

STATE BOARD OF EXAMINERS

MINUTES– Subcommittee Meeting

August 9, 2022 – 1:30 p.m.

Joe R. Williams Building, 4th Floor Syringa Conference Room

700 W State Street, Boise ID 83702

Call-In Information - (712) 770-4875; Access Code = 820128

The regular meeting of the Subcommittee to the State Board of Examiners was called to order at 700 W State Street, 4th Floor Syringa Conference Room, Boise, Idaho, at 1:30 p.m. pursuant to Idaho Code §67-2002 and by order of the chair.

The following members were present: Chairman David Fulkerson, Division of Financial Management; Lisa Mason, Secretary of State; Andy Snook, Attorney General Office and Brian Benjamin, Office of the State Controller, as assisting secretary of the subcommittee.

Also present was Jackie McCleve, State Controller's Office; Rachel Grove, State Controller's Office; Steve Olsen, Attorney General Office; Jared Larsen, Governor's Office and Yolandi Faulkner, Office of Emergency Management by phone.

CONSENT AGENDA

1. Minutes- Action Item – Approved

Approval of official minutes for the meeting of the Subcommittee to the Board of Examiners on July 12, 2022.

Resolution: *Ms. Mason moved to approve the minutes from the July 12, 2022 meeting. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.*

REGULAR AGENDA

2. Office of Emergency Management – Action Item – Approved

ID#	Description	Amount	Comments	Date to Board
2022-00076	Mercury	\$3,526.67	Response to unmarked pesticides on private property (BEAR LAKE COUNTY)	08/04/2022
	TOTAL	\$3,526.67		

Discussion: *No discussion.*

Resolution: *Ms. Mason moved to place item 2 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.*

3. Department of Administration- Division of Public Works- Action Item – Approved

Request for recognition of assignment from Hepworth Family Landholdings, LLC to Kilmainham Airport Plaza, LLC, an Idaho limited liability company. A transfer of interest in the real property lease of the State of Idaho, by and through the Commission of Pardons and Parole, as "Lessee,"

and Lessee's occupancy of 3125 Shoshone Street, Suites 101A, 101B, 102, 103, 104, 105 and 106, Boise Idaho 83705-4766.

Discussion: No discussion.

Resolution: Ms. Mason moved to place item 3 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.

4. Office of The Attorney General – Action Item – Approved

Request approval to pay the court-awarded attorneys' fees in F.V., et al. v Jeppesen, et al., Case No. 1:17-cv-00170-CWD (D. Idaho), in the amount of \$321,224.50 and refer to the Constitutional Defense Council for payment from the fund created under Idaho code §67-6301. A full copy of the agenda item documents can be found on the Controller's Website <https://www.sco.idaho.gov/LivePages/board-of-examiners.aspx>

Discussion: Mr. Olsen introduced himself as the chief of civil litigation in the Attorney General's Office. He asked if the Board of Examiners would approve the payment of \$321,224.50 plus accrued interest at the rate of 2.14% from the date of June 8, 2022. Mr. Olsen spoke to the genesis of the court case, stating that it began in 2018 when a lawsuit was brought challenging the state's decision to not change the sex on a person's birth certificate to reflect their gender identity. That same year, the court entered an order stating that the state can no longer automatically reject applications from transgender people to change their sex listed on their birth certificates. The Department of Health and Welfare then complied with the court's injunction. In 2020, House Bill 509 was adopted and shortly after its adoption, the plaintiffs filed a motion to clarify the 2018 permanent injunction. The contention was that the new statute was contrary to the court's injunction, which required the state to not automatically reject applications to change a person's sex identification on their birth certificate. After two motions were filed, the court concluded that the statute did violate the court's permanent injunction. Mr. Olsen reported that it was a hard-fought case, and after that time the plaintiffs submitted a claim for payment of attorneys' fees. The plaintiffs asked the court to enter an award of \$456,478.00 on behalf of the named defendants on this case. Mr. Olsen reported that that amount was rejected, but the court ultimately agreed on a total of \$321,224.50 for attorneys' fees, paralegal costs, and out-of-pocket court fees. Mr. Olsen concluded by asking again if the Board of Examiners would approve this payment and any accrued interest.

Mr. Fulkerson added that the preference of the governor's office is to approve the claim but not to refer it to the Constitutional Defense Council and instead let the legislature work through the budgetary indications of paying the claim.

Mr. Snook stated that he thinks the appropriate motion is reflected in Mr. Olsen's letter to the Board of Examiners, which asks that the Board recognize that it is an outstanding debt that needs to be paid pursuant to a court order.

Mr. Benjamin added that changes will be made to the language on the regular meeting agenda to appropriately reflect the request brought forward by Mr. Olsen.

Resolution: Mr. Fulkerson moved to approve payment of the claim and place item 4 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.

INFORMATIONAL AGENDA

5. State Controller's Office

- a. Reports of overtime paid on FLSA exempt employees by agencies, which was approved by the Board of Examiners.

- State Controller's Office –Exemption End Date - December 31, 2022

- b. Reimbursement to the State of Idaho (Idaho Innocence Fund) in the amount of \$1,248,980.58, previously paid to Mr. Christopher Tapp (see Tapp v State of Idaho, No. CV01-21-03719). Mr. Christopher Tapp is reimbursing the State of Idaho, pursuant to Idaho Code 6-3503(5), after receiving a monetary settlement of his civil action for wrongful conviction and accompanying wrongful incarceration.

6. State Insurance Fund

- a. Estimate of the State Insurance Fund expenses to be paid by sight drafts for the month of July 2022.

Estimated expenditure for workers compensation claim costs, dividends and premium refunds	\$20,000,000.00
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Funds Expended in June 2022:

Workers Compensation Claim Costs	\$13,785,073.07
Dividends	\$0.00
Commission	\$-7,861.14
<u>Policy Refunds</u>	<u>\$40,076.57</u>
Total	\$13,817,288.50

- b. Estimate of the Idaho Petroleum Clean Water Trust Fund expenses to be paid by sight drafts for the month of July 2022.

Estimated expenditure for Idaho Petroleum Clean Water Trust Fund	\$750,000.00
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Funds Expended in June 2022:

Payroll	\$63,505.06
Operations	\$17,070.84
<u>Claim Costs</u>	<u>\$121,942.48</u>
Total	\$202,518.38

Ms. Mason moved to adjourn the meeting. Mr. Snook seconded the motion. The meeting adjourned at 1:45 p.m.