

STATE BOARD OF EXAMINERS
MINUTES– Subcommittee Meeting
December 13, 2022 – 1:30 p.m.
Joe R. Williams Building, 5th Floor Lost River Conference Room
700 W State Street, Boise ID 83702

The regular meeting of the Subcommittee to the State Board of Examiners was called to order at 700 W State Street, 5th Floor Lost River 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; Andy Snook, Attorney General Office; Lisa Mason, Secretary of State Office; and Brian Benjamin, Office of the State Controller, as assisting secretary of the subcommittee.

Also present was Rachel Grove, State Controller's Office; Jackie McCleve, State Controller's Office; Rachelle Vance, Department of Health and Welfare by phone; Josh Whitworth, State Controller's Office and Scott Zanzig, Office of the Attorney General.

Discussion: Mr. Benjamin stated that the Board had a late submission for the agenda (item 5c). Mr. Benjamin continued that the agenda had been revised, however the item would require a motion to have it officially added to the subcommittee meeting agenda. Mr. Snook moved to place item 5c on the regular agenda. Ms. Mason seconded the motion. The motion carried on a unanimous voice vote.

CONSENT AGENDA

1. Minutes- Action Item

Approval of official minutes for the meeting of the Subcommittee to the Board of Examiners on November 8, 2022.

Resolution: *Ms. Mason moved to approve the minutes from the November 8, 2022 meeting. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.*

REGULAR AGENDA

2. Ada County Sheriff's Office – Action Item – Recommend Approval

Request for approval pursuant to Idaho Code §31-2219, and Idaho Code §31-3203, for transportation of prisoners sentenced to ISCI and transported to the Ada County Jail upon a Judgment of Conviction or a Return on a Board Warrant for April through September 2022.

Mileage at \$.40 per mile... \$1,164.00

Mileage at \$.25 per mile... \$647.92

Total of Claim:..... \$1,811.92

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 Environmental Quality - Action Item – Recommend Approval

- a. Request in accordance with House Bill 763, First Regular Session of the 66th Idaho Legislature, that \$3,500,000.00 be transferred from the General Fund to the Department of Environmental Quality fund #0225 during the second quarter of Fiscal Year 2023.
- b. Request in accordance with House Bill 763, First Regular Session of the 66th Idaho Legislature, that \$554,900.00 be transferred from Public Water Systems Supervision Fund #0191 to the Department of Environmental Quality fund #0225-04 during the second quarter of Fiscal year 2023.
- c. Request in accordance with House Bill 763, First Regular Session of the 66th Idaho Legislature, that \$476,000.00 be transferred from the Air Quality Permitting Fund #0186 to the Department of Environmental Quality fund #0225 during the second quarter of Fiscal year 2023.

Discussion: Mr. Benjamin stated that there was a revision on item 3a, the original request was for 3.5 million to be transferred but was revised to \$1,826,600.00. Ms. Mason noted a typing error on the request, and the request should state the 'second regular session. Mr. Benjamin noted that there are actually two typing errors, the first is as Ms. Mason mentioned, and the second is the requests should state the third quarter of fiscal year 2023.

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

4. Department of Health & Welfare - Action Item – Recommend Approval

Request in accordance with appropriations passed by the Second Regular Session of the 66th Idaho Legislature, that \$260,353,200 be transferred from the General Fund to the Cooperative Welfare Fund #0220 during the third quarter of Fiscal Year 2023.

Discussion: Ms. Vance stated that this is their standard quarterly transfer.

Resolution: Ms. Mason moved to place item 4 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.

5. Department of Administration – Division of Public Works - Action Item – Recommend Approval

- a. Request for recognition of assignment from Edmark Properties LLC to 3110 Cleveland LLC, an Idaho LLC. A transfer of interest in the real property lease of the State of Idaho, by and through the Idaho State Liquor Division, as "Lessee," and the Lessee's occupancy of 918 Blaine Street, Caldwell, Idaho 83605-3767.
- b. Request for recognition of assignment from Edmark Properties LLC to 3110 Cleveland LLC, an Idaho LLC. A transfer of interest in the real property lease of the State of Idaho, by and through the Idaho Department of Correction, as "Lessee," and the Lessee's occupancy of 3110 East Cleveland Boulevard, Building D, Caldwell, Idaho 83605-5539.
- c. **ADDED AT ONSET OF MEETING WITH MOTION** - Request for recognition of assignment from All West Properties, LLC to 845 Center Street, LLC. A transfer of interest in the real property lease of the State of Idaho, by and through the Idaho Department of Agriculture, as "Lessee," and the Lessee's occupancy of 845 West Center Street B, Suites 301, 303, B105, and B106, Pocatello, Idaho 83201.

Resolution: Ms. Mason moved to place item 5 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.

6. State Controller's Office – Action Item – Recommend Approval

Request for previously approved overtime compensation for employees working on the Luma project be extended. The request is to authorize exempt FLSA employees (class codes listed on memo) to be paid for overtime worked. If approved, these employees would be changed temporarily to extend from the period Dec 31, 2022 to December 31, 2023.

Discussion: Mr. Whitworth stated that this has been a great tool for the Controller's Office to maintain knowledge in the project, and reward staff for the efforts they are doing. Mr. Whitworth stated there's a lot of overtime as well as late nights. Mr. Whitworth continued that the 'go live' was moved from January to this upcoming July. He also stated that not doing something like this takes away a critical tool and limits their ability to keep those team members on the team. Mr. Whitworth also stated that there has been a lot of movement of financial personnel across the state and losing that expertise would be detrimental to the project. Mr. Whitworth discussed the stabilization period after the 'go live' and that they are trying to make sure there is enough support for the personnel that are operating the system. Mr. Whitworth stated that they are committed to manage post go live much more critically, and to make sure they are not using overtime unless it's absolutely needed. Mr. Fulkerson asked whether there was adequate budget to fund this. Mr. Whitworth stated that there was. Mr. Benjamin commented that the Controller's office pays this overtime on a monthly basis and the Controller's office has set a floor of comp time for staff, so that they are not paying comp time that the employee brought over from their previous agencies.

Resolution: Ms. Mason moved to place item 6 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.

7. Office of Attorney General and Idaho State Police – Action Item

Request approval to pay the court-awarded stipulated attorneys' fees in Doe v. Wasden, et al., Case No. 1:20-cv-00452-BLW (D. Idaho), in the amount of \$275,000.00. Additionally, the request is to refer this to the Constitutional Defense Council for payment from the fund created under Idaho code §67-6301.

Discussion: Mr. Zanzig stated that these fees are from a settlement that came from a constitutional challenge to application of the Idaho sex offender registry laws, specifically for people who were convicted of the crimes against nature statute prior to the time when courts no longer applied that statute to consenting adults. Mr. Zanzig continued that there is a Supreme Court authority Lawrence vs. Texas, which states that consensual sexual acts between adults cannot be criminalized. Mr. Zanzig continued that the argument in this case was that these individuals had been convicted before that ruling came out, and the defendants claimed that they had consensual sex, so as applied to them, the Federal District Court held that the statute was unconstitutional.

Mr. Zanzig stated that the case went up on appeal at the Ninth Circuit. During the argument in the ninth circuit, the panel told Mr. Zanzig's former colleague Leslie Hayes that she was not going to like the result and should find a way to settle the case. This was also stated to the plaintiffs' lawyer. Mr. Zanzig stated that the case was settled after mediation. Mr. Zanzig continued that part of negotiations is determining what happens with the attorney's fees. Mr. Zanzig stated that usually in these cases under federal law, if you prevail, you are entitled to an award of attorney's fees. During those negotiations, the plaintiffs claimed that their attorney's fees were well above \$400,000 and those fees would have continued to roll up, if the case proceeded. Mr. Zanzig stated that as part of the settlement, they were willing to take a discount down to \$275,000.00, and as part of that agreement there were discussions about how that money would be paid. The

plaintiffs were aware that in the past, the attorney's fees award had been paid out of the Constitutional Defense Fund. The plaintiffs recognize that the process is much more streamlined than having an agency go to the legislature and seek an appropriation for a fiscal year in the future, and therefore they wanted in the agreement that the Attorney General's Office would come to the Board of Examiners and request it be paid out of the Constitutional Defense fund. Mr. Zanzig stated that they let the plaintiffs know that this might not be the way business is going to be conducted going forward, and therefore there is a stipulation for a secondary method of payment, which would be that the Idaho State Police seek an appropriation from the legislature and make payments over time, one due July 2023, and one that would be due the following year. Mr. Zanzig continued that the downside of having the obligation go that far in the future is that the plaintiffs would be entitled to interest under federal law, and as part of the negotiations it was decided the interest would not begin accruing until July of 2023.

Mr. Fulkerson then stated that he spoke with the Governor's office and their preference would be that this item go the same route as the last one, where it be referred to the legislature for payment, and as long as it is paid by July the state would not have to pay any interest. Mr. Fulkerson continued that Governor's office stated they would like to use the Constitutional Defense Fund as its intended purpose, which is affirmative action, rather than paying claims.

Mr. Snook commented that the charge for the subcommittee is to recognize the claim, and probably would not be for the Board's consent agenda but for their regular agenda.

Mr. Fulkerson stated that he was contemplating a motion to match what was done previously and place the item on the consent agenda with a referral to the legislature for payment.

Mr. Benjamin stated that the subcommittee needs to make sure that they honor the request that was made and not change it, therefore it would be appropriate for the regular agenda as written.

Mr. Snook commented that the subcommittee can recognize that there is an amount owing, and not necessarily place the item on the consent agenda and the Board itself can decide where they want to route the payment. Mr. Snook also noted that the previous claim from Health and Welfare in previous months did not specifically stipulate that it go before the Board of Examiners, as this case does in its settlement documents.

Resolution: Mr. Snook moved to place item 7 on the regular agenda. Ms. Mason seconded the motion. The motion carried on a unanimous voice vote.

8. Idaho State Police – Action Item – Recommend Approval

Request for approval of overtime compensation for the Director of Communications who is an FLSA 'A'. The request is to authorize him to be paid for overtime worked facilitating communications during the investigation of the murders in Moscow, Idaho. If approved, his FLSA would be changed for the end of calendar year 2022.

Discussion: Mr. Benjamin introduced the agenda item and noted that he spoke with a representative at the Idaho State Police who stated that they would only be paying out those comp hours that were accrued during the investigation of this case.

Resolution: Ms. Mason moved to place item 8 on the consent agenda. Mr. Snook seconded the motion. The motion carried on a unanimous voice vote.

INFORMATIONAL AGENDA

9. Office of the Attorney General

Notification that Deputy Attorney General Matt Lovell has been permitted to accept additional outside employment at the University of Idaho Law School in Boise. This is a temporary position and would involve Mr. Lovell grading practice bar exams and providing feedback and mentorship to students.

10. State Insurance Fund

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

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

Workers Compensation Claim Costs	\$11,543,968.15
Dividends	\$0.00
Commission	\$4,450,408.41
<u>Policy Refunds</u>	<u>\$350,919.69</u>
Total	\$16,345,296.25

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

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

Payroll	\$65,376.94
Operations	\$20,742.13
<u>Claim Costs</u>	<u>\$93,653.89</u>
Total	\$179,772.96

Ms. Mason moved to adjourn the meeting. Mr. Snook seconded the motion. The meeting adjourned at 1:56 p.m.