Notice and Appeal Provisions for Certain Determinations. **Larry Ingram**, Unemployment Compliance Bureau Chief, reported the DOL is asking for amendments to various sections of the Idaho Employment Security Law (ESL) with this legislation. **Mr. Ingram** explained these amendments are requested to make the notice provisions for determinations and other important actions by the DOL consistent throughout the ESL (Title 72, Chapter 13). These changes will benefit both employers and claimants because the rules will be clear and consistent. These changes are housekeeping measures because the intent of the law is not changed and the rights provided to employers and claimants are not changed during the established appeal processes. The majority of these changes make reference to one of two different sections of the Idaho ESL, Idaho Code § 72-1368(5), which the DOL is asking to be amended in a companion bill, **H 396**, to address notice issues created by a recent Idaho Supreme Court case (*Boyd-Davis v. Macomber* - 2015). Directing the notice requirements to one statute has the added benefit that, if for some reason changes in law require a change in the notice requirements of the ESL, the changes can be made to all the affected statutes by only amending one statute, Idaho Code § 72-1368(5).

MOTION:

Senator Guthrie moved to send **H 397** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor.

GUBERNATORIAL APPOINTMENT AND HEARING:

The appointment of Susan Buxton, Boise, Idaho, as Administrator of the Department of Human Resources (DHR), effective March 1, 2016, to serve at the pleasure of the Governor, not to extend beyond his term. **Ms. Buxton** remarked she was excited to be before the Committee. She appreciates the chance to be the Administrator at the DHR and to work with the staff. She said while an attorney she represented local government entities and businesses dealing with human resources.

DISCUSSION:

Senator Lakey asked Ms. Buxton to talk about her perspective from the standpoint of a business owner and how owning a business has helped her with this position. **Ms. Buxton** said there are human resources issues that arise whenever one owns a business. She has experience with hiring the right person for the job and firing someone who does not work well within the business. **Ms. Buxton** remarked she has an understanding of the market, core values, goals and how to keep employee morale flowing in a positive direction. She said she has spent many hours looking at different ways to manage human resources and to do a better job. She remarked she is amazed at the caliber of State of Idaho employees.

Senator Thayn wanted to know if Ms. Buxton is legally qualified for her position as Administrator, DHR. **Ms. Buxton** stated she has administered human resources throughout her career, representing entities, policies, hiring and firing.

MOTION:

Senator Lakey moved to send the Gubernatorial appointment of Susan Buxton as Administrator of the Department of Human Resources to the Senate floor with the recommendation that she be confirmed by the Senate. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the appointment on the floor.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:14 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 03, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Minutes of February 23, 2016	Senator Rice
APPROVAL:	Minutes of February 25, 2016	Senator Thayn
<u>S 1358</u>	Relating to Idaho Equipment Dealer Protection Law	Roger Batt, Western Equipment Dealers
<u>S 1315</u>	Relating to Trust Sale	Trent Wright, President & CEO, Idaho Bankers Association
<u>RS24582</u>	Unanimous Consent Relating to Travel Insurance	Sarah Fuhriman, U.S. Travel Insurance Association
<u>RS24537</u>	Unanimous Consent Relating to Automobile Minimum Liability Insurance	Bill Litster, Idaho Public Policy Institute
<u>RS24652</u>	Unanimous Consent Relating to Durable Medical Equipment	Senator Jim Guthrie
<u>H 366</u>	Relating to the Board of Architectural Examiners	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses
<u>H 368</u>	Real Estate Appraisers - Amends Existing Law to Revise Definitions	Roger Hales, Attorney, Idaho Bureau of Occupational Licenses
<u>H 486</u>	Relating to Barber Colleges	Kris Ellis, NW College Federation
<u>H 398</u>	Relating to Revised Uniform Athlete Agents Act	Dale Higer, Chairman, Uniform Law Commission
<u>H 519</u>	Massage Therapy Student Compensation	Representative Kathleen Sims

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Martin

Sen Rice
Sen Thayn

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46

Sen Lakey
Sen Guthrie
Sen Heider

Sen Schmidt
Sen Ward-Engelking

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 03, 2016
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Chairman Patrick** announced the Minutes of February 23, 2016, would be heard later in the meeting. **Senator Thayn** moved to approve the Minutes of February 25, 2016. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

S 1315 **Relating to Trust Sale.** **Trent Wright**, President and Chief Executive Officer (CEO), Idaho Bankers Association, stated this legislation relates to personal property left behind following a trustee's sale. The purpose is to clarify the liability for disposition of personal belongings left at a property. There is no fiscal impact on state or local funds. He said he requested the Committee send **S 1315** to the amending order. He said the previous language in section 11 had been removed, and new language was inserted into a new section 15.

Mr. Wright said that **S 1315** provides that following the tenth day of a trustee's sale the purchaser may remove any non-titled personal property remaining on an unoccupied premises and place it in suitable storage for a period not to exceed 90 days. He explained that personal property is often left by the prior owner or a tenant following a foreclosure. Sometimes it is difficult to determine whether the personal property has been abandoned. He said there is often a question of what to do with the personal property left behind once the creditor takes possession of an otherwise vacant property. Can the creditor discard the personal property or is an eviction required to have the personal property removed? This bill is straightforward legislation that establishes a clear timeline for disposition of personal property left behind and the notice for retrieval of the property.

Mr. Wright referred to section 15 of the bill and noted the changes. He explained that on or after the tenth day, as provided in subsection 11, if the property is reasonably determined by the purchaser to be unoccupied, the purchaser may (a) dispose of any titled personal property remaining on the premises in the manner described by applicable law; and (b) remove any non-titled personal property from the premises and place it in suitable storage. The purchaser may dispose of the non-titled personal property only after providing 30 days written notice. The 30-day notice has to be sent by first-class mail to the last known address of the last known occupant of the property; a notice must be posted in a conspicuous place on the real premises that such non-titled personal property may be disposed of following such 30-day period, and providing a name, address and phone number to contact regarding further information as to the location and disposition of such non-titled

personal property; and the notice shall generally describe the non-titled personal property that was left on the premises and that the purchaser intends to dispose of the property and the anticipated method(s) of disposition. In subsection (c) if the owner of the non-titled personal property fails to claim the non-titled personal property within 90 days of the date of the written notice that was provided under subsection (b), then any and all of their rights in said property shall extinguish and the purchaser shall have no further liability regarding said property or to any potential claimants of said property.

Senator Lakey remarked he had the opportunity to meet with Mr. Wright on the language revision, which provides more opportunity for notice and property posting for a 90-day period.

MOTION: **Senator Lakey** moved that **S 1315** be sent to the floor of the Senate with a recommendation to refer this bill to the amending order. **Senator Rice** seconded the motion.

TESTIMONY: **Richard Eppink**, Legal Director, representing the American Civil Liberties Union (ACLU), testified in opposition to the bill. He said he has represented hundreds of families who lost their family heirlooms and other belongings. He advised that the eviction process needed to be supervised by the courts. He said personal property was part of the deal in non-judicial notices. The foreclosure industry does not consider families. Billions of dollars have been lost. He asked the Committee to hold the bill.

Joseph Jones, Deputy Attorney General representing the Department of Finance (DOF), said the DOF does not oppose this bill. Lenders face complexities when a property has to go through foreclosure, which is very costly. He said the properties are abandoned and the lenders are forced to go to court and to get a court order; the DOF understands the difficulties of the situation.

DISCUSSION: **Mr. Wright** said this bill specifically addresses unoccupied homes. This bill also specifies a reasonable time period for notices.

Senator Schmidt wanted to know if there were any changes on page 3, section 11. **Mr. Wright** explained that the amendment strikes out the language in section 11, and a new section 15 will be created.

Senator Rice commented that violations of the bankruptcy code would still have remedies. This legislation creates a separate process for unoccupied property which allows for notices to owners to reclaim property. There is also a provision to allow property to be disposed of if no one claims it within a reasonable period of time without creating further litigation.

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

RS 24582 **Unanimous Consent Relating to Travel Insurance.** **Sarah Fuhrman**, US. Travel Insurance Association, said this legislation would authorize the Department of Insurance (DOI) to issue a limited-lines travel insurance producer license to qualified applicants for provisions of travel insurance through travel retailers. The legislation requires the licensed limited-lines travel insurance producer and the travel retailer to meet administrative and disclosure requirements, such as including the producer's identification information. The producer will be required to make certain disclosures to the consumer in the marketing materials and fulfillment packages, and the producer will be required to establish and maintain a transaction record. There is no impact to local government or to the General Fund.

Senator Schmidt wanted to know why this legislation was being introduced so late

in the session. **Ms. Fuhriman** said this was due to her client working with the DOI. It took a while for conversations to take place.

MOTION: **Chairman Patrick** asked for unanimous consent to send **RS 24582** to the Senate State Affairs Committee for printing. There were no objections.

RS 24537 **Unanimous Consent Relating to Automobile Minimum Liability Insurance. Bill Litster**, Idaho Public Policy Institute, remarked the purpose of this legislation is to increase the required automobile minimum liability insurance or proof of financial responsibility from \$25,000 to \$50,000 maximum for one claimant; from \$50,000 to \$100,000 maximum for two or more claimants; and from \$15,000 to \$50,000 maximum for property damage. Liability insurance minimum limits have not been increased since 1983, which is more than 33 years ago. The same \$25,000 in medical services that a person received in 1983 would cost more than \$100,000 today.

The precise savings are yet to be determined, but the benefit to the General Fund and other government entities is conservatively estimated to be between \$1 million and \$2 million. The reason for these savings is because government entities that have paid for medical bills have a first-position reimbursement right (subrogation) from automobile insurance settlements paid from an at-fault driver or the responsible insurance company.

Senator Schmidt mentioned that Mr. Litster remarked that Senator Davis was not successful 12 or 15 years ago when he introduced similar legislation, and he wanted to know when in the session Senator Davis started his endeavor. **Mr. Litster** said that he could find out.

MOTION: **Chairman Patrick** asked for unanimous consent to send **RS 24537** to the Senate State Affairs Committee for printing. There were no objections.

RS 24652 **Unanimous Consent Relating to Durable Medical Equipment. Senator Jim Guthrie** said the purpose is to amend the Idaho Pharmacy Act (IPA) by adding additional requirements to be issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy (IBP) and to add a definition of DME supplier. This legislation also adds a requirement for suppliers of listed DME devices to have an accredited facility in the State or within 150 miles of the border. The DME supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact to the General Fund.

Senator Guthrie reported there were some issues that arose when this legislation was originally heard. This Routing Slip (RS) incorporates those revisions. He outlined the changes and referred to page 8 for the primary changes. He said the proximity to the State language remains intact. This RS is an effort to make the legislation better.

MOTION: **Chairman Patrick** asked for unanimous consent to send **RS 24652** to the Senate Judiciary and Rules Committee for printing. There were no objections.

MINUTES APPROVAL: **Senator Rice** moved to approve the Minutes of February 23, 2016. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

Relating to Idaho Equipment Dealer Protection Law. Roger Batt, Western Equipment Dealers, said the purpose of this legislation is to provide clarification of the original legislative intent of the Idaho Equipment Dealer Protection Law, which was passed to protect dealers from changes imposed by equipment suppliers if changes are substantial and negatively impact the equipment dealer's business.

Mr. Batt explained that on page 1 of the bill, subsection 4, this legislation provides clarity to the original intent of the law by making it a violation of the law for an equipment supplier to substantially change the dealer's competitive circumstances without good cause. He explained "substantially changing the dealer's competitive circumstances" as an event, act or omission of the supplier that has a material detrimental effect on the dealer's ability to compete with another dealer who sells the same brand of equipment. **Mr. Batt** remarked the best way to explain the situation is that equipment dealers have a geographical area of responsibility assigned to them by the supplier to sell and service the supplier's brand of equipment. Dealers purchase parts and special tools and invest in buildings and rolling stock, education and training, inventory and product support to promote the supplier's product. For decades, Idaho equipment dealers have understood once they are assigned an area of responsibility by the supplier, that this area belongs to them to sell equipment and parts to customers and to meet market share requirements in their dealer agreement with the supplier. Dealers have always understood that a free trade system exists and that someone from one area of responsibility may sell equipment or parts to someone in another's area of responsibility.

Mr. Batt said that what dealers are not accustomed to, and the driving force behind this legislation, is if a supplier were to work with another dealer to put a physical dealership in the middle of an existing dealership's area of responsibility. This happened in Idaho a few years ago. He cited an example of a dealer who, after decades of large capital investments, selling equipment and building a client base, was suddenly notified that another dealership had been given approval by the same supplier to build another dealership within that same area of responsibility to sell the same product line. This is viewed by equipment dealers as wrongful, harmful to existing business owners, against the intent of the Idaho Equipment Dealer Protection Law and without any doubt "substantially changes the dealer's competitive circumstances."

Mr. Batt pointed out that in subsection (4) of the bill, the words, "of the dealer agreement" have been removed and language was added in lines 40-42 to clarify that persons interpreting the statute understand that the terms of a dealer agreement do not impact the determination of whether there has been a substantial change in the dealer's competitive circumstances. Page 2 of the bill clarifies language in the statute with respect to suppliers.

Pages 3 and 4 of the bill address a supplier being allowed to substantially change the dealer's competitive circumstances with good cause. Under these sections of law, the supplier would need to provide written notice to the equipment dealer of any substantial change in the dealer's competitive circumstances. If the supplier's claim is that the dealer failed to achieve market penetration, the supplier would provide written notice of its intention at least one year in advance to the dealer. Upon the end of the one-year period, the supplier may substantially change the dealer's competitive circumstances upon written notice specifying the reasons for determining that the dealer failed to meet reasonable market penetration.

Mr. Batt referred to several letters of support he received from members of the Western Equipment Dealers, including the Coeur d'Alene Tractor Company, Schlofman Tractor in Boise and Pioneer Equipment in Idaho Falls that explain the need for this legislation and how it would benefit these dealerships.

He mentioned that as of yesterday, some amendments to this bill were agreed upon by the Western Equipment Dealers and the Association of Equipment Manufacturers. These amendments include the definition of "substantially changing the competitive circumstances" Idaho Code § 28-24-103 and strike the word "determine" on line 40 of the bill and replace it with the word "control" with respect to the dealer agreement. This is the same language that both parties above agreed to and that is in Oregon's legislation that was passed and signed into law in 2015.

Mr. Batt said he knows of no opposition.

DISCUSSION:

Vice Chairman Martin said he needed some historical perspective. He wanted to know why there was not a similar protection for cell phone dealers and others? **Mr. Batt** said there has been a long standing history between dealers and suppliers. He cited an example of a supplier who put a dealership in the area of responsibility for another established dealer. This caused significant damage to the established dealer's business. **Vice Chairman Martin** talked about the free enterprise system and allowing dealerships to freely compete.

Chairman Patrick remarked the standards addressed in **S 1358** are the same in the automobile business. Dealers are protected from changes imposed by suppliers if changes are substantial and negatively impact the car dealership business.

Senator Rice asked if equipment dealers had to pay for a franchise in addition to purchasing equipment and parts. **Mr. Batt** said this has never been discussed. **Senator Rice** said he was not sure if it was not already illegal, but he said when he read the changes on page 1, the bill is clarifying that if an agreement allows an event, act or omission, it does not mean that a court could not find that there is not a substantial change in the competitive circumstances. **Senator Rice** asked Mr. Batt if this was correct, and **Mr. Batt** said that was his understanding. **Senator Rice** commented that the changes on pages 3 and 4 were clarifying rather than substantive changes. **Mr. Batt** said the changes deal with good cause, which would be in writing from the supplier to the dealership in order to give them enough time to make the necessary corrections.

Senator Heider wanted to know why the State is in the middle of dealer agreements. He remarked that each dealer has a region and it seemed to him as though the dealer and the manufacturer have agreements. **Mr. Batt** explained that contracts that are entered into between a supplier and a dealer are adhesion contracts, also known as a "take it or leave it" contracts. He said that there is no protection regarding market penetration. **Senator Heider** said that is the purpose of the contract. A contract is there to protect the dealer and the supplier. **Mr. Batt** stated there is nothing in statute that protects dealerships from suppliers arbitrarily making decisions to substantially change or alter the circumstances of the dealer, even if it is in the contract.

Chairman Patrick said "take it or leave it" contracts are common and there is no negotiating.

TESTIMONY:

Suzanne Budge, representing John Deere, said she wanted the bill amended to align the language with dealer contracts in other states. She said the intent was to have language that is agreed upon by manufacturers and dealers. She pointed out that in 2015 two parties did agree on common language and she wanted that included in this legislation. She asked the Committee to consider removing ambiguity and aligning the language that was agreed upon in Oregon. She explained that on page 1, line 40, she wanted to strike the word "determine" and insert the word "control." She asked that a definition be added for "substantially changing a dealer's competitive circumstances." She noted this change would be for new contracts, which is what was consistent with the state of Oregon.

Vice Chairman Martin remarked when he had his businesses, he had multiple product lines and signed contracts, which were "take it or leave it" and were non-negotiable. He had no government protections. He asked why the Legislature should intervene for this group versus another group. **Ms. Budge** said code has been in place for many years. She said this code also applies to auto dealers. The language added in this bill should provide certainty and remove ambiguity. The proposal does not affect current contracts. She remarked that John Deere endeavors to have good relationships with their dealers, which is the heart of their business.

Vice Chairman Martin asked if we do nothing on this legislation, what is the effect and why the change? **Ms. Budge** said this bill was brought by dealers and it is their objective to change the language on behalf of their organizations. The manufacturers are responding to the legislation. The manufacturers have reviewed the legislation and are being proactive when they find issues that are going to be problematic in their existing contracts.

Senator Schmidt asked if any surrounding states besides Oregon have this type of legislation. **Ms. Budge** said that from a broader perspective, many states have these contractual deals in their codes; the most recent one is in Oregon. The objective is to have the language aligned in the state where the manufacturer is located as well as that of the dealer.

Senator Lakey remarked he struggled with the anti-competitive nature contained in this bill. He said this bill seems to take the focus away from the agreement and make something happen outside of the agreement. **Ms. Budge** said she did not agree or disagree. This issue has been under discussion for many years.

Senator Guthrie remarked this change is only applicable moving forward. He wanted to know if others would be "grandfathered" in. When others want to move in does that not confuse the situation? **Ms. Budge** said these contracts are already in place across the State. A provision would be requested to allow that contracts in place be subject to the law already in place when the contract was signed. Only new contracts would be affected. **Senator Guthrie** commented it seemed that an existing dealership would be subject to someone moving into the area of responsibility and the person who moved in would not be subject to any further competition. This seemed unfair to him. He suggested that if a dealer renews a contract in three or five years, then they would fall under the new law.

Senator Rice wanted to know what was different with these changes from the viewpoint of the manufacturers. **Ms. Budge** said manufacturers were not proposing the language, but rather this was a reaction from a national viewpoint regarding ambiguous language.

Senator Heider queried that if the dealer's competitive circumstances were

changed versus the competitive circumstances of a dealer agreement, was there a difference? He referred to lines 35-36 on page 1 and said there did not appear to be any changes in the definition. **Ms. Budge** said the language was not that of her client.

Mr. Batt commented he thought there was an agreement on the amendments. He stated there was an initial agreement to strike "determine" and the definition, but there was no agreement on section 4 and he said current contracts would not be protected. Lines 35 and 36 would change the terms within the agreement.

Senator Schmidt asked if this law is passed, why would it not just affect new contracts? Would all current contractual relationships be redrawn? **Mr. Batt** said the amendment only applies to new contracts, and current contracts would not be protected. He said the changes should be retroactive.

MOTION: **Senator Heider** moved that **S 1358** be held in Committee. **Vice Chairman Martin** seconded the motion. **Senator Lakey** stated he was in support of the motion. **Senator Rice** commented he saw this bill as one that could not move forward. The motion carried by **voice vote**.

H 366 **Relating to the Board of Architectural Examiners.** **Mitch Toryanski**, Attorney, Idaho Board of Occupational Licenses (IBOL), said this bill will remove members of the State Board of Architectural Examiners (IBAE) from the Public Employee Retirement System of Idaho (PERSI) by changing the payment they receive from compensation to an honorarium, under Idaho Code § 59-509. There is no impact on the General Fund and a negligible impact on dedicated funds.

Mr. Toryanski stated the IBAE consists of six volunteers appointed by the Governor; they are all practicing architects. This bill changes the type of compensation that IBAE members receive from \$75 per day in salary to \$75 per day in honorarium. By changing from salary to honorarium means members will no longer participate in PERSI. He explained that the reason IBAE members do not want to participate is because their small contribution to PERSI, a defined benefit plan, can have negative tax consequences relating to their participation in a private sector retirement plan, typically a 401K or an Individual Retirement Account (IRA). Most boards used to participate in PERSI. Over the years, all boards except for the IBAE have voted to opt out of PERSI.

MOTION: **Senator Thayne** moved that **H 366** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 368 **Real Estate Appraisers - Amends Existing Law to Revise Definitions.** **Roger Hales**, Attorney, IBOL, said in this bill the Idaho Real Estate Appraiser Board (IREAB) is amending its definition of "appraisal." The law change will establish that the IREAB regulation only pertains to an estimate of the value of real property rather than opinions regarding the nature, quality or utility of the real property. There is no impact on the General Fund or the IBOL's dedicated fund.

Mr. Hales said this proposed law change was requested by a licensed real estate appraiser based upon a concern that the present definition is so broad that it includes many other services, such as soil reports, energy audits, title reports or property inspections, where no opinion of value is intended.

The proposed law change was discussed and adopted in an open, noticed meeting of the IREAB. It has been posted on the IREAB's website since October 2015. A postcard was sent to all current license holders informing them of the proposed change. There was no opposition.

Senator Schmidt stated the definition of "appraisal" has been significantly narrowed. He expressed a concern that there may be unforeseen consequences. **Mr. Hales** said the IREAB has not dealt with other opinions related to quality or utility of real property and this change will not affect current practice.

MOTION:

Senator Heider moved that **H 368** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 486

Relating to Barber Colleges. **Kris Ellis**, Northwest College Federation, stated the purpose of this legislation is to clarify licensed barber schools as postsecondary institutions in order to align with federal regulations. There is no fiscal impact to the General Fund.

Ms. Ellis commented this is a cleanup bill that is required by the U.S. Department of Education (USDOE) for schools with students who are eligible for federal financial aid. The added language will ensure that barber schools in Idaho are in compliance with this rule that requires them to be designated as postsecondary schools. In 2013 legislation was passed that brought cosmetology schools into compliance with the rule, but not barber schools.

Ms. Ellis said an oversight was discovered this summer when a new barber school went to open in Boise and the USDOE asked for their postsecondary certificate. The IBOL was not able to provide a certificate specific to the barber school. The substantive changes do three things: 1) designate barber schools as postsecondary; 2) clarify the schools must be licensed by the State Board of Education; and 3) students that attend must meet minimum requirements for admittance to a school. This legislation also has an emergency clause to quickly remedy this oversight.

MOTION:

Senator Heider moved that **H 486** be sent to the floor with a **do pass** recommendation. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

H 398

Relating to Revised Uniform Athlete Agents Act (RUAAA). **Dale Higer**, Chairman, Uniform Law Commission (ULC), said the RUAAA updates the 2000 version of the Uniform Athlete Agents Act (Act) adopted by Idaho in 2001 due to the increased occurrences of improper activity with respect to benefits between student athletes and agents and for the ever-evolving sports commercial marketplace. The Act governs relations among student athletes, athlete agents and educational institutions. It further protects the interest of student athletes and academic institutions by regulating the activities of athlete agents. The 2015 revision updates the definition of "athlete agent"; requires reciprocal agent licensing; and enhances notice requirements to educational institutions. There is no impact on the General Fund.

Mr. Higer explained the Act was promulgated in 2000 after the National Collegiate Athletic Association (NCAA) asked the ULC to undertake the drafting of a uniform act to address the problem of rogue sports agents giving cash and other economic benefits to student athletes. The Act has been widely adopted, Idaho being one of the first in 2001. Forty-two states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have adopted this Act. Many states have amended the Act to address issues raised by this conduct, thereby making the Act less uniform. After studying these and other issues, the ULC in 2013 created a drafting committee to revise the Act. The RUAAA was promulgated by the ULC in 2015 after a two-year drafting project. All stakeholders involved in collegiate athletics attended and participated extensively in the drafting process. The stakeholders included the NCAA, the National Association of Intercollegiate Athletics (NAIA), the National Federation

of State High School Associations (NFSHSA), the American Football Coaches Association (AFCA), athletic directors, athlete agents' associations, the National Football League (NFL) Players' Association, the National Association of Secretaries of State (NASS) and the National Association of Attorneys General (NAAG).

Mr. Higer indicated the RUAAA updates and improves the Act by expanding the definition of "athlete agent," providing for reciprocal registration of agents, adding new requirements to the signing of an agency contract, expanding the notification requirements to educational institutions and providing remedies to student athletes. The term "athlete agent," defined in **H 398** in Idaho Code § 54-4802 beginning on page 1, line 38, includes financial advisors, business advisors, career managers and individuals who give something of value to a student athlete or another person in anticipation of representing the athlete for a purpose related to the athlete's participation in athletics. The RUAAA provides reciprocal athlete agent registration to address a concern of athlete agents for different forms in different states and the costs associated with filing in various states. That provision is found in Idaho Code § 54-4805 (2), page 6, beginning on line 27. The contract between the student athlete and athlete agent must now contain a statement that the athlete agent is registered in the state in which the contract is signed; list any other states in which the agent is registered, Idaho Code § 54-4810 (2)(a), page 9, lines 4-6; and be accompanied by a separate record signed by the student athlete acknowledging that signing the contract may result in the loss of eligibility to participate in the athlete's sport, Idaho Code § 54-4810 (4), page 9, lines 35-38. This last requirement is intended to draw to the attention of the student athlete the serious consequences of signing an agency contract.

Mr. Higer remarked the proposed RUAAA provides for additional notification requirements. An athlete agent is required to notify the educational institution at which a student athlete is enrolled before contacting a student athlete. This provision is found in Idaho Code § 54-4811(6), page 10, lines 36-38. A violation of this notice requirement is subject to civil penalties. An educational institution that becomes aware of a violation of the RUAAA by an athlete agent shall notify the IBOL of the violation. This provision is found in Idaho Code § 54-4811 (8), page 11, lines 1-4. Such notifications should lead to more enforcement of the RUAAA. Student athletes are now given a right of action against an athlete agent who is in violation of the RUAAA, Idaho Code § 54-4816, beginning on page 12, line 8. The Routing Slip (RS) that became **H 398** was reviewed by Tana Cory, Chief, IBOL, and her staff and proposed changes have been incorporated. The RUAAA has been endorsed by the NCAA and is supported by Boise State University (BSU) and the University of Idaho (U of I). **Mr. Higer** said he was not aware of any opposition to this legislation.

Senator Rice and **Mr. Higer** had a conversation about agents compensating players. They discussed the idea that it is illegal in most states for sports agents to provide gifts or other items of value to amateur athletes, and agents are supposed to register with state regulators before approaching an athlete. Violators can be prosecuted.

Senator Schmidt remarked that the civil penalties were the largest he has seen. **Mr. Higer** said this was current law.

Senator Rice said he was not comfortable with the bill and did not see what would be accomplished. He said he believed the civil penalty in existing code could be unconstitutional.

MOTION: **Senator Rice** moved that **H 398** be held in Committee subject to the call of the Chair. **Senator Lakey** seconded the motion. He said he thought there could be something that could be worked out. The motion carried by **voice vote**.

H 519 **Massage Therapy Student Compensation. Representative Kathleen Sims** said this bill will allow compensation to be given to massage therapy students for tuition work-off programs where such programs have been established by the institution teaching massage therapy. Students would graduate with a license and be debt-free. She remarked there is an emergency clause added. There is no impact to the General Fund.

TESTIMONY: **Lydia Benson**, Director of the American Institute of Massage, testified in support of this bill. She said her school has been offering tuition credit for the last 15 years as they have no federal funding.

MOTION: **Vice Chairman Martin** moved that **H 519** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Vick will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 3:11 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 08, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>H 511</u>	Relating to Homeowner's Associations	Representative Terry Gestrin
<u>S 1317</u>	Relating to Homeowners' Attorney Fees	Senator Lakey
<u>S 1385</u>	Relating to Automobile Liability Insurance	Bill Litster, Idaho Public Policy Institute
<u>S 1387</u>	Relating to Durable Medical Equipment	Senator Jim Guthrie
<u>H 371</u>	Relating to Factory-Built Structures	Steve Keys, Deputy Administrator, Division of Building Safety
<u>H 454</u>	Relating to Environment, Energy and Technology Committee - Underground Facilities Damage Prevention	Neil Colwell, Avista Corporation
<u>H 480</u>	Relating to Licensure Boards	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses
<u>H 482</u>	Relating to Boards, Outfitters and Guides	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 08, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

H 511 **Relating to Homeowner's Associations** (HOA). **Evan Mortimer**, Attorney, said this legislation protects the private property rights of Idaho homeowners by ensuring their rights to rent their property is preserved. The legislation states that if a homeowner bought a home at a time when renting the home was allowed by a HOA, the HOA may not create new Covenants, Conditions and Restrictions (CCRs) that change the existing right to rent without written consent of the homeowner. This would not impact CCRs that were in place prior to the time a homeowner purchased the property.

Mr. Mortimer stated the ability to rent property is a fundamental right, as is the right to sell property. Legally speaking, rentals are "short-term sales" of property. Currently, HOAs have unlimited authority to amend CCRs after a person purchases property and may restrict property rights however they see fit. The goal of this bill is to prevent HOAs from taking that fundamental property right away from a property owner without permission, after the property is purchased. **Mr. Mortimer** emphasized this bill essentially tells HOAs that any attempt by them to take away the fundamental right to lease property without adequately accommodating existing owners' investment-back expectations is unreasonable, unconscionable and against public policy.

Specifically, **Mr. Mortimer** said that under this bill, an HOA may not restrict a homeowner's right to rent property without express written consent. He explained that CCRs that are in place when a person purchases property can limit the right to rent. This bill does not change the ability of a land developer to establish the original CCRs. This bill does not prevent an HOA from adding or amending CCRs that restrict rentals. He stated that HOAs can amend or pass CCRs that restrict rentals according to their bylaws and enforce them, so long as members who do not agree in writing to be bound will be grandfathered into the new CCRs. Later purchasers would be bound to the rental restrictions.

Mr. Mortimer stated this bill will make it hard for HOAs to amend their CCRs to restrict rentals. The burden should be on the HOA. He pointed out that language would need to include something such as, I agree to be bound by the amendment.

DISCUSSION: **Senator Thayne** and **Mr. Mortimer** discussed fines levied by HOAs for parking violations. **Senator Ward-Engelking** asked if there is any mediation that takes place when there is a violation of the HOA covenants. **Mr. Mortimer** explained that HOAs change rules, which is a widespread practice, and no mediation occurs.

TESTIMONY: The following people testified in support of **H 511**: **Katherine Swift**, who said she has a property management company and this bill creates opportunities in the area for those who need short-term rentals. Her company provides a solution for owners who want to keep their homes, pay taxes and afford the upkeep. **Joe Grover** said that in some cases, long-term renters do not always take care of the property. He remarked that if he were to consider staying somewhere on vacation, he would look for a short-term rental rather than a hotel. **Marina Banaszek** said that she has a short-term rental and that she and her husband have improved the property, which is better than most homes in her neighborhood. She said there was no HOA but she is afraid to purchase any rental property that has an HOA since she thinks the HOA could change the CCRs. **Wes Jones** said that part of his income is from long-term rental property. He is always worried that he may lose income from a change in CCRs. He stated he sold the property to Jonathan Frost. He found it very interesting that the neighbors in Mr. Frost's area would complain about a vacation home being rented on a short-term basis. He commented there are large crowds at several cabins in that neighborhood on a regular basis. There are a number of areas around that particular community that allow vacation rentals. He said that he has now purchased a piece of property in that area and it would help if the property is sold as a vacation rental.

Jonathan Frost, representing himself, testified in support of the bill and said that currently, Idaho HOAs have the right to restrict or eliminate rentals from the area of their jurisdiction, even though those restrictions did not exist at the time the owner purchased the property. Owners should have the reasonable expectation that if a rental is allowed at the time of purchase, he or she will be able to continue renting the property throughout the time they own their property. He added the language in the bill on page 1, lines 37 to 42, and on page 2, lines 1 through 4, will allow homeowners to rent their home when a HOA would take that property right away: "no HOA may add, amend or enforce any covenant, condition or restriction in such a way that limits or prohibits the rental, for any amount of time, of any property, land or structure thereon within the jurisdiction of the HOA, unless expressly agreed to in writing at the time of such addition or amendment by the owner of the affected property. Nothing in this section shall be construed to prevent the enforcement of valid covenants, conditions or restrictions limiting a property owner's right to transfer his interest in land or the structures thereon so long as that covenant, condition or restriction applied to the property at the time the homeowner acquired his interest in the property". This language will not change the ability an HOA has to enforce the CCRs that existed when an owner purchased their property. Essentially, these sentences would "grandfather" an owner into the original CCRs if the CCRs allowed rentals when the property was purchased. This is the legal language that would protect the land rights of owners throughout Idaho. **Mr. Frost** said that a similar law exists to protect owners in other states (e.g., Georgia and South Carolina). For each night rented, he paid taxes from 8 percent to 15 percent per night. In addition to sales tax, Idaho charges a travel and convention tax to occupants of short-term rentals, and some cities are allowed to charge a local option tax. None of these are required if a rental is longer than 30 days.

Mr. Frost commented that he invests nearly 100 percent of his income back into the business. He said he employs individuals to help remodel, maintain and clean between group stays. He stated his family participates in these efforts out of necessity. After reviewing many home listings and CCRs to ensure rentals were allowed, he and his wife purchased a home in Donnelly that had been on the

market for nine months and was publicly advertised as having "great vacation rental potential." The neighbors were nearly all part-time residents, but were eager to see the activity and improvements being made on the home each time they visited their vacation homes. **Mr. Frost** offered his personal cell phone number to the neighbors and let them know that he was available 24/7 in case they had any concerns about the rental. He said that if something bothered the neighbors, he wanted to know so that he might personally address the issue. In June, after investing a sizeable amount of his own and the business money as a down payment and for improvements, the home was ready to rent and was listed on vacation rental sites. The demand was sufficient enough to keep his business moving forward. **Mr. Frost** said he moved his family to Valley County and found a modest rental to live in.

Mr. Frost related that approximately a month after the CCRs were changed, the HOA's attorney summoned him to a meeting where the HOA Board (Board) questioned him as to why he continued to do short-term rentals. The attorney and the Board stated he had rented his home on three occasions over the past month, which was during the holiday season. In the interest of transparency and goodwill, **Mr. Frost** said he provided the HOA attorney with every date he had booked before the December 10, 2015 amendment was effective. He remarked he even disclosed that he had accepted a single booking request after the December 10 amendment, with the understanding that he may need to cancel that reservation or pay a fine. He said he and his wife did this in the interest of full disclosure and explained that they fully intended to abide by the rules, as long as it was necessary. The Board said they would adjourn into an "executive session" to decide how to proceed. On March 1, 2016, he received notification from the Board's attorney stating that, in their opinion, he had violated the amendment in the CCRs by honoring the pre-existing contracts he had entered into before the December 10 amendment.

Mr. Frost explained that for disclosing that he had honored these pre-existing contracts, the HOA chose to fine him \$11,700 and reserved the right to fine him if he continued to honor the remaining reservations. The HOA stated they reserved the right to file a lien and foreclose on his property if he and his wife did not pay up "shortly."

Mr. Frost explained that once HOAs impose fines, the options a homeowner has are to pay or go to the courts to argue their case. If the homeowner is not effective at pleading their case, they pay their own attorney fees, the HOA's attorney fees and the fines the Board imposed. HOA boards have much less to lose if they fail, as their insurance pays all of their costs. He said his is not the first family this has happened to in Idaho. Other short-term rental owners count on the income their rental provides. He said they have consulted with numerous real estate professionals and attorneys and have come to the conclusion that they have no other option but to turn to the legislative branch and change the law. The law has to be changed to prevent HOAs from restricting or prohibiting rental activity when it was allowed at the time of home purchase, and thereby destroying home values and people's businesses. Supporting this bill and adding these sentences to Idaho Code will allow homeowners to rent their home(s) when an HOA would try to take that right away.

Senator Rice wanted to know if any lots in the subdivision were still owned by the person who built the subdivision. **Mr. Frost** said he believed that 20 percent of the lots were still owned by the person who started the subdivision.

The following people testified in opposition to **H 511**: **Jeremy Evans**, Attorney, Vial and Frothingham, representing HOAs in the State, said the solution in **H 511** would attempt to affect, as currently written, a much more serious problem, with broad

consequences for every ordinary condominium owner in Idaho. He said he did not want this bill to apply to any condominium owners. He emphasized that the law already recognizes and protects owners' right to rent out their property. **David Ricks**, representing himself, said this bill puts the property rights of a few over the majority. **Jim Roland**, representing himself, said short-term rentals compete with the hotel industry. **John Hockberger**, representing himself, said the area in which he lives has been owner-occupied with very few rentals and that short-term rentals would diminish his living accommodations. **Georgia Mackley**, who manages an HOA and is a co-owner of Development Services, Inc., said the control in this bill goes to one homeowner who does not want to follow the rules. **Scott Turlington**, Principle Strategic Advisors, said he wanted to offer an amendment to the bill. He said the CCRs state that the sole purpose is for single-family residential units. He remarked that since 1998 there has never been a rental in Windsong. What has become apparent is Idaho Code decided to define a hotel and a motel. He said the Tax Commission further defined hotels and motels and made rules. He reaffirmed that if occupancy was less than 31 days, the owner was subject to taxes. The HOA should have the right to amend CCRs. His amendment would exempt hotels and motels.

DISCUSSION: **Senator Rice** asked Mr. Turlington what his position was regarding existing contracts for short-term rentals at the time the HOA rules are changed. Was it his belief that the person who has an existing contract has to breach their existing contracts? **Mr. Turlington** said that in this case, the existing contract that was entered into included the CCRs, which included section 4.01 of this bill that said the sole purpose was the establishment of single-family residential units. When he read his CCRs, he understood what his limitations were and gave the example of not being able to have a basketball hoop in his front driveway. **Senator Rice** repeated his question to Mr. Turlington, asking if there was an existing contract, was it his position that the owner of the home that already had a contract should breach the contract and pay any penalties regardless of his neighbors and should his neighbors be able to impose a fine on him. **Mr. Turlington** said he did not know if he had a position and deferred to the Idaho Supreme Court decision on the case of Pinehaven Planning Board versus Thomas J. Brooks and Jennifer Brooks. **Senator Rice** wanted to know if Mr. Turlington thought an \$11,700 fine was appropriate to impose on someone because they did not want to breach their pending contracts and take an additional loss to their value of the property when the CCRs were changed. **Mr. Turlington** remarked he had no specific opinion.

Vice Chairman Martin said he was trying to figure out his own situation. He cited the example of people coming and going in a neighborhood and there are no problems. He said if people come and go quietly, he is not too concerned. He wanted to know if that would be a good remedy for the HOA to only cite an owner if they caused a problem. **Mr. Turlington** said he agreed.

Senator Thayn asked if this bill is passed, would the CCRs that are currently in place be overturned or are the changes retroactive. **Mr. Turlington** remarked he did not know if he read a retroactive clause and that was a question for attorneys.

TESTIMONY: **Ken Mallea**, president of his HOA, spoke about single-family residences and said he thought 99 percent of all people who live in all subdivisions in this county oppose **H 511**. He remarked that if this bill passes, every home for rent would be advertised on the internet. He talked about the registration of sex offenders and how they have seven days of free time away from the city in which they live. He expressed a concern that sexual predators could rent a place for short-term stays.

Anne Hay expressed a concern the neighborhood would lose its ability to take care of its own problems. She was also concerned about the idea of having 24-hour security to keep everyone safe.

Ron Evans, Vice President of Windsong HOA, reported he observed people staying at the Frost cabin for three or four nights in groups of 15 to 20 people. Some were well behaved and some were not. He mentioned he has had a few issues with noise and with vehicles being driven over another lot. He said the residents did not want short-term rentals in their neighborhood. There was a six-month rental limitation incorporated into the covenants in December of 2015.

DISCUSSION: **Senator Rice** asked if there was a reduction in value of the property owned by Mr. Frost because of the change in the CCRs and would it be fair for the HOA to pay the difference. **Mr. Evans** remarked this problem could have been prevented if some pre-purchase conversations had taken place. **Senator Rice** wanted to know if the HOA had fined the Frosts, and if so, how much. **Mr. Evans** said fines were incorporated into the prohibition of rentals because it was the opinion of the HOA there should be some kind of penalty. **Senator Rice** again asked Mr. Evans how much the fine was. **Mr. Evans** said the fine was \$300 per day while the property was rented and the total amount was \$11,700.

Senator Schmidt said that in Article 4 of the Windsong CCRs, houses are described as a single-family dwelling and it was obvious the neighbors were not following the covenant requirement; he wanted to know why the HOA did not invoke that article. **Mr. Evans** replied the HOA did not know what the Frosts were going to do with the property when it was purchased. He mentioned the HOA looked at the conditional-use permit process, but rentals "slide under the radar." However, when an operation turns into a commercial occupation, then that is a problem. **Senator Schmidt** commented that the HOA had plenty of standing without changing the CCR rules and if zoning would not enforce the rule, then the HOA should enforce it. **Mr. Evans** said this was not considered.

Mr. Mortimer asked the Committee to give this bill a "do pass" recommendation. **Senator Thayn** asked Mr. Mortimer if this bill would overturn any CCRs that are in place. **Mr. Mortimer** said there is an enforcement provision and a property owner has to expressly agree to any changes. **Senator Thayn** asked if this bill were to pass, could Mr. Frost use his property as a rental. **Mr. Mortimer** said "yes," explaining that Mr. Frost has not consented nor signed anything agreeing to the CCRs regarding the ability to rent and, therefore, the HOA cannot enforce them against him.

Senator Thayn asked what would happen if the property were to be sold. Would the rights be transferrable? **Mr. Mortimer** said the burden would be shifted from the individual homeowners and the new owner would have to agree to the CCRs, including the restriction on rentals.

Vice Chairman Martin referred to page 1, lines 40 through 42 of the bill, and wanted to know the intent of the language. **Mr. Mortimer** explained that CCRs apply to everyone. However, when there is an addition or amendment to the CCRs, the owner of the affected property has to expressly agree in writing at the time of

the changes. The HOA has to craft the language so the affected owner who does not agree will have to be "grandfathered" in.

Senator Lakey said a scenario could arise when an HOA decides to impose a "no short-term rental" amendment to their CCRs and there is a 90 percent vote. Ten percent would be grandfathered in and protected until they sold their property and anyone buying would have to adhere to the modified CCRs. He wanted to know about those who voted and were in the 90 percent, do they have to sign a separate waiver that they voted in favor of the changes or does their vote count as an express agreement in writing? **Mr. Mortimer** said what he envisioned is that HOAs and attorneys are going to have to craft the language so that when a change is agreed upon, the property owner will sign an agreement with the changes.

Senator Ward-Engelking wanted to know how an HOA would justify the sole purpose of single-family residences. She wanted to know how that is upheld with someone coming in and renting their home every day or the entire year. She remarked that sounded like something different than a single-family home. **Mr. Mortimer** referred to the Idaho State Supreme Court case of Pinehaven Planning Board versus Thomas J. Brooks and Jennifer Brooks, and said this case talks about whether or not renting your home is commercial activity. The court determined that it is not. A single-family dwelling can have many people coming to stay whether it is in cabins or houses. Just because there is a renter does not automatically mean that is a bad renter. **Senator Ward-Engelking** remarked she was not concerned about the bad or good tenant and understood long-term renters may not take care of a property. However, if a property is rented for less than 31 days, that constitutes a hotel. **Mr. Mortimer** explained there is a distinction between what the Tax Commission says about what is taxed and the tax alternatives; this is an issue for the Tax Commission.

Senator Schmidt referred to Article 4 in the CCRs and said Mr. Frost purchased the property with the express consent that the property would be a commercial rental, contrary to the HOA agreement. The HOA passed something they could enforce. Why does the HOA express they expect this house to be a single-family dwelling, which was not part of the original deal? **Mr. Mortimer** said this goes back to the definition of a single-family dwelling. Generally speaking, a single-family dwelling has not hindered the ability to rent a home nor has the timeframe been often discussed. **Senator Schmidt** stated that Mr. Frost's original intent was that this was going to be a commercial property, which was in violation of the covenant and we are trying to protect that violation with this legislation. **Mr. Mortimer** explained there are no provisions in the CCRs that have to do with rentals and there are no restrictions on rentals in the CCRs. This is about the ability for a property owner to use their land as they see fit. A single-family dwelling can include long-term and short-term rentals.

Mr. Mortimer discussed the decrease or increase in property values when there are short-term rentals, pointing out there are pros and cons. He cited information from an article published by Cornell University. He said he found out that the ability to share the cost of a home through rentals actually will insulate a homeowner with the effects of the negative housing turn. The issue of raising or lowering property values is a debated issue. However, the Idaho Bankers Association (IBA), Idaho Association of Counties (IAC) and the Idaho Association of Realtors (IAR) all support this legislation. He said this was a good law and a good idea. He said an HOA could not come in after the fact and take away the fundamental property rights of owners.

Senator Rice said that looking at the language of the bill at the time the HOA and CCRs were created, the original CCRs are actually signed by the owner or representative. When changes are made that restrict a fundamental use of the property that affects the value of the property, this is not the same kind of change as adjusting where someone can park or how long a trailer can be parked in the driveway versus parked behind a fence.

Senator Rice referred to a comment made earlier about the democratic process, and said there is just as important a process when someone's property or property rights are taken for public use; such action would include any time when there is a vote of the neighbors, the loss has to be paid for. He pointed out what we have is a situation where an HOA wants to be able to take property rights that no one anticipated would be taken when they purchased the property and not pay for it. **Senator Rice** said the Frost case was an example of an unconscionable fine because someone fulfilled a few weekend contracts after the neighbors took fundamental rights to the property. He noted we have cities that have tried to define single-family homes as those whose residents are only related family members that have a close relationship, but that was found to be unconstitutional. What this bill does is re-enthrones the principle that when one owns property, one has the ability to use the property without restriction when it comes to renting or in ways that will devalue the property. That should include HOAs. The Idaho Supreme Court makes rulings on public policy as to what they think the Legislature might accept or what is most appropriate. It is this body's duty, obligation and authority to decide the public policy of the state of Idaho, together with the colleagues in the House..

MOTION:

Senator Rice moved to send **H 511** to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion.

Senator Lakey commented he looked at this bill as balancing. Both sides are talking about property rights. He is concerned an HOA is going to go onto someone's property and tell them what to do and amend the CCRs. The ability to rent is very important and needs to be protected. Only the person who owns the property and does not agree to the changes is grandfathered.

Senator Heider remarked this bill deals with property rights and contract laws. When someone buys a home, they cannot arbitrarily say what they want to do. All things involving real estate must be in writing and signed, otherwise it is not binding.

The motion carried by **voice vote**. **Senators Schmidt** and **Ward-Engelking** voted nay. Senator Heider will carry the bill on the floor.

S 1317

Relating to Homeowners' Attorney Fees. **Senator Lakey** said this legislation clarifies that HOAs may only seek attorney's fees and costs from a property owner and place a lien on an individual's property if those reasonable attorney's fees and costs have been awarded by a court. He stated he wanted to modify this bill. There is a practice that concerns him about fining someone and not giving them a chance to remedy. Attorney's fees cannot be assessed on a homeowner if not awarded by the court. **Senator Lakey** asked to send this bill to the 14th Order for amendment.

MOTION:

Vice Chairman Martin moved to send **S 1317** to the 14th Order. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

S 1387

Relating to Durable Medical Equipment (DME). **Senator Guthrie** said the purpose of this legislation is to amend the Idaho Pharmacy Act (IPA) by adding additional requirements before being issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy (IBP) and adds a definition of DME supplier. This act adds a requirement for suppliers of listed DME devices to have an accredited facility in the State or within 150 miles of the border. It also adds the DME supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact to the General Fund.

Senator Guthrie reported there were some issues that arose when this legislation was originally heard. He outlined the changes and referred to page 8 for the primary changes, noting the ambiguity was addressed. He said the proximity to the State language remains intact. This bill is an effort to make the legislation better.

DISCUSSION:

Senator Schmidt referred to page 9 and the 150-mile requirement. He wanted to know if someone could bid on DME, have a facility in Idaho and be located well over 150 miles from Idaho and the customers they are serving. **Senator Guthrie** explained the DME bids are awarded in an identified competitive bid area. Bids will be awarded specific to that area. If the company was beyond the 150 miles, it would still be within the framework of the Centers for Medicare and Medicaid Services (CMS) bid law. Each of the items, such as walkers, wheelchairs and oxygen that are identified for bid will be bid separately. He said an important thing to remember is that this legislation is not affecting any of the mail order or drop-ship companies. **Senator Schmidt** expressed a concern about the distance of 150 miles, which opens the doors to the competitive nature of bidding. **Senator Guthrie** said Colorado actually had a proximity of 50 miles. He said that in 2017 through 2019, federal legislation will require up to three rounds of competitive bidding to drive the prices down. The federal bidding of CMS will have to be sensitive to state licensure and requirements. This is a preemptive move. The CMS is still involved in suicide bidding where providers are bidding and not servicing contracts. There is no chance of stopping suicide bidding until 2019 or later.

TESTIMONY:

Brent Seward, Executive Vice President of Norco Medical, Inc., spoke in favor of this bill. He remarked this is really about patient safety and quality health care. Current DME licensure laws do not address appropriate patient safety. He said this bill defines complex DME. If a company bids and is farther away than 150 miles, the company has the intent to fulfill their obligation. The Medicare National Competitive Bidding process has created loopholes. The main problem is with the lack of regulation on DME licensure. **Mr. Seward** said this bill appears to some people to increase costs. People are trying to save money by mail ordering products due to the lack of access. Patients will end up in the emergency room because they have not been trained on how to use complex equipment.

Senator Lakey said he was struggling with the 150-mile restriction. He said why not take the approach of putting requirements over what needs to be provided or timeliness or customer service versus an arbitrary 150 miles. He wanted to focus on customer care and timeliness.

Mr. Seward said the 150 miles is reasonable. Those companies have the ability to take care of a problem and have good intentions.

TESTIMONY: **Susan Mauers**, Maag Pharmacy, testified in support of **S 1387**. She said the elderly need instructions on how to use DME. Technicians are happy to help even after hours. She said they had to reduce their area of service because of the cost of doing business due to suicide bids.

Scott Ingraham, Seating and Mobility Specialist with Numotion, a national company with an office in Boise, testified in support of the bill. He shared his experience working with a spinal cord-injured quadriplegic patient. He said he spent approximately 15 hours of time with the patient to determine what type of equipment was needed. He sent out a list of recommended products to the insurance company and they did not call back. He stated the biggest issue was that the bid for the high-end piece of mobility equipment, a power wheelchair, was won by a company in Florida. This patient received a wheelchair, which was shipped by the manufacturer to a tractor and machine shop in Burley. The company in Florida flew their seating specialist to Idaho. The tractor company brought the chair to the patient's house. Essentially, if a chair breaks down on a Friday afternoon, there are three required service technicians who would not be able to provide the service for this equipment. Phone calls would have to be made to someone in Florida. The patient would have to wait for the technicians to fly to Idaho. Meanwhile, the patient is potentially stuck in bed and could develop pressure sores. He could then be admitted to the hospital for wound care versus having the ability to call someone locally to get the service that is needed. This particular piece of equipment has to be programmed with a laptop plugged into the power wheelchair. There are all types of settings for safety. Sometimes patients require someone to service their equipment a minimum of every three months. The equipment is not something that can be dropped off at the door.

Jesse Taylor, representing Norco Medical, Inc., addressed the question of 150 miles. He said that while drafting this bill, he spoke with others in other states. The Attorney General in Colorado advised that by putting a mileage requirement to the patient in the bill, that would avoid any problem with the commerce clause. Anyone in the state of Idaho is covered by the part of the law that says "a presence in Idaho or within 150 miles." That mileage would cover most of the surrounding states' territory competitively. Most companies will not be able to service or be able to provide service beyond the 150 miles.

Alex Adams, Director of the Idaho State Board of Pharmacy, said there is a fiscal impact on the Pharmacy Board dedicated funds due to the 15-mile restriction. He said there are currently 256 registrants whose address is more than 150 miles from the border of Idaho. They would be unable to register with the Board of Pharmacy, which would have a negative impact of approximately \$12,800.

Senator Guthrie remarked the dedicated funds for the Board of Pharmacy would be impacted but if those accounts outside the 150 mile radius cannot register, there is an equivalent cost savings. He said he would not have brought this bill back a second time if he had not believed in it. He remarked he wanted continuity and quality of care for patients.

MOTION: **Vice Chairman Martin** moved to send **S 1387** to the floor of the Senate with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Lakey** asked to be recorded as voting nay. Senator Guthrie will carry the bill on the floor.

S 1385 **Relating to Automobile Liability Insurance.** **Chairman Patrick** announced this bill has been rescheduled for the Committee Meeting of March 15, 2016, at the request of Bill Litster, Idaho Public Policy Institute.

Chairman Patrick announced the remainder of the bills on the agenda would not be heard due to the lack of time.

H 371 **Relating to Factory-Built Structures. Jack Lyman**, Idaho Housing Alliance, testified in support of this bill. He said it should be sent to the 14th Order for amendment to change the wording to say "to serve at the pleasure of the Governor." **Chairman Patrick** stated this bill would be continued to the Committee meeting of March 10, 2016.

H 454 **Relating to Environment, Energy and Technology Committee - Underground Facilities Damage Prevention. Neil Colwell**, Avista Corporation, said that he had someone to testify who had traveled a great distance.

TESTIMONY: **David Nelson**, District Manager, City of Hailey, said he had been injured in October 1999 in a gas line explosion. He was a first-responder for the fire caused by the gas line. He was blown into a hole of flames and was burned. This accident changed his life forever. He said if more time had been taken to locate lines, this accident would have never occurred. He said he believed this new legislation will help prevent serious accidents.

Chairman Patrick stated this bill and the remaining bills would be continued to the Committee meeting of March 10, 2016.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 3:53 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 10, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>H 485</u>	Employment Security Act	Kenneth Edmonds, Director, Department of Labor
<u>H 371</u>	Relating to Factory-Built Structures	Steve Keys, Deputy Administrator, Division of Building Safety
<u>H 454</u>	Relating to Environment, Energy and Technology Committee - Underground Facilities Damage Prevention	Neil Colwell, Avista Corporation
<u>H 480</u>	Relating to Licensure Boards	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses
<u>H 482</u>	Relating to Boards, Outfitters and Guides	Mitch Toryanski, Attorney, Idaho Bureau of Occupational Licenses
<u>H 501</u>	Workers' Compensation Insurance	Woody Richards, Associated Loggers Exchange
<u>HCR 48</u>	A Concurrent Resolution Relating to the Appointment of a Committee Relating to Public Procurement	Representative Neil Anderson and Senator Fred Martin
<u>H 398</u>	Relating to Revised Uniform Athlete Agents Act	Dale Higer, Uniform Law Commission

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 10, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

H 485 **Employment Security Act. Kenneth Edmunds**, Director, Department of Labor (DOL), reported this legislation amends provisions of the Employment Security Law. Section 1 changes the minimum and maximum base tax rates by rounding the existing tax rates to their nearest tenth of a percent. Section 2 would stabilize the benefit amount at 55 percent of the State average weekly wage paid by covered employers. This legislation would also create a sliding scale for the maximum weeks of entitlement to benefits by indexing the maximum number of weeks to the seasonally adjusted unemployment rate. Currently, the maximum duration for unemployment benefits is 26 weeks. The new maximum would range from 20 to 26 weeks. This bill requires the weekly benefit amount to be "determined by the director" to make the language consistent with that used in Idaho Code § 72-1367(c).

Director Edmunds said there is no fiscal impact to the General Fund or to local government funds. Section 1 would have no impact on the Employment Security Fund's solvency. Section 2 would lower the liability of the Employment Security Fund and have no impact on the trust fund's solvency. It would decrease for every one percent reduction in Idaho's unemployment rate.

Operational costs funded by the Federal Unemployment Tax Act would result in a one-time cost of approximately \$65,000 for the programming, testing and implementation of Idaho's automated unemployment insurance tax and benefit system.

DISCUSSION: **Vice Chairman Martin** asked what was the overall reason for changing the minimum and maximum base tax rates? **Director Edmunds** remarked the DOL was trying to make unemployment collection less enticing especially when the unemployment rate is low. **Senator Schmidt** asked what if there was a prolonged downturn in the economy, would there be a downturn in wages? **Director Edmunds** said that when there was a downturn in the economy a few years ago, there was no wage growth, but no downturn in wages.

Senator Thayn asked Director Edmunds to explain when people receive unemployment benefits based on wages, how does the wording on page 4 of this bill fit the individual. **Director Edmunds** said this is driven more by personal history and not by the State average. Fixing the benefit allocation at 55 percent will result in a more stable maximum benefit amount during economic contractions

and expansions. **Senator Thayne** asked for more information about the 55 percent of the State average weekly wage paid by covered employers for the preceding calendar year. **Director Edmunds** said this refers to the maximum weeks of entitlement and was adjusted downward based on what the employee has earned or their employment history.

Senator Schmidt wanted to know if Director Edmunds knew if these changes would accomplish the goal of this bill. **Director Edmunds** commented that these changes were adopted in other states in different forms, but he was not relying on what has been done in other states. He said the expectation of the DOL was for someone on unemployment to find a job when economic times are good. They discussed a study on welfare benefits and how that was not included in the calculation for unemployment benefits.

MOTION: **Vice Chairman Martin** moved that **H 485** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

H 371 **Relating to Factory-Built Structures.** **Steve Keys**, Deputy Administrator, Division of Building Safety (DBS), reported this legislation would merge the Manufactured Housing Board (MHB) and Modular Building Advisory Board (MBAB) into a single governing board to be named the Factory Built Structures Advisory Board (FBSAB). The MHB is currently charged with developing and monitoring the licensing and continuing education requirements for people engaged in manufacturing, selling and installing manufactured homes. These homes are built to a federal standard and regulated by the U.S. Department of Housing and Urban Development (HUD). The MBAB is responsible for the regulatory framework applicable to constructing modular buildings that are constructed in accordance with the International Building Codes (IBC), as are site-built structures. Many manufacturers, retailers and installers in Idaho are involved with both products.

For the purpose of the FBSAB's advisory authority only, the term "factory built structure" will include any building that is of closed construction and substantially prefabricated or assembled at a location other than the building site, including modular buildings and manufactured homes. The newly created FBSAB will comprise eight members representing various participants of both industries. One member shall represent a manufacturer of commercial modular buildings; one member shall be a consumer who lives in a manufactured home; two members shall be licensed as either a retailer or installer of manufactured or mobile homes; one member shall represent a manufacturer of manufactured homes; two members shall be either a dealer or installer of modular buildings; and one member shall be a consumer who uses or has used modular buildings. The administration of both the modular building and manufactured housing programs by the DBS will remain the same, including the manufacturing and installation standards, the inspection and enforcement standards and procedures, fees and any applicable licensing requirements. The only change will be to the governing body, which will advise the DBS with regard to its administration of matters related to each industry.

This legislation will have no adverse fiscal impact. **Mr. Keys** said this bill should go to the amending order to allow for the inclusion of language stipulating that members of the FBSAB would serve "at the pleasure of the Governor."

TESTIMONY: **Jack Lyman**, Housing Alliance of Idaho, testified in support of **H 371** at the Committee meeting of March 8, 2016.

DISCUSSION: **Senator Lakey** asked if the amendments were a result of a court action. **Mr. Keys** said "yes."

MOTION:

Senator Lakey moved that **H 371** be referred to the 14th Order for amendment. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 454

Relating to Environment, Energy and Technology Committee - Underground Facilities Damage Prevention. **Neil Colwell**, Avista Corporation, said the purpose of this legislation is to provide for Idaho primacy in the protection of the public health and safety regarding underground facilities and to reduce damages to those facilities by the creation of a representative Stakeholder Board (Board). The Board will be housed at the DBS and will provide statewide education and administrative enforcement of the underground damage prevention statutes. If adopted, this legislation will also prevent federal oversight and enforcement related to underground facilities that is authorized by Title 49 of the Code of Federal Regulations (CFR) Part 198 that took effect on January 1, 2016. He said the elements of the legislation are to create and fund a board, collect and analyze data and eliminate court enforcement.

There will be no fiscal impact to the General Fund. Recovery of costs associated with administration of this legislation will be borne entirely by underground facility owners. Funds generated for Board operation will be approximately \$50,000 annually and will need to be authorized by the Joint Finance-Appropriations Committee (JFAC) annually through its appropriations process.

Mr. Colwell said that as of January 1, 2016, Idaho was faced with a simple choice of either federal or local control. He pointed out that under federal control the federal government has the power to enforce dig-law violations against the homeowner digging with hand tools. There is the ability to impose civil penalties up to \$200,000 per day per incident or \$2 million per incident. Constituents would have to contend directly with federal employees and the process. He said underground facilities pay a fee for each call someone makes for a dig location. He noted that when the Board is formed they will be able to listen to complaints. Members of the industry will collect data and the Board will analyze. This bill allows the Board to handle enforcement so it does not go through the courts.

Mr. Colwell referred to a letter received by the Attorney General's office of Idaho from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), stating that on July 23, 2015, the Pipeline Damage Prevention Program Final Rule 49 FR 43835-43869 may impact the state of Idaho. He said the rule includes new criteria and procedures to determine the adequacy of state damage prevention enforcement programs, administrative procedures for states to contest a notice of inadequacy, the Federal requirements PHMSA will enforce against excavators where federal authority is exercised.

Mr. Colwell gave a brief history. He said PHMSA agrees with the comments from the Interstate Natural Gas Association of America (INGAA), Texas Pipeline Association (TPA), Iowa Association of Municipal Utilities (IAMU), the Black Hills Corporation, Iowa One Call and National Association of Pipeline Safety Representatives (NAPSR), oppose an exemption for homeowners excavating on their own property with hand tools. The exemption for homeowners has been removed from the final rule. PHMSA has not included any exemptions for excavations in this final rule. He pointed out that PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level.

DISCUSSION: **Senator Thayne** wanted to know who appoints the Board and who will be writing the rules? **Mr. Colwell** indicated the industry will recommend its own representatives and will be made a part of the DBS. The Board members will write the rules and other rules as may be necessary for orderly administration, except for those related to underground facilities damage prevention.

TESTIMONY: **David Nelson**, District Manager, Intermountain Gas Company, testified in support at the meeting of March 8, 2016.

Celynda Roach, Cable One, testified in support and said that in 2015 her company had unidentifiable disruptions from cut wires. Several areas were without cable and phone service. If gas or electric lines are cut, lives can be lost. She highly recommended adoption of this bill.

MOTION: **Senator Rice** moved to send **H 454** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Rice remarked this bill was very responsible and he liked the idea there would be collaboration. **Senator Lakey** remarked he appreciated the stakeholders. The motion carried by **voice vote**. Senator Rice will carry the bill on the floor.

H 480 **Relating to Licensure Boards.** **Mitch Toryanski**, Attorney, Idaho Bureau of Occupational Licenses (IBOL), said this bill will remove the requirement that the Idaho Board of Licensure of the Professional Engineers and Professional Land Surveyors (IPELS) hire a licensed professional engineer or professional land surveyor as its executive director, that the Board of Nursing (BN) hire a licensed nurse as its executive director, and that the Board of Pharmacy (BP) hire a licensed pharmacist as its executive director. The IPELS, the BN and the BP are the State's only three regulatory licensure boards that are compelled by statute or rule to hire a licensee as their executive director. This bill will allow these boards to hire a licensee if the board wishes, but does not mandate it. There is no fiscal impact. This bill would give these three boards the same flexibility in hiring as Idaho's occupational licensing boards.

DISCUSSION: **Senator Ward-Engelking** remarked she has received several emails on this bill. She explained the people who were impacted by this legislation were unaware of the proposed legislation. **Ann Beebe**, Special Assistant to the Governor for Boards and Commissions, said she contacted each board at least three times. There were 35 boards who were in favor of this legislation and one board who did not want to speak with her concerning this bill.

TESTIMONY: **Thomas Judge**, land surveyor, said it was worth noting that his professional organizations had not spoken to the boards because as State employees they are prohibited from speaking to members at that stage of legislation. He remarked he found out about this bill approximately three weeks ago. There were some conversations that should have taken place. He said if this change is made, someone is being put in a position who cannot do the job and who would have to hire a consultant to help them. This opens the door for any applicant who is not licensed to be hired.

DISCUSSION: **Senator Rice** expressed a concern about the comment made by Mr. Judge regarding State employees being prohibited from speaking to employees when legislation is being crafted. He asked Mr. Judge if he was aware of a specific code section that prohibits boards from talking to an association or employees about statutes they may be working on. **Mr. Judge** said State employees are not allowed to talk about policy that is coming from the Governor's office. **Senator Rice** said he would be very concerned that if that is the case and if it was anything within the control of the Legislature, they would want to do something about it. He asked for this information be given to him if such a policy exists.

Senator Schmidt talked about the drafting issue which usually addresses something within a profession and this legislation is covering many boards. He wanted to know if this legislation had gone beyond the single subject. **Mr. Toryanski** explained this legislation covers three boards and a single subject, which is the qualifications of the executive director. This is not the legislation that covers many boards.

TESTIMONY: **Jeremy Chou**, Givens-Pursley, representing the American Council of Engineering Companies of Idaho, said there is no opposition. He expressed concerns about this legislation with the Governor's office and he said he will be working with the Governor this summer. This change came about because of an Idaho Supreme Court case.

DISCUSSION: **Mr. Toryanski** pointed out there are other boards with executive directors who are not licensed. However, a licensed individual could still be hired by any of the boards. This bill gives flexibility to the boards. **Senator Lakey** and **Mr. Toryanski** discussed the idea that this bill does not limit a board's ability to hire a licensed individual.

MOTION: **Vice Chairman Martin** moved to send **H 480** to the floor of the Senate with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Chairman Patrick will carry the bill on the floor.

H 482 **Relating to Boards - Outfitters and Guides.** **Mr. Toryanski** reported this bill will reduce the exposure Idaho's regulatory boards, commissions and members have to federal and anti-trust prosecution by modernizing older regulatory licensure board/commission statutes to mirror newer regulatory licensure board/commission statutes. This legislation will: 1) allow the Governor to consider for board/commission appointments all qualified candidates who are recommended by trade associations and by any individual residing in this State; 2) direct that all board/commission members serve at the pleasure of the Governor; and 3) require that each regulatory licensure board/commission have at least one consumer member.

This change will permit all qualified candidates to be considered for appointment to Idaho's regulatory boards/commissions, permit the State to more closely supervise regulators and bring the consumer perspective to all regulatory licensure boards/commissions responsible for the health, safety and welfare of the public.

There will be no impact to the General Fund. The four boards/commissions adding a member operate solely on dedicated funds derived primarily from licensing fees. The impact to the dedicated fund for each of these is: Genetic Counselors Licensing Board - \$200 per year; Public Works Contractors License Board - \$500 per year; Board of Cosmetology - \$1,500 per year; and Real Estate Commission - \$9,355 per year.

Mr. Toryanski related that one year ago, the U.S. Supreme Court issued an opinion, North Carolina Board of Dental Examiners versus the Federal Trade Commission (FTC), which increased the exposure of state regulatory boards

and the citizen volunteers who serve on the boards to federal and state anti-trust lawsuits. This bill is a response to this increased risk. He pointed out that **H 482** strengthens State supervision over State regulators to reduce the likelihood that they will unlawfully restrain trade between citizens and businesses.

This bill takes three features from the statutes of more recently established boards and extends them to older boards. There is more separation between Idaho's State regulatory boards, whose duty is to protect the public and private associations whose role is to promote their profession. These three features will: 1) allow the appoint authority (Governor) to consider all qualified candidates for board membership from any nominating source, rather than only the nominees of a private organization; 2) require all board members serve at the pleasure of the Governor; and 3) ensure that every board has a public member to share the consumer perspective with the professional experts on those boards. **Mr. Toryanski** pointed out that in recent years, these three features have worked well for many boards. This bill would extend these features to all occupational licensing boards and provide an extra margin of separation between these government boards and private professional organizations. Putting all licensing boards on the same level in these three areas is desirable, particularly due to the opinion of the U.S. Supreme Court.

TESTIMONY:

Mr. Judge remarked there was short notice on this bill. He testified in opposition. The idea of adding a public member was well-received. All members can be nominated by anyone and having a public member on the board is not a problem. He remarked that by serving "at the pleasure of the Governor" members can be removed from the board for misconduct and would be held to a higher standard. He felt this would politicize the board. He said he believes clearly articulated policies and State supervision is already in place.

Senator Lakey asked Mr. Judge if an individual had to be licensed in order to become a member of the IPELS association. **Mr. Judge** said an individual did not have to be a member of the association to maintain a license. **Senator Lakey** wanted to know about those who are in the profession who decide they do not want to be in the IPELS association and they could possibly be a good candidate for the board, but less likely to be nominated. **Mr. Judge** said currently there is a list of active surveyors and those outside of the ranks have been asked for input. He remarked the profession is a small community of approximately 600 people. They discussed the matter of non-members being excluded from being nominated because they had not joined the ranks.

Ken McClure, representing the Idaho Society of Certified Public Accountants, testified in support of this bill. He said he appreciates what the Governor has done with the professions. He was not thrilled at first, but after reading the FTC's guidance and the U.S. Supreme Court case in North Carolina, he commended the Governor's office and said this was an appropriate and necessary step.

DISCUSSION:

Mr. Toryanski said Mr. McClure did a good job of summarizing and he said sending this bill forward is a good course of action. He said it was not good for private organizations to serve as gatekeepers for a board. He said it was startling to see how closely the IPELS Board parallels this bill and that of North Carolina. He remarked that as a matter of policy, there is a large amount of talent in Idaho with over 7,000 licensed engineers. It would be a shame not to have all of that talent available for the Governor's appointment.

Mr. Toryanski addressed the phrase "at the pleasure of the Governor" and said these boards are public agencies in the executive branch and the Governor is politically responsible for supervision. The boards are independent and if they want

to change rules and laws, they have to come to the Legislature. They are expected to follow rule and law.

Senator Guthrie said he was concerned about the difference of opinion about how much outreach was done and asked if the boards were contacted. **Mr. Toryanski** said the boards were notified on August 24 and September 2 of 2015. The Governor sent out a letter to all boards and asked them to meet. Phone calls were made. On February 5, 2016, the Governor sent another letter to the boards and solicited concerns and attached a first draft of the bill. It was suggested the boards share the information with their members. Changes were made in consideration of the input received. Many of these features are in place with many of the boards.

Senator Schmidt asked Mr. Toryanski how he would respond to the comment "at the pleasure of the Governor" and Mr. Judge's concern about the phrase. **Mr. Toryanski** said everyone is appointed by the Governor and what they do is ministerial. Many volunteers are hard to find. The advantages far outweigh the negatives. **Senator Schmidt** wanted to know if there were some boards where the ratio of the political affiliation or lack thereof is supposed to be in statute and was that considered. **Mr. Toryanski** said that is true for some boards, but not the IBOL.

MOTION:

Vice Chairman Martin moved to send **H 482** to the floor of the Senate with a **do pass** recommendation. **Senator Rice** seconded the motion.

Vice Chairman Martin remarked he has had difficulty finding someone to serve on a board. **Senator Lakey** said he was in support of the motion. He expressed a concern there are private organizations that want to be the gatekeeper. There may be someone who is excellent and who may not want to participate in an organization.

Senator Rice said he wanted to address the communications piece. He remarked he has known Ann Beebe for many years and she has always been organized and very candid. When he heard from Ann that every one of these boards were contacted, he knows they were. The board could have dropped the ball and not talked with those who have licenses, but he is satisfied that every board was contacted more than once.

The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

H 501

Workers' Compensation Insurance. Woody Richards, Associated Loggers Exchange, said the purpose of this legislation is to allow insurance companies to utilize certain Idaho bonds as security deposits for the Idaho Industrial Commission (IIC). There is no fiscal impact.

He said Associated Loggers Exchange writes workers' compensation insurance policies. Workers' compensation insurance companies are regulated by both the Department of Insurance (DOI) and the IIC. The DOI requires defined amounts of capital and surplus for insurance companies to insure against insolvency. The IIC authorizes insurers to write workers' compensation policies and determines the adequacy of the security deposits held in trust by the State Treasury. When an insurer is authorized to write business in Idaho, a security deposit is required by the IIC to secure compensation liability if the insurer should become insolvent. The instruments that can be used as security deposits are defined in Idaho Code § 72-301. **Mr. Richards** said that until 2014, Idaho Code § 72-301 permitted workers' compensation deposits to include interest bearing bonds of any state, any county and any municipality in the United States. Because of concern regarding the economic soundness of certain instruments across the United States and an

inability to monitor such a large number of bonds, the law was amended in 2014 to permit only U.S. bonds and certain surety bonds issued by insurance companies.

Currently, the DOI still allows investments in Idaho-issued bonds as part of an insurance company's bond portfolio. Importantly, these bonds may have a higher yield than treasury notes, which allows insurance companies to be stronger financially and to maintain lower premium rates.

Mr. Richards pointed out that discussions to reach a compromise between the pre-2014 Idaho law and the current law were begun approximately six months ago with the DOI and the IIC. After these discussions and several drafts for amended language were exchanged, the current wording was created. The DOI and the IIC are neutral with regard to the amended language. The A-rated Idaho bonds required by the amendment are considered investment grade. The IIC has access to the description and the credit rating relating to these bonds. If the bond is downgraded below A-, the workers' compensation insurer is required within 30 days to replace the bond with one that meets the credit quality requirement in the amended law. The bonds are liquid and can be easily sold but **H 501** only requires that they be replaced at the IIC by other bonds. The purchase of the bonds helps to maintain Idaho's infrastructure. Idaho bonds may have a higher yield than treasury notes, which allows insurance companies to be stronger financially. This legislation is supported by the insurance industry and by the Idaho Association of Commerce and Industry. He said he knew of no opposition to the legislation.

Senator Lakey disclosed for the record that he is the Senate representative on the State Fund Insurance Fund dealing with workers' compensation.

MOTION: **Senator Ward-Engelking** moved that **H 501** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the bill on the floor.

HCR 48 **Chairman Patrick** announced this concurrent resolution would be moved to last on the agenda.

H 398 **Relating to Revised Uniform Athlete Agents Act.** **Dale Higer**, Chairman of the Idaho Uniform Law Commission, said the Revised Uniform Athlete Agents Act updates and improves the Uniform Athlete Agents Act by expanding the definition of "athlete agent," providing for reciprocal registration of agents, adding new requirements to the signing of an agency contract, expanding the notification requirements to educational institutions and providing remedies to student athletes. He said this act has been endorsed by the National Collegiate Athletic Association (NCAA) and is supported by Boise State University (BSU) and the University of Idaho (U of I). He said he wanted to yield some of his time to Joe Stegner, U of I.

TESTIMONY: **Joe Stegner**, U of I, said he works for the President of the university in Government Relations. He said the U of I is supportive. These laws are in response to bad practices representing student athletes as they become professional players. There are enormous sums of money at stake which attracts dishonest people. The State already has a uniform law. The U of I does not have many agents in the State, but many come from outside of the State. The message from this legislation is to let agents know that when they come to Idaho, they will be covered by uniform law that is prevalent in many other states. This is a safety measure.

Senator Rice asked Mr. Stegner what the difference was between this revised bill and the original bill. **Mr. Stegner** said the revised bill makes it harder for agents to come into the State and represent themselves in the final contracts for athletes. **Senator Rice** commented he appreciated Mr. Stegner being there to address this issue.

MOTION: **Senator Schmidt** moved that **H 398** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor.

HCR 48 **A Concurrent Resolution Relating to the Appointment of a Committee Relating to Public Procurement.** **Vice Chairman Martin** said this resolution was unanimously recommended by the members of the Purchasing Laws Interim Committee (PLIC), which met from August 2015 to January 2016 to study the State purchasing laws and make recommendations for revisions. It is the belief of the PLIC that some issues require additional study, including the appeals process for the Division of Purchasing, ethics in procurement, information technology contracts, and provisions of law relating to multiple contract awards, public works construction, purchasing by political subdivisions and void contracts.

This resolution authorizes the Legislative Council to appoint a committee to undertake and complete a study of issues relating to public procurement and to report its findings and recommendations to the First Regular Session of the 64th Idaho Legislature.

The cost of the study is not expected to exceed \$10,000. The study will be paid for by the Senate and House of Representatives from their existing appropriation in the legislative account.

MOTION: **Senator Lakey** moved that **HCR 48** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 3:03 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Tuesday, March 15, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of March 1, 2016	Senator Ward-Engelking
	Minutes of March 3, 2016	Senator Schmidt
S 1385	Auto Liability Insurance	Bill Litster, Idaho Public Policy Institute
H 554	Workers' Compensation - Firefighter Occupational Diseases	Rob Shoplock, Professional Firefighters of Idaho

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 15, 2016

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Ward-Engelking** moved to approve the Minutes of March 1, 2016. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Chairman Patrick commented the Minutes Approval for March 3, 2016, would be heard later in the meeting.

H 554 **Workers' Compensation Firefighter Occupational Diseases. Rob Shoplock**, Professional Firefighters of Idaho, said this bill addresses the nearly impossible burden of proving occupational diseases associated with firefighting within the workers' compensation system. Research has established that firefighters are significantly more likely to develop certain types of cancer than the general population. Under current law, the burden of proof for these known occupational diseases is nearly impossible to overcome as exposures are chronic, occur over long periods of time and are uncertain regarding specific toxins and carcinogens present at any given structure fire. This bill would change existing workers' compensation law so that it would be presumed that such diseases were occupationally related unless medical evidence showed otherwise.

Mr. Shoplock advised that the National Council on Compensation Insurance (NCCI) "expects that the enactment of such presumptions will result in increases in workers' compensation; however the extent of such increases is difficult to estimate due to significant data limitations, which include the scope of data reported to NCCI and the conflicting results of published studies on occupational disease and firefighters." There is no impact on the General Fund.

TESTIMONY: **Francesca Litow**, Occupational Medicine Physician and Adjunct Assistant Professor of Environmental Health, Johns Hopkins University Bloomberg School of Public Health, testified via a phone conference, in support of the bill. **Dr. Litow** said that studies have clearly documented reason for concern about the chemicals in smoke that firefighters' commonly encounter. Smoke is a complex mixture of cancer-causing chemicals from combustion of all the various products in modern fires. She noted a Harvard study that examined levels of a number of air contaminants at more than 200 structural fires provides an example of the uncontrolled, hazardous nature of firefighter exposures. The only available form of protection for firefighters is also the least effective of the established workplace exposure controls. The use of personal protective equipment, such as respirators and turn-out gear, is far inferior to such remedies as substitution with a safer chemical, enclosure of the hazard and ventilation. She stated that despite using

turn-out gear, firefighters commonly note soot on their skin after working major fires.

Dr. Litow said that results combining all data in 32 studies of firefighters for 20 different cancer types are presented in the LeMasters report. Notably, risks for ten types of cancer (50 percent of the types tested) were significantly increased in firefighters; risks for the other ten types were increased but did not reach statistical significance. She said that in the LeMasters study, a two times higher risk for testicular cancer was found. The other significantly associated cancers were increased by 20 to 50 percent. It is likely that the risk is even higher because there are several major challenges in accurately studying risk in firefighters and all result in underestimation of risk.

Dr. Litow said when firefighters are diagnosed with cancer as a result of their job, they face a system that is stacked against them. In the absence of presumptive legislation, the firefighter has to shoulder the burden of proving that his or her cancer is work-related. The firefighter has to find legal counsel to help with the process and a health care provider who understands the complex causation issues for work-related disease, which is much more challenging than for injuries. Sometimes they are even asked to identify the exact exposure that caused their cancer, which is clearly impossible. When these occupationally induced cancers are not covered by workers' compensation insurance, firefighters must use sick leave and may have to use personal savings in order to cover medical costs after the insurance maximum is met. These additional burdens should not be placed on firefighters when they develop cancers that studies have shown are clearly a result of their occupation.

Dr. Litow said air monitoring clearly documents that firefighters are exposed to carcinogens at high levels in their work. Recent large cohort studies continue to support that firefighters are at increased risk of developing and dying from multiple types of cancer. For a number of reasons, the risks are likely substantially higher than the studies report. We also know that the current workers' compensation system places an enormous burden on individual firefighters who develop cancer.

DISCUSSION:

Senator Schmidt and **Dr. Litow** had a conversation about insurance in other states that covers firefighters in the workplace. They talked about apportionment in California, and how smoking and job-related issues are complicated and difficult it is to determine whether and to what extent a disease is caused by an individual smoking, for example, or an exposure in the workplace.

Vice Chairman Martin asked why the volunteer firefighters are included in this bill.

Mr. Shoplock explained that when he met with Representative Hartgen last year, they discussed adding the volunteers because many respond to calls just as the career firefighters do. They will be required to have the same physicals as the career firefighters. He said he did not think the amount of claims would increase.

Vice Chairman Martin referred to page 6, line 44, of the bill and asked why those investigating fires should be included. **Mr. Shoplock** said investigators have been lifelong firefighters and during a fire investigation they are exposed to the same carcinogens while digging through soot.

Senator Lakey asked if there was something added to the list of specific cancers and the timeframe in which they occur. **Mr. Shoplock** said mesothelioma was added because of the high probability of occurrence.

Senator Thayn referred to page 7, line 32, and asked about the use of tobacco products for ten or more years prior to a diagnosis and wanted to know what that meant. **Mr. Shoplock** said the firefighter must not be a habitual tobacco user for ten years and must be tobacco free in addition to the latency period.

Senator Rice pointed out that if a firefighter used chewing tobacco for ten years, there would not be coverage. **Mr. Shoplock** said the bill was written this way, but was intended to address secondhand smoke. **Senator Rice** asked why there was a sunset clause. **Mr. Shoplock** explained that when the discussions took place, the legislation was written to reflect that the Legislature meets once a year. Problems will be addressed and evaluated every year. **Senator Rice** commented he was in support of the bill and that cleanup would be done on an ongoing basis.

Mr. Shoplock thanked everyone who had taken the time to meet with him and he asked for support from the Committee.

MOTION:

Senator Ward-Engelking moved to send **H 554** to the floor of the Senate with a **do pass** recommendation. **Senator Rice** seconded the motion. **Senator Lakey** said he was in support of the bill and commented the tobacco language could be made more clear next year. The motion carried by **voice vote**. Senator McKenzie will carry the bill on the floor.

**MINUTES
APPROVAL:**

Senator Schmidt moved to approve the Minutes of March 3, 2016. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

S 1385

Relating to Automobile Liability Insurance. **Bill Litster**, Idaho Public Policy Institute, stated the purpose of this legislation is to increase the required automobile minimum liability insurance or proof of financial responsibility from \$25,000 to \$50,000 maximum for one claimant; from \$50,000 to \$100,000 maximum for two or more claimants; and from \$15,000 to \$50,000 maximum for property damage. Liability insurance minimum limits have not been increased since 1983, which is over 33 years ago. The same \$25,000 in medical services that a person received in 1983 would cost over \$100,000 today. He made a comparison of the cost of automobiles from 1983 until now.

Mr. Litster commented the precise savings are yet to be determined, but the benefit to the General Fund and other government entities is conservatively estimated to be between \$1 million and \$2 million. The reason for these savings is because government entities that have paid for medical bills have a first-position reimbursement right (subrogation) from automobile insurance settlements paid from an at-fault driver or the responsible insurance company.

Mr. Litster stated that actual quotes from various insurance companies indicate that for an average driver to move from the current State-required minimums to the proposed new increase would cost between \$2.50 and \$3.75, depending on the company. **Mr. Litster** said that 95 percent of the initial cost to buy a minimum \$25,000 policy is what the insurance company wants to charge a driver based on risk assessment, which is very inexpensive.

Mr. Litster went over the objections he said he heard about this legislation. He cited the state of Maine and said their percent of uninsured motorists remained the same after their liability minimums were raised.

Mr. Litster remarked that the hospitals, doctors and entities providing up-front and post-accident medical care would be helped. Many would rather not submit their bills and take a reduced taxpayer-funded payment, but instead wait for payment at 100 cents on the dollar at settlement from adequate automobile liability policies. Benefitting in turn would be every county's property tax Indigent Fund and the State Catastrophic Liability Fund (CAT), the Crime Victims Driving Under the Influence (DUI) Fund and Medicaid. Taken together, these government entities collectively pay eligible medical bills on hundreds of accidents annually for victim drivers, and thus have a full reimbursement right for what they paid out from the automobile liability policy underinsurance. Additionally benefiting would be health

plan providers of government and private employers (Blue Cross, Blue Shield, Select Health). The precise savings are yet to be determined, but the benefit to the General Fund and other government entities is conservatively estimated to be several million dollars.

Mr. Litster said the consequences of waiting on this legislation would be that people who are involved in catastrophic accidents would suffer a significant financial loss.

DISCUSSION: **Senator Rice** commented he remembers a discussion that occurred last year and he expressed a concern this issue has been brought forward at the end of this session. Because of that, the public cannot be heard and he said this legislation should have been heard in January. **Mr. Litster** said if time runs short, he will have victims testify. He said he discussed running two bills simultaneously with Senator Rice in January. He said this bill is simple and not complicated. He said the implementation date would be January of 2017.

Senator Rice said this bill was never going to be a companion bill, which he made clear to Mr. Litster during their conversation. He said the other bill that Mr. Litster was referring to needed considerable work on the language.

Vice Chairman Martin stated this bill changes the liability limits with the first two amounts being doubled; he asked why the third amount tripled. **Mr. Litster** said the Legislature in the past has chosen to make the property damage amount a single limit amount, whether it is one person or more. He said he had been in contact with the chairman of the CAT Fund and if he gets the support of the other groups, this would be important.

Senator Schmidt stated that Mr. Litster was describing the amounts as minimum amounts. He wanted to know how frequently people have the minimum car insurance. **Mr. Litster** said it was anecdotal and different figures are mentioned. He said he spent time with the Director of the Department of Insurance (DOI) discussing these amounts.

TESTIMONY: **Kathryn Mooney**, CAT Fund, testified in opposition to this bill and stated she wanted to clarify the remarks previously made by Mr. Litster. She said the Chairman of the CAT Fund had asked her to write a letter to the Senate State Affairs Committee during the print hearing for this legislation, relating to an alleged comment made by CAT Fund representatives. She stated they did not request nor are they involved with **S 1385**. As a State agency they would not presume to issue support on behalf of any legislation. Some information and reporting of the CAT Fund is accessible on the internet. She said they do not have data for the Committee and the Senators could draw their own conclusions.

Michael Kane, Attorney, representing Property Casualty Insurers Association of America, spoke in opposition to the bill. He said his client opposes a raise in the cost to the public who has to buy their product. The proposal will make the State of Idaho have the highest insurance rates in the country. Alaska has a 13 percent uninsured rate. He guarantees the change would cause an approximate 10 percent increase in rates. Approximately 20 percent of private insurance contracts in the State would be immediately voided. He said he was gravely concerned about the fiscal note. **Mr. Kane** said the counties are not supportive. The counties and the CAP Fund were not approached by Mr. Litster.

Matt Andrew, Attorney, said he litigates auto accidents. He spoke in support of the bill. He said medical costs go up every year and are ever increasing. Due to inflation, he believes it is time for the minimums to increase. He said this was an important and meaningful change.

Angela Richards, representing Allstate, American Family and the Farm Bureau Insurance companies, testified in opposition to this bill. She said approximately 91 percent of claims are handled within the policy limits.

Phil Barber, American Insurance Association, testified in opposition to the bill. He said this bill would raise insurance for those who have the least amount of assets. People who do not have assets are less inclined to buy insurance. He remarked this bill would create a large body of uninsured drivers.

Dean Cameron, Director, DOI, testified in opposition to this bill. He suggested the bill be held in Committee for this year. He said he has not had significant conversations with Mr. Litster. He said Mr. Litster visited with him the same day the bill was printed. He expressed concern and said he believed there is significant data that could be researched about the overall effect and cost of the proposed changes. He talked about comparison of limits and a higher threshold and cost when everyone has to adhere to the higher limits. He knows of agents who suggest insurance be purchased at a higher level of coverage, which is a smart thing to do. He remarked that Idaho would become an outlier as compared to other states. He said he was willing to work with other agencies and Mr. Litster, should the bill be brought forward sooner next year.

Vice Chairman Martin wanted to know what percentage of Idahoans only carry the minimum amount of insurance. **Director Cameron** said that figure could be obtained from the carriers.

Julie Hart, representing Enterprise Rental Company, testified in opposition to the bill. She said by changing the limits, it would be a logistical problem with cars crossing state lines. There would be a problem determining which car would go to which states and contracts would have to be rewritten.

Vice Chairman Martin wanted to know how much insurance would increase for rental companies. **Ms. Hart** said approximately \$25 to \$175 per rental, depending on the driver and the type of car.

Mr. Litster said one of the benefits of the bill would be when a Nevada tourist visited Idaho, there would automatically be \$50,000 in property damage coverage. He said he had an economist draft a report noting the cost of medical goods has increased.

Senator Rice disclosed for the record that his firm handles personal injury cases.

MOTION: **Senator Ward-Engelking** moved to hold **S 1385** in Committee. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**, with **Vice Chairman Martin** asked to recorded as voting nay.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:16 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Thursday, March 17, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of March 8, 2016	Senator Guthrie
HONORING OF PAGE:	Kennedy Jones	Senator Jim Patrick
<u>H 538</u>	State Procurement Act	Senator Fred Martin; Representative Neil Anderson
<u>H 541</u>	Relating to Purchasing Exclusion	Senator Chuck Winder; Representative Matt Erpelding
<u>H 487</u>	Relating to Agreements and Covenants Protecting Legitimate Business Interests	Representative Patrick McDonald

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Rice
Vice Chairman Martin	Sen Thayn
Sen Lakey	Sen Schmidt
Sen Guthrie	Sen Ward-Engelking
Sen Heider	

COMMITTEE SECRETARY

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 17, 2016

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Guthrie** moved to approve the Minutes of March 8, 2016. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

HONORING OF PAGE: **Chairman Patrick** honored page Kennedy Jones. **Kennedy Jones** shared what she learned while being a Senate page and gave a brief summary. She said she learned how to address the Committee and thanked them for having her as a Page. She loved organizing and spent a lot of time at the copying machine. She mentioned she learned how to read bills and that it is always all right to ask questions. There are many ways to earn respect and there is a balance of professionalism at the Senate. She likes working behind the scenes. **Ms. Jones** said she is interested in musical theatre and will be attending college in the fall either at the University of Utah or Southern Utah University. **Chairman Patrick** thanked her for her service and wished her the best of luck in the future.

H 538 **State Procurement Act.** **Vice Chairman Martin** said this legislation is unanimously recommended by the members of the Purchasing Laws Interim Committee (PLIC), which met from August 2015 to January 2016 to study the State purchasing laws and make recommendations for revisions. In proposing this legislation, the PLIC had two goals: to modernize and clarify the laws and to address specific issues that were identified in the PLIC's study.

Vice Chairman Martin said he would yield his time to Elizabeth Bowen, Legislative Research Analyst, Legislative Services Office. **Ms. Bowen** said this legislation recodifies the existing laws into a new chapter of the Idaho Code. Recodification will enable the laws to be found in one place dedicated specifically to State procurement. The term "procurement" will replace the term "purchasing" in code, as "procurement" more accurately describes the activities addressed by the laws. While the recodified laws are substantially similar in content to the existing laws, some language has been revised to reflect modern practices, to include updated terminology and to provide clarity where the language of the existing laws is confusing or unclear.

Ms. Bowen explained new language is also incorporated in the recodified laws to resolve issues with the current system as identified in the PLIC's Final Report. Training will now be required for all State officers and employees with procurement-related duties. Contract oversight will be required as well. The Administrator of the Division of Purchasing (DOP) will be given more flexibility to

grant exemptions from open contracts, which will enable state agencies to buy property elsewhere when the property available under an open contract is for some reason insufficient. State institutions of higher education will likewise be afforded more flexibility when choosing whether to buy property under an open contract.

She said finally, a new ethics statute is included to clearly state the ethical standards expected of everyone involved in the State procurement process, including members of the private sector, such as vendors or their representatives. The ethics statute defines breaches of ethical conduct and provides penalties for the breaches.

Ms. Bowen explained the exact fiscal impact of this legislation depends on how the DOP at the Department of Administration (DOA) promulgates rules based on its statutory authority. The requirement to formulate rules for delegated authority and contract monitoring may take additional time and effort, and the extra reporting for statewide exemptions will have some impact on staff time at the DOP, but that cost will be absorbed by existing dedicated fund sources.

Ms. Bowen stated contract oversight, management and monitoring may have some fiscal impact on the State agencies should the DOP require third-party subject matter experts to oversee large-value or high-risk contracts. If such rules are promulgated, the cost estimate is approximately \$250,000 for the life of such contracts. The State estimates there may be approximately five new large-value or high-risk contracts issued annually, but the vast majority of contract management, monitoring and oversight is overseen by existing State employees within existing agency budgets and will continue to operate this way.

Ms. Bowen emphasized that additionally, there will be a cost for enhanced training for all State employees. In Fiscal Year (FY) 2016, the DOA estimated a cost of \$136,000 in ongoing personnel costs to fill two vacant full-time positions (FTP) and \$30,000 in ongoing operating expenditures. These FTPs will expand the procurement training program for all State purchasing personnel. The employees will develop, maintain, deliver and manage a statewide procurement training program through the Internet, in addition to on-site training throughout the State. The estimate also includes a learning management system to contain course content delivery, personnel registration/administration, training event management, curriculum and certification management, skills and competence management and training for record management and reporting. The ongoing cost of the learning management system will be absorbed through existing DOP dedicated fund sources. The entire State will benefit from the addition of enhanced procurement training. Approximately 300 people will receive ongoing training, which will increase the competencies of all State employees involved in property acquisitions. It will provide consistency in how purchasing is performed throughout the State and reduce the need for employees to utilize national purchasing certification programs. Training programs will be centered on Idaho's statutorily prescribed procurement processes, as well as general public procurement processes.

Vice Chairman Martin said the enhanced training, oversight and unified codification of purchasing statutes will modernize purchasing standards with the intent of reducing governmental errors, encouraging local participation and competition and providing cost savings to the State. The quantification of the benefits of these improvements will become apparent over time.

MOTION:

Senator Heider moved to send **H 538** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

H 541 **Relating to Purchasing Exclusion.** **Senator Winder** stated that Idaho Code allows political subdivisions to piggyback onto contracts that were competitively bid by the State of Idaho. This proposed change would outline that any contract awarded by the DOP, competitively bid or not, would be available for use by the political subdivision. There is no fiscal impact. This addition to the statute could lead to savings for all cities and counties during their procurement process.

MOTION: **Senator Guthrie** moved to send **H 541** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Winder will carry the bill on the floor.

H 487 **Relating to Agreements and Covenants Protecting Legitimate Business Interests.** **Representative Patrick McDonald** said that in the event of a civil action by an employer, this amendment identifies the court as having the authority to determine if a key employee or independent contractor has breached an agreement or covenant resulting in harm to the employer. There is no fiscal impact to the General Fund. He said this bill is needed because Idaho businesses have to be protected from competitors relating to customer lists and special processes.

TESTIMONY: **Codi Galloway**, representing herself, testified in support of this bill. She stated she and her husband started a computer school called LeapFox Learning ten years ago. She said her company became successful and they invested a majority of their money back into the business. She talked about a valuable key employee who was very knowledgeable about all of the inner-workings of the company. This employee worked for LeapFox for six years and had signed a non-compete agreement. The key employee was enticed by a competitor and she began working for them. **Mrs. Galloway** discovered the key employee made copies of all customer lists and all other paperwork related to the company before she left. The competitor used the customer list and other relevant paperwork in an effort to put LeapFox out of business.

Mrs. Galloway reported that she hired an attorney who waged a battle against the competitor. The competitor ignored all requests to cease-and-desist. Her business was devastated. even though it now has been two years and she has not had her day in court. She and her husband have spent over \$200,000 on attorney fees. She stated that in the end, she is confident they will win at trial. She said the current law does not work. She said the amount of time and money puts a win out of the reach for most small businesses. If this law had been in place and there been irreparable loss, the court could have issued an injunction. She is hoping someone else benefits when there is a proven breach of a contract.

Senator Ward-Engelking wanted to know if Mrs. Galloway suffered actual damages since her case is pending. **Mrs. Galloway** deferred to her attorney. **Ron Coulter**, Attorney, said actual damages have been established and the case has been in the discovery phase for one year. There was a special discovery manager appointed to the case. **Senator Ward-Engelking** stated she heard that Mrs. Galloway could ask for irreparable harm. **Mr. Coulter** said not in the way of damages. **Senator Ward-Engelking** said she had read the Attorney General's opinion (attachment 1) and the letter said it was difficult to prove damages and the burden to overcome this presumption is almost impossible. **Mr. Coulter** remarked he does not take stock in this opinion from the Attorney General's office. He said one could prove a rebuttal of presumption as one can show evidence whether or not there was harm.

William Mauk, Attorney, representing himself, testified in opposition to this bill. He said the issue of non-compete agreements are difficult and in constant flux. This proposal does not provide any greater or additional protection as there is protection already in law. This bill addresses an issue of evidence having to do with

injunctions. He said with this bill the suing party will not have to show damages and puts the burden on the party who is being sued. He suggested to the Committee that writing a law to address a case that has not been fully adjudicated is not the best way to approach legislation.

Senator Lakey asked Mr. Mauk to briefly touch on what it takes to get a temporary restraining order (TRO) and how it affects a case and a defendant. **Mr. Mauk** said that with a TRO, the burden is on the party bringing suit. They have to show they have been damaged and suffered irreparable damage. In the future there will not be a damage recovery.

Senator Rice remarked that being damaged is not sufficient to get an injunction. The damage has to be irreparable. **Mr. Mauk** quoted Federal Rules of Civil Procedure Rule 65 relating to injunctions and TROs and said that in order to get an injunction one has to show they have been damaged or prove they have been irreparably damaged.

Alex LaBeau, representing the Idaho Association of Commerce and Industry, testified in support of the bill. He stated the employer needed some sort of protection. Standards are appropriate and the Legislature has a legitimate interest. A court battle has to take place to enforce a contract.

Jocelyn Plass, representing herself, testified in opposition to the bill. She said she owns a restaurant in Stanley. She said many companies are leaving the State, and by voting for this bill the Committee is making it hard to do business in the State. She stated we need solutions and this bill is placing the burden of proof on the employee.

Jeremy Chou, Attorney, representing himself, testified in support of the bill. He remarked this is a good policy to protect the sanctity of contracts. These agreements have to be reasonable. This bill says that if it is a valid contract and there is a breach, and if the damaged party can prove damage, they can get a rebuttable presumption. He said attorneys prove a negative all of the time. Businesses will want to relocate here knowing their interests will be protected.

Senator Schmidt asked Mr. Chou how he would know which customers belong to whom? **Mr. Chou** said that through proof of evidence. An affidavit would have to be signed by the individual client. **Senator Schmidt** remarked that customers always have the option of going somewhere else. **Mr. Chou** stated that if an affidavit is signed, the key employee cannot do something with the customer list. Through an affidavit signed by the customer, it can prove the customer was being solicited by the former employee.

Senator Ward-Engelking said this bill appears to be a change in statute. Does this hurt potential employers or just employees? **Mr. Chou** said the contracts must be reasonable and stated that a key employee could still work in the industry, but could not solicit former customers of the employer.

Guy Hallam, representing Idaho Trial Lawyers Association, spoke in opposition to this bill. He said this was an unnecessary addition to code. The code is working as drafted.

Jayson Ronk, representing Micron Technology, Inc., testified in support of the bill. He said he has reviewed this issue with the Micron attorneys. He said they do not have a tremendous amount of non-compete agreements.

Representative McDonald summarized and said this bill levels the playing field.

This gives the person who is accused of a violation a chance to defend themselves. This bill is fair and protects the people who need protection.

Senator Rice commented that his initial reaction to the language was this is an almost irrebuttable presumption, but he started looking beyond that. If you look at existing code, non-competes are only allowed up to 18 months. The law does not allow for a two- or five-year non-competes. The length is less than the average length of these types of lawsuits. The standard is that if a plaintiff receives a damages judgment, that would cover whatever is lost, but the problem is one cannot get a judgement. He stated there are provisions for non-competes in the law and then there is a hurdle the employer cannot get over. The non-compete time was contracted, but essential damages are not mitigated by stopping breaching activity. This law puts what was actually contracted for into balance.

MOTION: **Senator Rice** moved to send **H 487** to the floor of the Senate with a **do pass** recommendation. **Vice Chairman Martin** seconded the motion.

DISCUSSION: **Senator Lakey** said he was against the motion. He said one thing he has learned is that there are two sides to a story. He said there was a large red flag because of pending litigation. These types of non-competes are more strictly scrutinized. A non-compete limits the ability for a person to work where they choose. He said the last sentence in the bill is the problem. He said the language says to rebut a presumption of irreparable harm has to be established. To rebut such presumption, the key employee or key independent contractor must show that the key employee or key independent contractor has no ability to adversely affect the employer's legitimate business interests. He said this is next to impossible to prove. He said the bill should be held and reworked.

SUBSTITUTE MOTION: **Senator Lakey** moved that **H 487** be held in Committee and reworked. **Senator Thayn** seconded the motion.

Vice Chairman Martin remarked that the court would have to be involved in the findings. **Senator Guthrie** said he supported the original motion. **Senator Ward-Engelking** stated that since there was an equal number of people who supported and opposed the bill, there is a problem with the bill and it needs to be reworded.

Senator Rice asked for a roll call vote. **Chairman Patrick** asked for a vote on the substitute motion.

ROLL CALL VOTE ON SUBSTITUTE MOTION: **Senators Lakey, Thayn, Schmidt** and **Ward-Engelking** voted aye. **Vice Chairman Martin** and **Senators Guthrie, Heider, Rice** and **Chairman Patrick** voted nay. The motion failed.

Chairman Patrick asked for a vote on the original motion.

ROLL CALL VOTE ON ORIGINAL MOTION : **Vice Chairman Martin, Senators Guthrie, Heider, Rice** and **Chairman Patrick** voted aye. **Senators Lakey, Thayn, Schmidt** and **Ward-Engelking** voted nay. The motion carried. Senator Rice will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:16 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary



Dist
by
Pat McDonald
HB 487

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 9, 2016

The Honorable Ilana Rubel
Idaho State Representative
Statehouse
VIA HAND DELIVERY

Re: H. 487 – Our File No. 16-54081

Dear Representative Rubel:

Regarding H 487, you have asked whether the presumption of irreparable harm contained in the legislation, while identified as rebuttable in the legislation is, “for all practical purposes,” irrebuttable.” H 487 proposes an amendment to present law that relates to restrictions in employment contracts. The specific proposal is to add a subsection providing, in instances where a court has found a breach of an agreement or covenant “protecting legitimate business interests,” that there is a “rebuttable presumption of irreparable harm” unless the person who has breached the agreement at issue can show that he has “no ability to adversely affect the employer’s legitimate business interests.”

The only way for an employee to rebut the presumption of irreparable harm under the proposed legislation would be for the employee to prove a negative—namely that the employee has “no ability to adversely affect the employers’ legitimate business interests.” Proving negatives is a very difficult thing to do in court and here, where the negative to be proved is the absence of any “ability” to “adversely affect,” the burden necessary to overcome this presumption may be extremely difficult, if not impossible.

The “adversely affect” language in the proposed legislation is not connected to any trade secret or proprietary information that the employee possesses. This means even if the employee could prove that he has not gained any information as a result of his employment that would adversely affect his former employer, he or she may not be out of harm’s way because the proposed language appears broader than that. Specifically, the language proposed in the legislation appears to require the employee to prove that he or she has “no ability to adversely affect the employer’s legitimate business interests” unconnected to whatever proprietary or trade secret information he may have obtained as a result of working at the employer’s place of business.

Representative Rubel
March 9, 2016
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It is worth pointing out that such presumptions already exist within the Code. For example, present Idaho Code § 44-2704(5) already provides that it shall be a rebuttable presumption that an employee (or independent contractor) who is among the highest paid five percent of the employer's employees is a "key employee" (or a "key independent contractor"), and that to rebut such presumption, the employee must show that he or she has no ability to adversely affect the employer's legitimate business interests. We are not aware of any cases interpreting this section, but this section would also appear to create a rebuttable presumption equally difficult to overcome as that contained in H. 487, regarding when an employee is a key employee (or independent contractor).

I hope that you find this analysis helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "B Kane", written in black ink.

BRIAN KANE
Assistant Chief Deputy

BK/tjn