

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 22, 2019

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:31 p.m.

RS 26467 **Relating to Plats and Vacations and Recording of Surveys. Thomas Judge**, Deputy Director, Idaho Board of Professional Engineers and Land Surveyors (IBPELS), presented for Keith Simila, Executive Director of IBPELS, reported the purpose of the survey narrative is to offer a rational summary of the evidence accepted and rejected to ensure evidence is not missed or misinterpreted. The survey narrative will serve to perpetuate a record of the evidence considered and the principles applied in performing the survey. This will aid the public and future surveyors by making the record more clear and complete.

Mr. Judge advised there is no fiscal impact to the General Fund or the IBPELS dedicated fund because the amendment requires surveyors to document information already obtained on the survey documents recorded in county courthouses.

DISCUSSION: **Chairman Patrick** and **Mr. Judge** discussed the record of evidence in performing a survey and whether the record was mandatory. **Senator Guthrie** asked if there was a cost for these changes. **Mr. Judge** remarked costs should be reduced and information would be centralized.

MOTION: **Senator Guthrie** moved to send **RS 26467** to print. **Vice Chairman Agenbroad** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Vice Chairman Agenbroad** moved to approve the Minutes of January 8, 2019. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

Senator Martin moved to approve the Minutes of January 10, 2019. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Agenbroad to introduce the presenters for the rules.

**DOCKET NO.
18-0106-1801**

Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children. **Dean L. Cameron**, Director, Idaho Department of Insurance (IDOI), pointed out the current pending rule applies to self-funded health plans subject to registration with the IDOI, as well as health insurers, and addresses coverage for congenital anomalies. There is some language in the rule that refers to premiums that denotes health insurance only; this causes confusion for self-funded plans since the term used for payments by members is "contribution" and not "premium." This rulemaking modifies language in Section 012 to include contributions in addition to premiums.

Mr. Cameron specified there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

DISCUSSION:

Senator Souza inquired if parents were notified of coverage prior to the birth or adoption of a child. **Director Cameron** stated the employer or the insurance agent usually notified the parent.

MOTION :

Senator Souza moved to approve **Docket No. 18-0106-1801**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0123-1801**

Rules Pertaining to Idaho Acquisitions of Control and Insurance Holding Company Systems. **Dean L. Cameron**, Director, Idaho Department of Insurance (IDOI), stated this pending rulemaking revises language in Subsection 027.01, regarding extraordinary dividends, to be consistent with changes made to Idaho Code § 41-3812 following enactment of H 454 in 2018. He explained in the past, the code used "lesser of" language in determining allowable dividend thresholds. Last year, the language was updated to "greater than" and slightly different thresholds. By making these changes, Idaho became consistent with neighboring states.

Mr. Cameron affirmed there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

MOTION:

Senator Lakey moved to approve **Docket No. 18-0123-1801**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0124-1801**

Advertisement of Disability (Accident and Sickness) Insurance. **Dean L. Cameron**, Director, Idaho Department of Insurance (IDOI), reported Section 025 of the pending rule states that the IDOI Director may require the filing of "direct response" advertising regarding disability accident and sickness policies. Some carriers, typically those seeking to sell limited benefit plans, object to filing advertising materials. This results in the IDOI sending a separate request for this material. The IDOI believes that it is appropriate to review any advertising material, and this change streamlines that communication and process. This rulemaking modifies the rule to eliminate the reference to "direct response" advertising.

Mr. Cameron advised 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. There is no incorporation by reference. Negotiated rulemaking was conducted.

DISCUSSION: **Senator Burgoyne** remarked he observed this rule protects a person and the insurance company. **Senator Souza** asked what the consequence would be if the IDOI reviewed proposed advertising and did not like it. **Mr. Cameron** stated the insurance company would have to change the advertising.

Vice Chairman Agenbroad inquired as to the timeframe for filing a request for approval of advertising. **Mr. Cameron** said some carriers will file advertising when they file a new product with the IDOI. Others may file the product and not file any advertising until later. The IDOI would still review the advertising with a turnaround of 30 days or less.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 18-0124-1801**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0149-1801 **Fire Protection Sprinkler Contractors. Dean L. Cameron**, Director, Idaho Department of Insurance (IDOI), indicated the pending rule revises language in Idaho Administrative Procedure Act (IDAPA) 18.01.49 to eliminate Subsection 011.07, in regard to providing for an advisory board that never formed. The pending rule also corrects a reference to a National Fire Protection Association (NFPA) standard in Subsection 020.01, and eliminates language in Subsection 021.06 concerning fees that tie the fee amount to 1 percent of the bid amount. Language imposing fees in the amount of \$2 per sprinkler head payable to the local fire department or the State Fire Marshal will be retained, including the retention of the maximum and minimum fees. The rulemaking also clarifies in Subsection 021.06 that the fee applies to each fire protection sprinkler system, which is defined in Subsection 004.01 of this rule.

Mr. Cameron reported there are no changes to the pending rule and it is being adopted as originally proposed. There is no impact to the General Fund. There is no incorporation by reference.

DISCUSSION: **Senator Lakey** thanked Director Cameron for his efforts in reducing costs and regulations. **Senator Thayne** asked why the IDOI was examining fire sprinkler contractors, since the fire marshal could do the same thing. **Mr. Cameron** indicated the fire marshal's office was located at the IDOI and they were requesting this change.

MOTION: **Senator Lakey** moved to approve **Docket No. 18-0149-1801**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0154-1801 **Rule to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act. Dean L. Cameron**, Director, Idaho Department of Insurance (IDOI), related this rulemaking seeks to make updates to the current rule consistent with NAIC Model Regulation 651 to add definitions for the year 2020 Standardized Medicare Supplement Benefit Plans and add more detailed sections with respect to such plans. **Mr. Cameron** explained the Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act of 2015 (MACRA) prohibits the first dollar of Part B coverage on Plans C and F to individuals "newly eligible" starting January 1, 2020. "Newly eligible" is defined as anyone aged 65 on or after January 1, 2020, or anyone eligible for Medicare due to: age, disability, or end-stage renal disease, on or after January 1, 2020. **Mr. Cameron** explained those already on Plans C and F can stay with the plans for life. These are the only plans that will cover Part B deductible. Part B will continue to be covered for those already enrolled in these plans. After year 2020 those newly eligible will share costs of Part B deductible.

Mr. Cameron cited what separates Plans C and F, and D and G, and indicated coverage under Part B deductible under C and F is \$183 (2018). All other

benefits are the same for Plans D and G. Additions include definitions for year 2020 Standardized Medicare Supplement Benefit Plans and more detailed sections to these plans.

Mr. Cameron outlined other changes. Plans C and F with F High-Deductible will no longer be available to individuals newly eligible for Medicare after January 1, 2020. Plans D and G will replace C and F for those individuals newly eligible for Medicare, with guaranteed issue right. There is an addition of the new G High-Deductible plan option. Appendices have been changed to update tables with changes in plans and includes outlines of coverage and specific plan designs. These are included in the outlines of coverage for Medicare supplement plans beginning January 1, 2020. The new benefits summary chart will be posted on the IDOI website. **Mr. Cameron** cited there is no fiscal impact to the General Fund. Negotiated rulemaking was conducted.

Mr. Cameron explained the materials cited are incorporated into the current rule; however, a correction is made to the reference, namely, to the NAIC Model Regulation 651, rather than the NAIC Model Act (650). Additionally, there are some substantive changes to the outlines of coverage and plan designs reflecting options and eligibility for Medicare supplement plans issued starting on January 1, 2020 (Attachment 1).

MOTION:

Senator Martin moved to approve **Docket No. 18-0154-1801**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0162-1801**

Annual Financial Reporting. **Dean L. Cameron**, Director, Idaho Department of Insurance (IDOI), commented this pending rule updates the Idaho Administrative Procedure Act (IDAPA) 18.01.62 to include National Association of Insurance Commissioners (NAIC) Annual Financial Reporting Model Regulation 205 provisions support the requirement of an independent internal audit function for large insurance companies or insurance holding company groups. This requirement applies to insurance companies with over \$500 million in annual premiums written (or \$1 billion if a member of a group). This pending rulemaking requires a standard best corporate governance practice to assist company management and the boards of large insurers by implementing sound business practices to maintain solvency and honor all policyholder obligations.

Mr. Cameron outlined the benefits of accreditation developed by the NAIC. He indicated consumers are assured that regardless of where the company is domiciled, it has been and will be appropriately examined and regulated in a similar manner. Insurance departments in other states would know that an Idaho insurance company wanting to sell their insurance products in their state has been properly regulated and held to appropriate similar standards. This helps Idaho insurance companies be successful in other states. Idaho insurance companies would not be required to be re-examined or regulated by every state for which they are selling products. This saves insurance carrier revenue, which saves consumers money. By maintaining accreditation, insurance companies will remain in Idaho. If Idaho lost accreditation, Idaho insurance companies would likely re-domicile or relocate to an accredited state. This would be a significant economic impact to the State's economy and adversely impact consumers.

Mr. Cameron stated 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 conducted. There is no incorporation by reference.

MOTION:

Chairman Patrick moved to approve **Docket No. 18-0162-1801**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0103-1801**

Public Employee Retirement System of Idaho (PERSI) Contribution Rules. **Don Drum**, Executive Director, PERSI, remarked this pending rule applies to the PERSI Employer General Member and Class II Contribution Rate, the PERSI Employee General Member and Class II contribution rates, and the Firefighter Retirement Fund Employer Rate. The actuarial valuation for the PERSI general member contribution rate period ending June 30, 2016 reflected that the amortization period was above 25 years. The PERSI Board acted to adopt a rate increase to bring the amortization period to 25 years or less as required by Idaho Code § 59-1322. This rate increase was scheduled to go into effect July 1, 2018. The actuarial valuation for the rate period ending June 30, 2017 reflected that the amortization period was less than 25 years and the PERSI Board delayed the rate increase for one year. This rule reflects the delayed increase and acts to impose the rate increase to go into effect July 1, 2019.

Mr. Drum explained a temporary rule was adopted under this docket effective December 5, 2017 and published in the January 3, 2018 Idaho Administrative Bulletin. This rule is now being promulgated as proposed rulemaking. The employee contribution rates will increase by 0.62 percent of salaries, beginning July 1, 2019. This will affect the General Fund to the extent the contributions required of the employer (State of Idaho and political subdivisions, and government entities electing to participate in the system) are made from General Fund dollars.

Mr. Drum stated negotiated rulemaking was not conducted because it is not feasible as it would be inconsistent with the PERSI Board's need to bring the amortization rate to 25 years or less and with the PERSI Board's exclusive fiduciary responsibility for plan operations. There was no incorporation by reference.

DISCUSSION:

Senator Guthrie asked for clarification of the 25-year amortization policy and stated PERSI was not there yet. **Mr. Drum** remarked the strict letter of the law requirement is that the PERSI Board must take action. The PERSI Board has the opportunity to look at rates and because of the market volatility, the PERSI Board was not sure if the rates would go over the 25-year amortization rate.

Senator Souza queried if the PERSI Board would decrease the contribution rate if the market improved on a consistent basis within a year. **Mr. Drum** acknowledged the PERSI Board could adjust the contribution rates, but he could not speak for the PERSI Board. He remarked this was an option the PERSI Board had as long as a rate reduction would not push PERSI over the 25-year amortization period. **Senator Thayn** asked about the increase in contributions and if the increase was included in the proposed budget. **Mr. Drum** reported the amounts were included in the Governor's budget.

MOTION:

Senator Burgoyne moved to approve **Docket No. 59-0103-1801**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0105-1801**

Public Employee Retirement System of Idaho (PERSI) Separation from Service Rules. **Don Drum**, Executive Director, PERSI, remarked that when a member is required to take a minimum distribution, but fails to complete a retirement application and choose a retirement option, the retirement option will default to regular retirement benefits if single or Option 1 if married. Also, when an inactive member defers retirement beyond service retirement age, the first retirement payment will be a lump sum that includes payment for the months of service beyond service retirement age.

Mr. Drum emphasized there is no impact to the General Fund. 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. There was no incorporation by reference.

DISCUSSION:

Senator Burgoyne and **Mr. Drum** discussed the selection of retirement options, the requirement to take a minimum distribution, and the completion or non-completion of a retirement application. **Mr. Drum** pointed out the PERSI Board did not want to penalize a spouse if a retirement application had not been completed. **Senator Souza** asked for clarification with the rule change. For example, if a member passed away and had not created an option for the spouse for the full amount of retirement, would the surviving spouse receive the whole amount of retirement as if the deceased spouse had selected that option? **Senator Thayn** asked for clarification on when a spouse dies, if the benefit would be in a lump sum or a continuation of a monthly payment until the surviving spouse passed away. **Mr. Drum** explained when a member has not filled out a retirement application and has not yet received a benefit, PERSI would fill out the application and the surviving spouse would receive a monthly benefit.

Senator Ward-Engelking remarked if an option was already set up and a benefit had been disbursed, that option could not be changed. **Mr. Drum** indicated it would be assumed the deceased person had not filed for retirement.

Senator Burgoyne questioned if there was any mechanism for a member or spouse to have a three-month option to change the selection of the retirement plan. **Mr. Drum** stated he was not positive whether or not federal tax law prohibits changing an option. **Mr. Drum** remarked a required minimal distribution is required by the federal government.

MOTION:

Senator Souza moved to approve **Docket No. 59-0105-1801**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.:
59-0106-1801**

Public Employee Retirement System of Idaho (PERSI) Retirement Rules. **Don Drum**, Executive Director, PERSI, explained the portion of this rule which has been deleted regarding when a member fails to file a completed retirement application and select a retirement option. The deleted portion will be addressed in Idaho Administrative Procedure Act (IDAPA) 59.01.05.126.

Mr. Drum acknowledged there is no fiscal impact to the General Fund. 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. There was no incorporation by reference.

DISCUSSION:

Senator Thayn asked if this rule affected cash flow of the PERSI fund positively or negatively. **Mr. Drum** stated the cash flow should be relatively the same.

MOTION:

Senator Thayn moved to approve **Docket No. 59-0106-1801**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0106-1802**

Public Employee Retirement System of Idaho (PERSI) Retirement Rules. **Don Drum**, Executive Director, PERSI, advised Idaho Administrative Procedure (IDAPA) 59.01.06.576 would be amended to require an employer who is not eligible to participate in other statutorily created sick leave pools, and wants to voluntarily participate in the unused sick leave pool established by the State, to annually update and submit an application for participation in the subdivision unused sick leave fund. A new section IDAPA 59.01.06.579, would be added to terminate employers failing to meet the participation or funding requirements. It also allows an employer to withdraw. Any terminated employer or withdrawn employer would not be allowed to rejoin.

Mr. Drum related there is no fiscal impact to the General Fund. 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. There was no incorporation by reference.

DISCUSSION:

A lengthy discussion occurred among **Senators Martin, Burgoyne, Guthrie and Souza** relating to the sick leave fund. They discussed why an entity would want to participate in the sick leave fund, if employers were statutorily entitled to join the fund, annual applications and termination rules, the investment of unused sick leave monies, Medicare subsidies, and financial penalties. **Mr. Drum** outlined the sick leave policy or plan, discussed prospective retirees who may want to use this policy, and the requirements of the fund. He explained there are a few entities who are applying to be admitted to the sick leave fund pool. New participants are not required by law to participate, but can withdraw from the fund if they choose. He said the purpose of the language is to allow an appeal to the PERSI Board if the participant does not agree with the actions of the PERSI Board.

Mr. Drum explained state agencies and school districts make a contribution towards sick leave with each payroll. That contribution is not earmarked to specific members. When a member retires, PERSI is notified and the unused sick leave is put into an account in the retiree's name. Those monies can be used to pay for insurance premiums, including Medicare, and are sponsored and maintained by the employer until the money is depleted. **Mr. Drum** remarked school districts and state agencies cannot withdraw from the sick leave fund.

Senator Guthrie stated he did not understand how an employer is vested if they could be terminated. **Cheryl George**, Idaho Deputy Attorney General, explained the sick leave pool applies only to those entities that are not mandatorily required to participate in this fund.

MOTION:

Senator Martin moved to approve **Docket No. 59-0106-1802**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. **Senator Guthrie** asked to be recorded as voting nay.

**PASSED THE
GAVEL:**

Vice Chairman Agenbroad 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