

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, February 05, 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 1:30 p.m.

**RS 26684** **Relating to the Barber and Cosmetology Services Act. Senator Jim Guthrie** reported this legislation will provide for apprenticeship opportunities for barbering and barber-styling professions. These changes will be consistent with the changes made for cosmetology last session.

**MOTION:** **Senator Lakey** moved to send **RS 26684** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Souza** moved to approve the Minutes of January 24, 2019. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Chairman Patrick passed the gavel to Vice Chairman Agenbroad to begin hearing the rules.

**DOCKET NO. 07-0206-1702** **Rules Concerning the Idaho State Plumbing Code. John Nielsen**, Plumbing, Heating, Ventilation, and Air Conditioning (HVAC) Program Manager, Idaho Division of Building Safety (IDBS), reported section 603.5.12 of the 2017 Idaho State Plumbing Code (ISPC) requires potable water supply to beverage dispensers or coffee machines be protected by an air gap or reduced pressure principle backflow prevention assembly. Installation of a reduced pressure principle backflow prevention assembly is not necessary to protect potable water supply to beverage dispensers or coffee machines because beverage dispensers and coffee machines are not considered highly hazardous. Allowing installation of vented backflow preventers instead of reduced pressure principle backflow prevention assemblies on beverage dispensers and coffee machines will result in significant cost savings for consumers installing beverage dispensers or coffee machines.

**Mr. Nielsen** indicated that due to the difficulty of complying with a restriction on installing cleanouts under the floor, residential builders are increasingly installing large cleanouts above the floor. Plumbers, builders, and home buyers have complained about the aesthetics of large cleanouts installed above the floor.

**Mr. Nielsen** noted that in 2016, the U.S. Department of Energy (USDE) changed its method for determining the first hour rating (number of gallons required) of residential water heaters, resulting in revised ratings. Manufacturers were required to display the revised ratings starting in June 2017. Revising the ratings in Table 501.1(1) of the 2017 ISPC to reflect the new method for determining ratings will allow plumbing contractors and inspectors to easily match the ratings on

manufacturer displays with ratings in Table 501.1(1).

**Mr. Nielsen** advised there is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. He gave a brief synopsis of why the materials cited are being incorporated by reference into this rule. This rulemaking revises section 603.5.12 to require potable water supply to beverage dispensers or coffee machines to be protected by an air gap or vented backflow preventer. Further, this rulemaking revises section 707.4 of the 2017 ISPC to allow water closets to act as cleanouts and require installation of exterior, two-way cleanouts. This rulemaking replaces the first hour ratings currently in Table 501.1(1) of the 2017 ISPC with ratings calculated using the USDE's revised method for determining ratings.

**DISCUSSION:** **Senator Burgoyne** and **Mr. Nielsen** discussed the aesthetics portion of the Rule for cleanouts, the current Rule, and the possibility of having a negative impact on the public. **Chairman Patrick** commented the aesthetics portion should not be in code. **Mr. Nielsen** commented he was not sure the aesthetics portion should be in code or is necessary. **Senator Lakey** indicated he agreed with Chairman Patrick.

**MOTION:** **Chairman Patrick** moved to approve **Docket No. 07-0206-1702** with the exception of Section 11, subsection 35, "each horizontal drainage pipe shall be provided with a cleanout at its upper terminal, and each run of piping, that is more than 100 feet in total developed length, shall be provided with a cleanout for each 100 feet or fraction thereof" for aesthetic reasons. After a brief discussion with Mr. Nielsen, **Chairman Patrick** withdrew his motion.

**DISCUSSION:** **Mr. Nielsen** and **Senator Souza** discussed current code and the proposed change in this rule. **Senator Lakey** cited the aesthetics portion of section 11, new subsection 35, and remarked the existing code is appropriate and should not be changed.

**MOTION:** **Senator Lakey** moved to approve **Docket No. 07-0206-1702**, with the deletion of section 11, new proposed subsection 35. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 07-0701-1703** **Rules Governing Installation of Heating, Ventilation, and Air Conditioning (HVAC) Systems.** **John Nielsen**, Plumbing and HVAC Program Manager, Idaho Division of Building Safety (IDBS), advised HVAC apprentices must currently complete four years of work experience to take the journeyman examination. Further, in 2006, the Idaho HVAC Board approved giving apprentices who successfully complete a full-time, one-year training course credit for one year of work experience. The IDBS stopped giving this type of credit to apprentices when it was discovered that the IDBS Board's decision conflicted with a rule requiring that work experience be completed on-the-job and not in an educational setting.

**Mr. Nielsen** stated the rulemaking will allow apprentices to take the journeyman examination before completing four years of work experience. This proposed rulemaking will also allow apprentices, who successfully complete an IDBS Board-approved, full-time, one-year training course, to receive credit for up to one year of work experience.

There is no fiscal impact on the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**DISCUSSION:** **Mr. Nielsen**, in response to a question by Senator Burgoyne, indicated credit was granted for one year of work experience when obtaining course credit, but it was in conflict with a rule requiring that work experience be completed on-the-job and not in an educational setting. **Mr. Nielsen** reported notices were sent out and there was no opposition. The changes were discussed at three IDBS Board meetings.

**MOTION:** **Senator Guthrie** moved to approve **Docket No. 07-0701-1703**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 07-0501-1801** **Rules of the Idaho Public Works Contractor's License Board (IPWCLB)**. **Patrick Grace**, Regional Manager, Idaho Division of Building Safety (IDBS), explained that under Idaho Code § 54-1910(a), a public works contractor licensee must designate a qualified individual (QI) by examination. If a QI ceases "to be connected" with the contractor, the contractor must notify the administrator of the IDBS "in writing within ten days." If the contractor provides notice in ten days, the contractor's license remains in force "for a reasonable length of time, to be determined by rules of the IPWCLB." If the contractor does not provide notice in ten days, the contractor's license is automatically suspended.

**Mr. Grace** reiterated there is no rule that defines how long "a reasonable length of time" is. Further, the IDBS cannot always determine what constitutes written notice that a QI has ceased to be connected with a contractor.

**Mr. Grace** indicated this proposed rulemaking will define a QI, determine the "reasonable length of time" a contractor's license will remain in force, and clarify the notice that a contractor's QI has ceased to be connected with the contractor must be provided on forms prescribed by the administrator. There is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**DISCUSSION:** **Senator Souza** and **Mr. Grace** discussed the implications of a QI licensee who ceased to be connected with a company. **Senator Burgoyne** queried if the permittee may perform work during the 90-day period until a replacement could be found. **Mr. Grace** reported the intent was to keep the license active until another person is qualified for that company. **Mr. Grace** remarked the exam is principally an exam which tests knowledge of business practices. **Senator Burgoyne** stated that if the statute calls for an automatic suspension, that it cannot be accomplished by rule. **Mr. Grace** remarked the IPWCLB does not automatically suspend a company who loses a QI. The IPWCLB has opted to provide due process. **Senator Souza** noted the statute says "immediate suspension" and queried if the language be changed to "due process". **Mr. Grace** advised that may be an unnecessary provision in law. **Senator Burgoyne** stated it was not too late to amend the statute, but the rule and the statute should be consistent with one another. He suggested the rule be held subject to the call of the Chair.

**Mr. Grace** stated the rule is not inconsistent, as it sets forth a time period of 90 days to replace the QI. The IPWCLB does not want to suspend immediately. He reiterated he was not sure the rule was inconsistent.

**Senator Guthrie** and **Mr. Grace** discussed the training timeframe, how many opportunities were available to take the exam, the suspension of a license, and the consequences for a contractor.

**MOTION:** **Senator Guthrie** moved to approve **Docket No. 07-0501-1801**. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Burgoyne** asked to be recorded as voting nay.

**Senator Lakey** commented it would be prudent for Mr. Grace to follow up and investigate whether there needs to be a statutory change.

**DOCKET NO.  
07-1001-1801**

**Rules Governing the Damage Prevention Board.** **Patrick Grace**, Regional Manager, Idaho Division of Building Safety (IDBS), advised the Damage Prevention Board (DPB) has authority, under Idaho Code §§ 55-2203 and 55-2211, to hear contested case appeals. The parties requesting these appeals often do not attend the appeal hearings or pay penalties imposed (at significant cost) to the DPB and the IDBS.

**Mr. Grace** noted Idaho Code § 55-2203 requires the DPB to review complaints alleging violations, including inaccurate location of facilities and untimely location of facilities. However, locators are not subject to civil penalties under the Idaho Administrative Procedure Act (IDAPA) 07.10.01. IDAPA 0.01.008 refers to underground "utility" owners in several places. However, Idaho Code § 55-22 only refers to underground "facility" owners.

**Mr. Grace** commented this rulemaking will require parties requesting appeals to pay an appeal bond of \$200. This rulemaking will also change any reference to "underground utility owners" in IDAPA 07.10.01.008 to "underground facility owners." Finally, this rulemaking will define locators and subject them to civil penalties. There is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**MOTION:**

**Senator Burgoyne** moved to approve **Docket No. 07-1001-1801**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
12-0108-1801**

**Rules Pursuant to the Uniform Securities Act (2004).** **James Burns**, Securities Bureau Chief, Idaho Department of Finance (IDOF), reported Rule 59 (12.01.08.059) is being eliminated as it provided for the implementation of a federal securities issuer exemption that no longer exists. Rule 103 (12.01.08.103) is being amended to address recent changes in examinations of uniform securities as adopted by both federal and state securities regulators.

**Mr. Burns** stated there is no impact to the General Fund. Negotiated rulemaking was not conducted for this rule as it is simple in nature and negotiation would be ineffective. There is no incorporation by reference.

**DISCUSSION:**

**Senator Burgoyne** inquired if any consumer protections would be removed with the appeal of this rule. **Mr. Burns** stated by operation of other rules, as well as the additional rule changes made in 2017, those who offer and sell securities in Idaho have an affirmative obligation to make sure that a transaction is suitable for the consumer who will be purchasing the security.

**Senator Lakey** remarked the testing requirements are an effort to remove barriers to entry. **Mr. Burns** stated the rule reduces redundancy. Requirements for taking the Series 66, the Series 7, and the Securities Industry Essentials exam were discussed. **Senator Lakey** remarked it seemed like an additional test was being added versus simplifying and getting rid of redundancy. **Senator Lakey** and **Mr. Burns** discussed that negotiated rulemaking was not done for something that was added. **Mr. Burns** indicated the Financial Industry Regulatory Authority (FINRA) engages with State regulators, and even though notices were not sent out in Idaho, the industry is involved to make sure everything makes sense. In some respects, the test is shorter.

**MOTION:**

**Chairman Patrick** moved to approve **Docket No. 12-0108-1801**. **Senator Guthrie** seconded the motion.

**DISCUSSION:** **Senator Souza** commented she did not mind that the test was split. She remarked someone who is not already in the field could take the basics test and show a potential employer they have skills, which would help to get hired in the securities field. **Mr. Burns** commented in the past, a potential test candidate had to be hired before taking the test. This new test opens up more possibilities.

**Senator Burgoyne** stated he was not in favor of this rule because negotiated rulemaking was not conducted. A testing requirement should have public notice.

**Senator Lakey** remarked he was voting nay. **Senator Lakey** and **Mr. Burns** discussed how FINRA and the industry had addressed the issue of the testing requirements, but this was not described in the docket.

**VOICE VOTE:** The motion carried by **voice vote**. **Senators Burgoyne** and **Lakey** asked to be recorded as voting nay.

**DOCKET NO. 28-0203-1802** **Rules of the Idaho Regional Travel and Convention Grant Program** (Program). **Matt Borud**, Marketing and Innovation Administrator, Idaho Department of Commerce (IDOC), reported the IDOC adopted a temporary rule on March 2, 2018, to define and clarify allowable costs of the Program so that it would continue to operate without interruption. This proposed rule implements the temporary rule without change and provides for other minor rule edits for housekeeping purposes.

**Mr. Borud** indicated there is no fiscal impact to the General Fund. Negotiated rulemaking was facilitated by involving current grant recipients in the formulation of the policy through telephone interviews, surveys, one-on-one meetings, and public meetings of the Idaho Travel Council (ITC). The ITC was presented with the results of the data collected and IDOC staff proposed a revision to the rule. The temporary rule was endorsed by the ITC and adopted by the IDOC Director on March 2, 2018. There is no incorporation by reference.

**DISCUSSION:** **Senator Thayne** and **Mr. Borud** discussed the idea that the Chamber of Commerce is more of a destination marketing organization. **Mr. Borud** explained the IDOC is seeking to more accurately define exactly who was participating in the program.

**MOTION:** **Senator Souza** moved to approve **Docket No. 28-0203-1802**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 17-0206-1801** **Employers' Reports**. **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), remarked the IIC is adopting the pending rule with a minor change to the "termination of disability" to comply with the Electronic Data Interchange (EDI), based on related comments on EDI procedures from sureties. EDI is a process of business information which allows one company to send information to another company electronically rather than with paper. Business entities conducting business electronically are called trading partners.

**Ms. Vaughn** explained 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. 17-0206-1801**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
17-0207-1801**

**Procedures to Obtain Compensation.** **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), reported the Idaho Industrial Commission (IIC) seeks to clarify that the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange (EDI) Claims 3.0 Implementation Guide and Trading Partner Tables referenced in the Rule are the roadmaps on how to properly report claims electronically; and they are not part of the rule. This is being done by moving the references to these guides from the Incorporation by Reference section to the Written Interpretations section of the rule. The changes also clarify the requirements for Trading Partner Agreements and eliminate obsolete procedures for submission of paper claims.

**Ms. Vaughn** stated there is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**MOTION:**

**Senator Souza** moved to approve **Docket No. 17-0207-1801**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
17-0210-1801**

**Administrative Rules of the Idaho Industrial Commission (IIC) Under the Workers' Compensation Law - Security for Compliance - Insurance Carriers.** **Patti Vaughn**, Benefits Administration Manager, IIC, reported the IIC seeks to clarify the new electronic requirements for insurance carriers on the submission of First Reports of Injury and Claims for Benefits, notices of occupational illness, and fatalities. The changes also eliminate the need to submit paper documentation in support of electronically-filed initial payments.

**Ms. Vaughn** stated there is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**MOTION:**

**Senator Martin** moved to approve **Docket No. 17-0210-1801**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
17-0210-1802**

**Administrative Rules of the Idaho Industrial Commission (IIC) Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers.** **Patti Vaughn**, Benefits Administration Manager, IIC, indicated the IIC seeks to authorize and set forth conditions for the use of electronic fund transfers and access cards to pay benefits due to injured workers by insurance carriers.

**Ms. Vaughn** reported there is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**DISCUSSION:**

A discussion ensued between **Senator Lakey** and **Ms. Vaughn** regarding the written disclosure to the claimant including the full text in English, Spanish, and any other language common to the claimant population. **Senator Lakey** asked for a definition of the claimant population. **Ms. Vaughn** replied that the claimant population is not defined and not tracked. She stated there are not many requests for any other language other than what is mentioned in rule. **Senator Lakey** voiced a concern about using a broad term that is not defined. **Ms. Vaughn** reported the IIC only provides text in English. She remarked the insurance carrier would have the obligation of providing text in another language. **Senator Burgoyne** stated it is important claimants receive notices from the insurance companies in a language they can understand. It is important the IIC gathers information on this issue. **Ms. Vaughn** said she would continue to explore this possibility in the future. **Senator Guthrie** asked if any insurance carriers complained. He remarked the language should be all inclusive. **Ms. Vaughn** stated the carriers are in support and materials in other languages are already in place for claims in other states.

**MOTION:**

**Chairman Patrick** moved to approve **Docket No. 17-0210-1802**. **Senator Burgoyne** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Souza** moved to approve **Docket No. 17-0210-1802**, with the exception of section 8, subsection e (ii), "include the full text in English, Spanish, and any other language common to the claimant population." **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. **Senators Burgoyne** and **Ward-Engelking** 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 at this time, **Chairman Patrick** adjourned the meeting at 3:01 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary