



State of Idaho
Division of Occupational and Professional Licenses
Idaho Electrical Board

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Minutes of 08/17/2022

Board Members

Present:

Rick Stark
Chad Fields
Greg Eagy
James Marchetti
Casey Wilson
Josh Madsen

Division Staff:

Michael Hyde
Tim Frost
Yvonne Dunbar
Bob McLaughlin
Gary Sonnen
Jessica Spoja
Linda Pratzner
Carlotta Zito

Board Members

Absent:

Jim Swier
Todd Feusier

The meeting was called to order at 9:01 a.m. (MT) by Rick Stark.

Board Business

Overview of Proposed Amendments to IDAPA 24.39.10 – Rules of the Idaho Electrical Board: Tim Frost presented an overview of the proposed amendments.

Overview of Comments Submitted Regarding Amendments to IDAPA 24.39.10: Tim Frost presented an overview of the comments submitted.

Public Comment: Public comments were discussed by topic.

Contractor License for Journeyman vs Master: Daryl Nelson asked that everything from the bottom of page eight to the middle of page ten, in the ZBR redline document, *Application Qualifications for Contractors Requirements*, be unstricken and left in the document for public comment.

Miles Whittington made a recommendation, in line with Daryl Nelson's comment, to leave the section, *Application Qualifications for Contractors Requirements*, open for public comment because it seems there is a lot of general confusion over definitions versus requirements versus qualifications. Unstriking that section and making it available for public comment would allow people who are active in the industry, both as contractors and holding master level licenses, to offer their input versus striking it out completely and not making it available for public comment. He stated a general clarification of this section would be beneficial to how this pertains to the industry.

Greg Eagy - If you're hiring an electrician and you're not an electrical person, how do you know what they can and cannot do. I mean, we know that they can and cannot do based on the license, but I guess as a building owner, you bring in a firm that did your house six years ago because you liked them, but they may not be able to sit down and design that project you like. I mean, what stops that until the inspection process, and then it's all done.

Michael Hyde - I think we're getting off topic here, getting into the design aspect. The rules are written from an enforcement piece, and this rule chapter says who may design, but the regulation of design isn't covered in this scope. We don't go to residential jobs and say, show us the electrical plans for this residential

job. Those don't exist. They're not required to be provided for enforcement. We look at it to code. In a commercial job, even from an enforcement piece, the only time we would ever ask for a set of plans stamped by a registered design professional is on state owned work, based on statute. I think we're kind of getting off topic here where we're just talking about who may design it, but the regulation piece is a totally separate issue.

Yvonne Dunbar - A licensee is required to only work within the scope their license allows them to do. Right now, a journeyman can only do the work the statute allows them to do. A master can do the work the statute allows them to do. That's not going to change with who owns a business. It's still the same. The business can only operate within the scope they're licensed employees can operate and that's what we're trying to explain. So, if a contractor only employs the journeyman, the scope is limited to what a journeyman can do because the journeyman can only do journeymen work. If a contractor hires, and that means they might hire a different design professional, if a contractor hires a master, the contractor can work within the scope of the master because the master can do the additional work. It doesn't expand who can do what work. The licensee is still required, and what prevents a licensee from going outside of their scope is if the Board receives a complaint on the issue, the licensee could have their license revoked.

George Stanton, Comet Energy - I'm going to dumb it down a little bit so don't be offended. Let's start off with it's not two separate subjects. We're talking about real world. If you don't prevent me from doing plumbing, and I have a job that has plumbing and I do that work and there's nothing that says I have a contractor's license and my contractor license doesn't differentiate between plumbing and electrical, then you have no way, without jumping into the weeds, of figuring out what we have. So, as far as the electrical, I own an electrical company, I'm a master. Say I lose my license tomorrow. We get a design. It's designed from India from supposedly an engineer, but who knows because of parts availability I go from a meter main, and I change everything out and then I make an interconnection for a solar, because I'm in the solar industry, to a totally different spot. I just designed that whole thing. Even if I didn't design it, somebody from India did that doesn't have the license either. My contractor license never changed. There's no accountability. There's nobody that can, in the field, look and say who did this, who did that. I could redline it, it's all good to go. No reason for a master whatsoever. So, basically, by implementing this as is, a master is unneeded entirely. Just because he can design, you're taking away any pull, any enforcement that is available to stop an electrician from doing that himself, or anybody else for that matter. So, they're not different. A great example was the parts availability and whatnot. That changes everything for me as far as the solar, but also with the houses, you don't know who designed it. Just because you got the set of prints, what if they're not stamped, what if they change something? The contractor's license is the same whether they have a master or a journeyman. When they come out to inspect that, it was designed by a journeyman who's technically not allowed to, you're just opening it up to say we don't need a master. There's no enforcement. There's nothing. If I'm wrong, let me know, but that's the way I see it. In the real world you can say that, hey, you're not allowed to do this, but there's nothing stopping me. There's nothing to prevent me, and there's nothing to tell the Board or anybody else that I have, or don't have, that person employed. So, by unstriking it, we would eliminate a lot of that because now you're required to have a master, which means you can make those changes, which means, hey, I can't get this piece of equipment but I can make these two things work, and I have somebody that I employ that is able to do that, otherwise, like I said, the supposed things they can do is not going to be enforceable in any manner. So, if we don't unstrike it, you just eliminated a license and more work is going to be done by people that are unqualified.

Jeff Fitzloff - Ninety percent of the jobs end up design build because they end up setting things closest to where it's drawn. Even if it's got engineered prints, they aren't adding studs to get a box where it needs to be. They'll go to the nearest stud. Residential is, I'll bet it's ninety-nine. I know of only one contractor that has a set of plans on the job that tells where the receptacles will be and still, they moved from stud to stud to make the six to 12 work where the studs are, they are not adding lumber to get their boxes nailed on. So that, by default, would require everybody to have a master. Just a point. Thanks.

Continuing Education for Apprentice Electricians: **Miles Whittington** - As director of an apprenticeship, I'm totally open to hearing what the staff has as far as options, especially for the lifetime apprentices. We're

moving into a four year registered apprenticeship program to be able to give them job placement and on-the-job training, as well as the classroom instruction. We're more concerned about individuals who sign up for an apprentice license that have no intention of attending school. As an educator, I think that it is imperative that we give them at least some kind of training out in the field. Whether it is NFPA70E or a basic OSHA training. Right now, we have a lot of apprentices that aren't actively enrolled into our registered apprenticeship program that still hold a state license. We still provide them with the required training. We can facilitate classes like that, and we are more than happy to do so, but without a state requirement for it, nobody's going to do it. I think that people who are working for four, five, six years and not on a track towards apprenticeship need to have some kind of training to keep them up to date. Our code cycle changes every three years. If you have people that haven't been attending and having gone to a code class or a safety class because sometimes those safety classes get adjusted, depending on what the code book says, it's putting them at a disadvantage, and not only could they be a potential harm to themselves but the people that they're working around. As much as we like to say that we're educated, you still have to wear a helmet to the job, so let's just at least get them the basic training of being safe on the job site, so that they can continue their work and go home to their families. Thank you.

Rick Stark - Do you board members have any questions or comments on this topic? I guess I will echo what Mr. Frost said earlier at our last Board meeting, and we did talk about this, I do believe the Board's intent, and please speak up if you disagree with my interpretation, I believe the Board's intent was in fact to maintain continuing education for the lifetime apprentices. We have heard over the years from a number of people that frequently need to employ apprentice workers. I think of the one where the husband had his wife come and help him pull cable once a week, or something like that, but nonetheless, I do think it's important to have that requirement in some way, shape or form. I would gladly take any disagreements or agreements from the Board at this time.

Tim Frost - If the Board wanted to consider that, what you would look at is under Rule 100 *Licensure and Registration*, on page six, where we detail out continuing education and continuation training. It's clear what the statute says related to continuation training. I don't think there's an argument there. I think the piece that would be a pathway for you to regulate this is the legislature added Board authority to require continuing education requirements for electricians in 1999, that was through House Bill Twenty Eight. The statement of purpose connects it towards only journeyman electricians, however the way it is written, it's very broad. It just says continuing education and it doesn't limit it to what the license type is. This is a scenario where the law is not limiting you, and the Board has historically utilized that law to also require continuing education for master electricians as well, even though the intent was for journeyman electricians, but the language is permissive. If staff had a recommendation here, and we wanted to require CE for lifetime apprentices, our recommendation would be right now that lifetime apprentices really starts after year eight. In other words, they can work outside of a program for eight years to gain their 16,000 hours and then they can sit to take the exam. So, in a lifetime apprentice scenario, they don't take the exam or can't pass the exam, it would be after year eight. One thing we could do is add to that rule, very similar to journeyman and master electricians, that after year eight, an apprentice is required to do eight hours of CE, very consistent with how journeyman and master electrician do it. In other words, you're no longer in a training program at this point, you are now in a long-term registration and you need to make sure you're staying up to date on the code requirements. That could be one staff recommendation, to add in a requirement for every year performing eight hours of continuing education after year eight for lifetime apprentices, and that would be under your statutory authority to do so if you wish.

James Smith - Maybe another idea in statute is just to make sure these lifetime apprentices are people that are trying to renew their apprentice license. They need to get it from a preferred provider that is state approved. They can go and take the classes, but it needs to be approved through the state of Idaho through a CE broker. We don't want to have to have them take a class somewhere and it's not approved with the state of Idaho. It needs to be from a state of Idaho approved training center, either a JATC or whoever else has submitted the proper paperwork to have their classes approved in Idaho.

Rick Stark - Correct me if I'm wrong, Mr. Frost or Mr. Hyde, but I believe that's the requirement for a journeyman anyway, so if they were to follow the same rules, would that not also apply?

Tim Frost - We do not require them to be specifically in a JATC approved program. We call out in a three-year period, 24 hours of continuing education, construction, consisting of eight hours of code update, covering changes in the latest edition of the National Electrical Code and 16 hours of any combination of code update training, code related training or industry related training. We do not currently limit them to specific board approved programs.

James Smith - I wasn't referencing they had to attend a JATC, but just make sure it's a state approved educational facility they're going through and they're not just opening the code book for 16 hours and saying I sat in my house reading for 16 hours. It just needs to be an approved class in the state of Idaho.

Tim Frost - Chairman, I have no disagreement with Mr. Smith. We would not accept that if submitted anyway under our current framework.

Daryl Nelson - I do believe the June meeting of 2021, when the rules last got simplified or redacted, whatever you want to call it, that used to be in there, that these courses did have to be approved by the state. I believe the comments Warren Wing had for that is, if you do take something, because not everybody does submit these classes to be approved by CE Broker or the state of Idaho through a CE broker, if you have documentation of it, they can take that at the counter and count that towards your license renewal because it does have those CEUs in there. I do vaguely remember something like that back at a special board meeting when we had to redo the last packet that we're probably working on now.

Rick Stark - Thank you. I do remember Warren talking about that. Thank you.

Apprentice Ratios: **Rick Stark** - Okay, any public comments on the apprentice ratios?

George Stanton - I don't know if it's much of a comment, but if we're allowing residential work and work like that to have a separate ratio, it sounds like they're on their way to a separate license, like Oregon or Washington. We've already talked about how a lot of this stuff is design built work and coming from the solar industry, there's no ratio whatsoever from specialty licenses, but it sounds like a different license, like a specialty license or a residential thing because generally, once we go to like a one and four, what contractor's going to say I want one and two. I guess I get to partake in that a little bit, but I also wouldn't mind if they create consistency across all and have an even playing field for all contractors, even like for specialty licenses, creating some kind of a ratio there. So right now, you're saying it's one in four for residential. For specialty licenses there's not a ratio, which is unfair in a lot of ways, I admit that. I don't take advantage of that as much as I could, but I also don't do utility skill stuff, but it just seems, whether you're a journeyman doing residential or a journeyman for commercial, you're a journeyman either way, and there's only so many people you can watch over. So, that's my comment. Thank you.

Jeremy Redman - Debbie Downer, broken record. I'm a journeyman electrician. When you look at this, board members that have been around any amount of time, or have been part of this industry, you'll see there's been a lot of deregulation that goes on, as far as apprenticeships go. The more you deregulate, as far as requirements to be part of a program, to get a license, now you just have to have a heartbeat to get a license. You don't have to be enrolled in a program. What the Division is telling us now is that there shouldn't necessarily be education requirements to even renew your apprentice license. That then leads to all of the education being done on the job. How you can add more students to a classroom and say that they're going to get proper education, I don't know. Nobody's advocating for a larger classroom size, but that's what we're doing here. We're pushing the students into on-the-job training. That's where they're going to get all of their theory, which, as a contractor, you folks that are contractors here, I'm sure you appreciate when your journeyman breaks down to explain to an apprentice the theory that they should be learning in a classroom, right? There has to be some kind of balance here. If we're not going to require apprentices to go to some kind of formal classroom training, be it an actual four-year program where they're going to get in the neighborhood of 600 hours of training, you cannot add more apprentices to a job site and expect them to be at some point anytime in their career, minimally qualified to be a journeyman. We've hear a lot of conversation recently as what is minimally qualified. The whole point of being an apprentice is to learn a trade. I would question the authority to issue licenses to people that are forever apprentices, if we're going to talk about statutory authority to somebody that has no intent of becoming a journeyman. We're not talking about that though, because that's bad for Idahoans. What I'm talking about here is, when

it comes to ratios, if we're going to decrease some of the regulations, we've got to increase some of the others. That's the only way this is going to balance out. I know I've said this time and time again, like I said, broken record on this one. If the Board wants to look at statute 54-1007 right there, I believe lays out your authority to require continuing education requirements to renew licenses right there for apprentices. Laid out right there in three separate scenarios. You can look at that how you want to, but every time I read that, that's where that goes to requirements as far as the continuing education. I know we're under ratio. I think this is all kinds of intertwined together. The ratio on the continuing education requirements, as I said, when I got my license, I had to be enrolled in a program to even qualify to get a license. You don't have to do that anymore. The only way it would be any easier right now to get an apprentice license is when you got your high school diploma, they issued you an apprentice license, it just came standard with your diploma. So, I'm sure you guys have all heard from me time and time again. Ratios are important.

Daryl Nelson - I guess I would probably recommend to the Board on page 12 of the packet or page 10, unstriking the (a) and (b) under that on the top of putting back in the ratios, allowing for public comment again. I think by striking it and not letting it go to that, you're going to be missing out on a lot of comments to actually make it a more informed decision when we go forward. There's probably going to go off topic here, outside of the ratios, but one of the things there, like Mr. Frost said earlier, when you look at the limited stuff, I did help get that shortened up a little bit more for some of the redundant wording in there. The part that didn't make it was the limited residential license that was passed at the last Board meeting here too. I know there is probably going to be some problems with moving forward on that, but that's not on the apprentice ratio that we're talking about. Keep in mind, it was going to be under limited, which as George mentioned a minute ago, there is no ratios on that part for the limited energy license types, but, there again, I would ask to unstrike that and let it go forward with public comment, with keeping that in there to let the public actually comment on those parts. Thank you.

Rick Stark - Any other questions or comments from the public or anyone on the phone?

Miles Whittington - We have about 170 apprentices right now actively enrolled in our program. Those are registered apprentices, not to mention the 90 or so we have that currently hold Idaho apprentice licenses that are trying to get into our program. We have a selection process, we're a non-profit trust, we operate that way. Not a single one of them have an issue with one to two or a journeyman with two apprentices on a job site. Jeremy mentioned a decrease in standards. Mathematically, 90% of your training is going to be on the job site versus the ten percent just hours. Comparing hours, you're going to get more training on the job site versus the hours you're going to receive in the classroom. The mentality we've adopted is, as far as the training center standpoint, out on the job is where you're going to learn how to do the work. In the training center is where you are going to learn why the work is being done. That's when we do code classes in theory, and the hands-on training in a controlled environment, but a controlled environment with hands-on training, one or two weeks of the lab, is no substitute for the type of work you're going to be doing day in and day out on a job site. If you're a journeyman that is overloaded with apprentices, or frankly, those of you who've been in the field long enough know there are journeyman who just don't want apprentices period. So, when left to their own devices, you have apprentices who are unqualified to do the work that are essentially teaching themselves without a proper ratio. We've seen it on some of the bigger scale jobs where you have them running outside of ratio, and you have apprentices teaching apprentices, and that work has to be redone. Nothing is more frustrating than doing work twice that should've been done right the first time. Again, I'm obviously biased as a huge advocate for ratios, but if that's not enough, look at your packets with how the industry responded to how they feel about the ratio. Maybe one or two people in the past year have been actively trying to say let's not have ratios at all, but there is an overwhelming response saying that we need to have a proper ratio to balance it out. If we're diluting our requirements to even get into an apprenticeship program or to maintain a license, as Jeremy mentioned, then we need to make sure that they're properly supervised on the job while they're getting the training done. For some of us, this is a career, we want to be electricians until we retire. For some people, it's a job and if they're not properly educated or properly supervised, it is a dangerous combination to say I'm just here for the paycheck, not I'm here to build Idaho. I'm here to make sure that my crew is safe so that we can go home. Regarding

ratios, just check out your packets and see what the industry wants because everybody knows how important that is. Thank you.

Rick Stark - Any other comments at this time?

Alex Owens, City of Rexburg Electrical Inspector - Just a question from an enforcement point of view, just to help me better understand the ratio deal. I see that it's struck out. So, you're proposing to delete all ratios, is that correct?

Rick Stark - As I understand it, that is correct as the document is prepared at this point. Yes.

Alex Owens - Okay, I just wanted to make sure.

Jason Hudson, AFL-CIO - I don't intend to address any of the policy arguments around it because it seems to me there's not really a policy argument going on as to the value of this. Industry seems aligned. I attended seven of the nine hearings last summer and every hearing, comment, and meeting so far this year. There hasn't really been a policy debate about the wisdom and importance of ratios that I have heard. So, I don't think there really is a question there. The question seems to really be boiling down to the legal procedural question around statutory authority and how to implement this. To my reading of it, section b, within that journeyman to apprentice ratio rule section, sort of lays out a path forward in, and of itself, where it says it points to the statutory requirements for direct supervision and constant on the job supervision and maintains a violation of those ratios is presumed to be a violation of those statutes. To my reading, that's just a different way of saying this is what the definition of direct supervision and constant on the job supervision are, which are clearly provided in statute. The bigger picture though is I believe everyone has seen legal opinions, both concluding there is statutory authority, there isn't statutory authority. Has everybody on the Board received the other legal opinions, or no. No? Okay, will the board members have an opportunity to see that?

Tim Frost - That would be if the members of the public want to share it in that type of format. I'm not aware.

Unidentified Speaker - I believe that was shared.

Tim Frost - It was shared? Okay, I was bcc'd on that, so I don't know who it was shared with.

Jason Hudson - Oh, okay, well, I guess that's the question then to the board members. Has everybody seen varying legal opinions on statutory authority? This is an open question at this point, and I think most importantly, the conclusion I'd advocate for is I think there are paths forward to achieve this and I would just encourage everyone to continue working on creative solutions, work with staff, work with the public, work with everyone on achieving a solution that keeps that policy conclusion that seems to have broad consensus in a manner that makes it above question that the proper process and procedure is followed.

Tim Frost - Chairman, follow up question. Mr. Hudson, you said you listened to seven of the nine listening sessions. You've been at a lot of the negotiating hearings, so I appreciate you coming to those. You said there's no disagreement from a policy perspective on the ratio discussion. Would you apply that to the residential setting as well?

Jason Hudson - I think your synopsis at the beginning of this meeting was pretty accurate, to the extent there hasn't been any policy disagreement, it has been around the residential.

Rick Stark - Thank you. There are no other questions for you. I did receive Mark's email with the other legal opinion. I assume other board members did too. Our newest board member did not. I think this might be a good opportunity to take a recess if there is no other public comment before we move into Board discussion on this matter. Maybe it makes sense to get a copy of that document during the recess so all the board members have an opportunity to look at it, and I think also, I would ask counsel to provide their perspective on it after the break as well. Mark, yes, real quick.

Mark Zaleski, Journeyman Wireman - Mr. Chair, members of the board, members of DOPL, for clarification, I just bcc'd the board members and yourself. That's who received it.

Tim Frost - Thank you.

Rick Stark - It's 10:23 am. Let's adjourn and readjourn at 10:35 am.

Board Discussion on Proposed Amendments to IDAPA 24.39.10, Written Comments, & Public Comments:

Rick Stark - Let's go ahead and readjourn. I apologize for the slightly longer break. We were getting

some documents printed and I wanted to give everyone on the Board a chance to review them before we readjourned. The next item on the agenda is board discussion. To kick that off, I want to clarify with DOPL what our vote today is really entailing and what happens at that point. Is there a public comment opportunity, or is this going straight to legislature, or what's the next step?

Tim Frost - Thank you Chairman and board members. As it relates to today, everything we've done over the past year and a half is what I would call pre-negotiations. Some of it's been informal, some of it has been formal, noticed in the bulletin, but what you have before you today is moving a rule chapter to proposed status. The vote today is starting negotiated rulemaking. In a way, we've had a lot of conversations on what we're going to do in zero base regulation. Lots of working back and forth on what the draft should include, shouldn't include, gathering comments. The goal of that in totality, is to work through 80% of the problems prior to ever publishing something in a proposed status. For example, today we worked significantly through this chapter. For the most part, the conversations boil down to about three different topics as being what we're going to likely receive more comments on depending on what the Board decides today. That's usually what our goal is before we start negotiated rulemaking. Today you would be voting on this to move forward to proposed status of rules. Based on the language and the decisions that you make, that will get published in the September bulletin. That bulletin will get published September 7th. We will allow for a month of public comment period. The law requires 21 days, we're going to extend that to allow for four weeks. So, from September 7th to October 7th, it will be what we would now call formal negotiated public comment. This is now treated a bit differently than what we've done in the last year and a half. This is our formal rulemaking record that we need to justify what we're moving forward with. We have a month of written public comments that we can accept. We can also accept oral or verbal. We will schedule two negotiated hearings between the time frame of September 7th and October 7th to get specific comments that were on whatever draft you propose forth today. Over the last year and a half, we've talked about specific topics, we've talked about specific versions of drafts, we've started at some points and moved to different points. Today we would be saying the Board is voting to move forward with this as a draft, this is where we're serious, we want public comment on this draft. This is the formal draft we're moving forward with two negotiated hearings, by which we'll schedule that they can show up and give formal comment. At that point, it's not a dialogue back and forth. It's the public providing comments to us, we document those comments, and then we present that back to the Board. Whatever comments we get in the two hearings between September 7th and October 7th, that will all be documented and put in a packet before the Board. Similarly, any written comments we get between September 7th and October 7th will be pulled together in a board packet and presented to the Board. After the October 7th timeframe, I believe a board meeting is already scheduled, but we'll make sure a board meeting is scheduled in October, the Board can review all public comment. The Board, if you choose, can take more public comment at that meeting. You can either vote on those rules at that meeting or, if there's just more time needed, we would schedule an extra meeting. Depending on the vote today and what comments we get is determining whether or not you're going to need two meetings after October 7th. I'm hopeful, that depending on how today goes, we can do it in one meeting. We'll certainly make sure the Board has plenty of time to review all the written comments we get from the September 7th to the October 7th timeframe. I'll pause there for questions.

Unidentified Speaker - Let me ask one. So, I did get a couple of meeting invites. Is that what those meetings are intended to be for from Carlotta? They were the public comment meetings? Is that what they were for?

Tim Frost - That's correct. Those are the scheduled negotiated hearings that will be published in the September bulletin in addition to these rules. The bulletin will publish the rule chapter and ZBR, explain what ZBR is, and detail the two dates of the 12th and 14th. Then it will show a clean copy of what the rule chapter is. Right now we've got a lot of different red lines, and we'll still have a red line up on our website for people to try to follow, if they want, but it will be posted in a clean copy for the public to be able to read. That is what they will see. That is what you received from the calendar invite. The Board would need to make final decisions on the rules by the first or second week of November. If we were to need more than one meeting, the Board would need to meet sometime after October 7th. If we need two meetings, those two meetings need to happen before the second week of November because then we'll

package any Board changes from the comments that we received and then that gets published in what's called the pending bulletin, which is a December bulletin that gets published in December. At that point, you as a Board have finalized it as a pending rule to get presented to the legislature. That'll get presented to legislature in January, usually the first two weeks of session.

Rick Stark - Thank you for the explanation. Does DOPL need or want board members specifically to attend the meetings or are those optional, based on our willingness or ability to attend?

Tim Frost - Chairman and board members, that's optional. We just cannot have a quorum. So, if board members want to attend and listen in, they certainly can.

Rick Stark - Thank you. Does anybody on the Board have any questions regarding the next steps in the process?

James Marchetti - Mr. Chairman, Mr. Frost, the action item we need to take today, it needs to be in the form of a motion from the Board if we want to strike some stuff or unstrike?

Tim Frost - Yes, sir. For example, in the Board discussions working through whatever topics the Board wants to discuss in the rule chapters, it would end in a motion to adopt 24 dot, you would specify the rule chapter, as proposed with these exceptions, unstrike this, unstrike this, add this. Then that would be the formal motion the Board is agreeing on to then publish as proposed. The one thing I will say, and it's just a clarification to some of the comments received today, if you are wanting more public comment on something, unstriking it isn't going to allow you to make a change after proposed status. For example, if there was a particular part of the 2020 National Electrical Code that we would want to exempt out, we would need to exempt it today to show to the public we're proposing, we're exempting it to then get public feedback on it. If we're not making a change, or we're unstriking a change to revert to original language, the Board is not able to change that language at the pending status. That is what the Administrative Procedures Act would consider as not a natural outlay of the rulemaking. Part of this decision is trying to close down any further comment on a particular topic. That is at the purview of the Board and that's your decision. Just keep in mind in unstriking it, you are not proposing a change, and therefore, if you're not proposing a change, we can't just make a change at a pending level. If we get to a specific topic, I can try to explain it further at that time. I don't want to, in any way, preface the Board's conversation or the wishes on any of these particular topics, but I can explain it at the time. I just wanted to give context there.

Rick Stark - So Mr. Frost, maybe since we already talked about the items I brought up regarding utility temporary and emergency connection processes, so, what you're saying is by unstriking those and putting them open for public comment, they cannot be restrictions in the future.

Tim Frost - In this type of rulemaking, if we unstrike Rule 12 for clarity, I don't think anybody's disagreeing with you on unstriking.

Rick Stark - I know, I just had to pick on something.

Tim Frost - That's a perfect example. Us unstriking Rule 12 is reverting it to the original language and so you're voting to go proposed today. It seems like we're proposing a change, but we're actually reverting it to the original language. So, we're not proposing a change. Therefore, since we are not proposing a change to what is in current rule, we wouldn't be making changes about it at the pending level.

Rick Stark - So, if somebody did oppose it, could it be stricken at the pending level or not necessarily at this point?

Tim Frost - I think it'd be hard for us to justify that.

Rick Stark - Okay, I think I am with you.

Tim Frost - I'll give an example that is more relevant. If ratio is unstricken in a commercial setting of two to one, and that language is reverted in proposed rulemaking, we would not be able to make any changes to ratio in a commercial industrial setting at the pending level. That would be an important scenario today as the Board considers that.

Rick Stark - It couldn't be changed to three to one or one to one at some point in the future is what you're saying?

Tim Frost - Future rulemaking.

Rick Stark - As part of this rulemaking process.

Tim Frost - It would not be able to change to a different number.

Rick Stark - Okay, I think I've got it. Thank you. With that, we will step through sort of the three major topics if you will. Let's start with board discussion on the journeyman versus master electrician or contractor license. Is there any board discussion on that topic?

James Marchetti - Mr. Chairman, just for clarification on that because of my simple mind, so you can become a contractor with a master's license or a journeyman license, but you are limited if all you got is a journeyman license. You are limited, say, from some design build or something like that. There are limitations as to what you can do if you only have a journeyman license. Is that a fair statement?

Yvonne Dunbar - Yes, it is. If it's just a journeyman, then if there were some design aspects, they'd have to get a design professional to perform that work and then they can perform the installation work.

Tim Frost - Chairman and Mr. Marchetti, one of the comments we received today is we could revert that language if that is a decision of the Board. That's completely fine. In reverting that language, right now it says master electrician or limited electrical, we would still need to add master comma, journeyman comma, or limited electrical installer. One of the things we've thought through is we could add a specific line item, like a subsection four that said a contractor's allowable scope of work is the same as the scope of the licensed employee to prevent the scenario of what you're trying to say of this individual working outside of the scope of what their license is. So, we could clearly call out that scope limitation for the contractor. That's another alternative.

James Marchetti - Okay

Rick Stark - Any other questions or comments from the Board on this topic?

Greg Eagy - Mr. Chairman, the contractor just has to employ the journeyman or a master electrician. It doesn't have to be the owner. Is that right? Just an employee to be the signatory.

Rick Stark - I believe it could be the owner, but it does not have to be. Any other questions? Alright, let's go ahead and start discussion on continuing education for apprentices. Comments or suggestions or questions by the Board on this topic? I guess while there is thinking going on, my understanding of this is the way it is written today, there is no continuing education for an apprentice, and Mr. Frost has suggested that perhaps doing that at the end of that eight-year period would be a viable option. I think there's other options available, but just to recap that was a suggestion.

Unidentified Speaker - Mr. Chairman, I believe, and Miles, Daryl, please correct me if I'm wrong, but the way it reads now, apprentices who have completed the instructional hours, the four years of education, have to do continuing education, but the eight-year path, sorry, 16,000-hour path apprentices are not required to do any continuing education is the concern.

Rick Stark - I think that's correct.

Tim Frost - Chairman, that is correct. That's what you see on page six. The statute specifically calls out continuation training for somebody who is enrolled in a program. The decision before the Board today is whether or not you want individuals that aren't enrolled into an enrolled program to perform CE, and if you do, how many hours of CE, and at what year does that start? Staff's only consideration was for somebody to qualify in a non-educational pathway. It's an eight year process to qualify, and if they don't take the exam at that point, they are essentially a lifetime apprentice. One possibility, like you said Chairman, there could be others, one possibility is to then require eight hours of CE after that eight year timeframe because they're now in a lifetime pathway.

Rick Stark - Any other discussion on this from the Board?

Unidentified Speaker - Mr. Chairman, I think it would be good for item 102 for the apprentice continuing education, to strike, after an apprentice who has completed the, strike "number of instructional hours," and replace with "requirements to take the journeymen's exam and has not taken or passed the journeymen's exam" and then that would encompass both options for being an apprentice.

Rick Stark - I follow what you're saying. I didn't get to the right page in time to be able to capture that.

Unidentified Speaker - Apologies. That's on page six, item 102.

Casey Wilson - We would just strike "number of instructional hours" and replace with "requirements to take the journeymen exam." So it would read, "An apprentice who has completed the requirements to take the journeymen's exam and has not taken or passed the journeymen's exam within two years of completion, shall complete the 24 hours of continuing education."

Tim Frost - Chairman, Mr. Wilson, there's probably two ways we can do this. We can do them separately or we can combine them. What we're saying here is an apprentice who has completed the number of hours required, and we're just being neutral on whether it's an on-the-job pathway versus an educational pathway, then is required after those two years to do 24 hours every year.

Casey Wilson - Okay, so you're just saying, "Who has completed the number of hours?"

Tim Frost - Correct. The number of hours, depending on the pathway, then gives you what year they're in. If they are on-the-job only, their number of hours is 16,000, year eight. If they haven't, this would read, "If they haven't taken their journeymen's exam within two years of completing those hours, then at year ten they are now required 24 hours of CE every year."

Casey Wilson - I had written every three years for some reason.

Yvonne Dunbar - That's what is required for journeyman or masters.

Tim Frost - And that would be a permissible pathway if the Board so chooses.

Rick Stark - Any other comments?

Greg Eagy - I have a quick question. How many people are actually in this position as apprentices? That they hit this length of time? Is this affecting a huge amount of people or just a handful?

Tim Frost - Chairman, I believe it's a handful, but it's something that we can probably report back on.

Greg Eagy - That's okay, I was just curious.

James Marchetti - I would make the statement that I know of three.

Rick Stark - I guess moving on to the apprentice ratio discussion before, perhaps the Board makes comments, I would look to counsel to maybe review what was stated last time from their internal review, as well as what Mr. Zaleski presented, which now everybody on the Board has had a chance to look at.

Tim Frost - Chairman, I'll start and then I'll defer to legal counsel in any type of conversation related to the other legal memo that was presented. I guess to begin the analysis 54-1006, subsection five, this is related to the Electrical Board talking about prescribing and amending rules consistent with this chapter for the administration of this chapter to effectuate the purpose thereof for the examination and licensing of electrical contractors, journeymen electricians and apprentice electricians. The first citation we're talking about is 54-1006, subsection 5. Next in statute 54-1010(1), it states, "All electrical contractors must be licensed as journeymen or master electricians", 54-1010(3) states that, "Any person working as an apprentice electrician must have a registration certificate." Now we get into kind of the history of apprentices in Idaho. Electrical apprentices were able to obtain that certificate and begin competency in 1947. In 1961, the legislature defined apprentice electricians as persons learning the trade under, and I'll put in quotes here because this is how the statute defined it in 1961, "Constant on the job supervision of a qualified journeyman." The requirement for constant on-the-job supervision under a qualified journeyman has been in place since 1961. No arguments there. In 1986, the Electrical Board was given the authority to issue registration certificates to apprentice electricians. It does not disclose all the why's other than in the statement of purpose of some of this, it talked about virtually impossible, the ability to keep track of all of apprentices. I think everybody could agree on that without a registration process. Nothing in the legislative history discloses an intent to require ratios of journeymen to apprentices. In clarity, when I say nothing in the legislative intent, when we are looking at any bills that have passed, the statement of purpose and the fiscal note connected to that bill or the committee meeting minutes that were connected to those bills as well, there's nothing that contemplates or discusses a requirement of ratio for journeyman to apprentice. Now you get back towards 1961, that constant on-the-job supervision phrase was not changed. That continues to remain in statute today. In all these conversations ratio, non-ratio, there is a requirement for constant on-the-job supervision, period. Note, our constant supervision language of the statute is part of the definition of what apprentice electrician is as opposed to mandating contractors or journeyman to abide by a particular standard of conduct. Legal counsel, in reviewing this, does not think this is an idle point. Generally, statute definitions exist only to define terms used elsewhere in an act and do not create different independent duties or standards of care. There is no Idaho statute or case in case law that defines constant on-the-job supervision. Other states have wrestled with this. There was at least one piece of case law related to plumbing, Welch versus Colorado Plumbing Board, but to date, there's been no case law or challenge of constant on-the-job supervision, or any type of statute further definition of that. It's very clear,

installation of electrical wiring and equipment and apparatus is to be done under the direct supervision of a journeyman or master electrician. That's in Idaho Code 54-1010, subsection one. This is the only part in statute that actually mandates a level of supervision to be direct. We've got a requirement in statute that says constant on-the-job supervision and then we have a requirement of installation of electrical wiring, equipment, and apparatus be done under the direct supervision. Again, the statute does not define direct supervision. It's unclear whether or not that phrase was intended to be synonymous with constant on-the-job supervision. It is worth noting that it seems, from the rules, the Board has in historical terms tried to work towards direct supervision and constant on-the-job supervision, being a synonymous term. That piece is clear from administrative rulemaking; however, there isn't anything in statute that suggests that ratios are used to substitute for defining direct supervision. That goes back to the fact that there isn't a specific section of statute that details the Board's rulemaking authority to further define it. It's just absent. So, we're working today in absence of that. The Electrical Board has used a ratio of apprentices to journeymen as a way to define direct supervision since at least 1991. Nineteen ninety one is the history of the electronic record when it comes to administrative rules. At that time, the rule stated any contractor who did not follow a two apprentice to one journeyman ratio would be in violation of the constant supervision requirement. Supervision of apprentices by journeymen is required by statute, but the limitations of the number of apprentices being supervised by journeymen is not found anywhere in statute. Again, we are working under the silence in the statute as it relates to further defining constant on-the-job supervision, further defining direct supervision, or any legislative intent that ratio is a method by which we determine that. With that Chairman, board members, that's the legal review of the specific citations that we're under today. I also recognize a legal memo has been submitted in the last 48 hours. If you have questions related to that legal memo, I'll defer to our legal counsel and perhaps she can detail, from her perspective, some of the elements that may or may not be missing within that memo.

Rick Stark - I would appreciate that. Thank you.

Yvonne Dunbar - I've reviewed this other legal memo, and also the legal memo Mr. Frost just shared. I reviewed the law and I have to say the memo we retained counsel to provide is the one that really outlines what the law does say and what it doesn't say. Unfortunately, this other memo identifies some statutes, but doesn't actually identify any statute that gives the Board authority to set a rule related to the workplace setting related to ratio. There's not even in statute the opportunity for the Board to further define either what constant on-the-job supervision means, or what direct supervision means in some form by tying it to a ratio. The memo you received within the last 48 hours mentions the USDOL and that statute. So that act was adopted initially in 1937. Our statutes were adopted, 54-1007, which identifies the schooling and everything for apprentices, was adopted in 1947. It was then amended 13 times since 1947. The legislature has had it in front of it 14 times where they've actually reviewed that particular provision. Idaho Codes 54-1003(a) and 54-1010, the former mentions the constant on-the-job supervision, the latter mentions direct supervision. Those were both adopted in 1961, and the legislature has amended those five times. Each of those statutes, not necessarily through the same bill, but the legislature. They've looked at that statute, those provisions, six times. They've had a bill and they've adopted something and may have reviewed it in between, notably; the legislature is aware of this 1937 Act. It's federal law. It's arguably been presented in front of the legislature, potentially, that may or may not be true, but the way a court looks at it is that the law predates Idaho code. The legislature could have adopted that law but has not. If you want to look at legislative intent, I've argued legislation in front of the Supreme Court, the Idaho Supreme Court in front of Idaho District Courts. My opinion is that what they will say is that the legislature had the ability to tie their apprentice program into federal law, they could have adopted ratio. They could have cited that federal legislation had they wanted to. Rather than doing so, Idaho, the legislature, created a different pathway. They created it by utilizing the phrases direct supervision and constant on-the-job supervision. If they wanted it to be synonymous with a ratio, they would have done that and they chose not to. That will be the legislative intent, in my opinion, how a court will look at it. If you look at 54-1007, which was quoted in this legal opinion you have in front of you and see that it actually provides the Board with the authority. It says the Board can establish a rule related to the number of hours worked. They can, by rule, fix a fee. They can, by rule, establish requirements related to verification of employment, number of instructional

hours completed and number of hours worked. It does not say the Board can say what the ratio or the workplace setting is, and that is why we have come to the conclusion that we do not think the ratio is supported in statute. With that, if you have any questions, I'm happy to answer them.

Rick Stark - I have a question. If the Board does unstrike language or modify the language for ratios at this time, does that present a problem with these rules going in front of the legislature?

Yvonne Dunbar - I can't speak to what will happen in front of the legislature. What I can tell you is it presents a legal issue because the rulemaking authority, it's shared in the other legal opinion we had outside counsel provide, he cites specific Idaho case law where the Idaho Supreme Court is very clear that a Board's rulemaking authority, a Board's authority in general, is limited by what's in statute. So, it's a potential legal issue.

Tim Frost – Chairman, if I may, the conversation could be a legislative issue, but it's for sure a legal issue. It's very unclear whether or not it would be a legislative issue. We can't foresee how the legislature's going to respond.

Yvonne Dunbar - It's just an issue. If I had to defend it in court, it would be that what would I tie it to? If somebody were to say, you can't have ratio because it's not tied to statute, that's where the legal issue comes into play. We're following the APA and making sure our rules procedurally comply with what they need to. That doesn't mean the court won't strike out a rule because of its substance. So, procedurally, we are compliant with the law, but the question is, do each of our rules comply substantively, and if they don't, then the court can strike them, and the court will strike a rule they don't believe is substantively allowable.

Rick Stark - Thank you. I would like to point out something I came across in 54-1013(1). As I read this, the Board is given authority to require proof of satisfaction of applicable continuing education requirements as established by the Electrical Board. Proof of satisfaction of applicable apprentice and specialty training instruction and work requirements as established by the Electrical Board. It's still vague, in my opinion. I hear what you are saying, but to me that seems to give us at least a leg to stand on saying we can sort of establish what those apprentices need to do to get to the journeyman.

Yvonne Dunbar - And that ties back so statutes can't be read alone. You have to read them in a whole and that ties back to 54-1007 that I pointed out in a more general statute, which is 54-1007 will trump any vague language in a more general statute. So, 54-1007 gets into the details of what the training is, and the Board's approval of this training program, the career technical education, and it gets into the Board's ability to verify employment and show the number of hours the Board requires or worked. The issue is there's nothing that says beyond that the Board can look at workplace setting, which is really what a ratio is, it's a workplace setting issue as opposed to the number of hours worked or the type of education we're requiring for apprentices. Any other questions?

Casey Wilson - Chairman, one question, as far as I understand it, we have the ability to define constant on-the-job supervision, but we cannot define that numerically. Is that correct?

Yvonne Dunbar - The statute doesn't specifically say the Board can further define what constant on-the-job supervision is, or what direct supervision is, but I think there is possibly some leeway for the Board to do so as long as it's consistent with what the chapter is saying because the legislature did not adopt a ratio, instead they utilized those phrases. Adopting a ratio then becomes inconsistent with the fact that all the legislature is requiring is constant on-the-job supervision or direct supervision.

Casey Wilson - So, if I define direct supervision as the NEC's definition of within sight, which is visible and not more than 50 feet, would that be allowed?

Yvonne Dunbar - I think we could have discussion around it. That would be something we could certainly discuss. I haven't looked at the NEC to see exactly what that says and how that applies. The Board has the ability to adopt the NEC with amendments as well.

Casey Wilson - And then we have the ability to set training requirements for apprentices, correct?

Yvonne Dunbar - You have the ability to set what the education is, which education is approved.

Casey Wilson – Okay, could we only approve apprentices who are being supervised by journeyman not supervising more than two to one?

Yvonne Dunbar - No. Any other questions?

Rick Stark - Thank you. Is there any other discussion from the Board on this specific topic? Any other discussion on the Board on anything else that's come up today that maybe I didn't cover earlier.

James Marchetti - Mr. Chairman, when I did research on this numeric ratio, I believe all 50 states have it from what I read. How are they doing it? I'm not a lawyer. How are they getting away with having that numeric number in there?

Yvonne Dunbar - It depends on what their legislature may have adopted. I don't think all 50 states have a ratio. In fact, I know they don't. Not all states even license at the state level. Some jurisdictions, local jurisdictions, have that ability in certain states, but it's also what the legislature adopts versus what the Board has authority to adopt. Like some legislators in other states, their legislation ties directly to the federal requirement. Ours doesn't.

Tim Frost - Chairman and Mr. Marchetti, some other statutes will specifically call out that the Board has been granted the authority to determine the supervision requirements of an apprentice to journeyman and they might not specify in the statute that ratio, but they may call out clarity that the Board has clear rulemaking authority over defining, for example, constant on-the-job or direct supervision. It's the balance of what we're trying to work through today, is what the law says versus what the law doesn't say, and we'll work with the Board's decision and go from there.

Rick Stark - Any other discussion or comments from the Board? Seeing none, I believe the next item would be to vote on this. I know we talked about a couple of modifications. I guess before a potential motion, does it make sense to specifically go back and address other modifications the Board would like to see, or would someone prefer to make a motion making those adjustments?

Casey Wilson - Mr. Chairman, I would appreciate just doing a quick once over of the changes we've discussed, if that's okay.

Rick Stark - Yes. I think that's fine.

Tim Frost - So, Chairman, I'll do my best to go through them to make sure we're capturing them. The first part is a motion to approve as presented with these exceptions. I think that's the easiest way to do it and then detail out your exceptions. The first exception is to unstrike Rule 12 for temporary installations and that's the power provider recommendation from Chairman Stark. So, unstrike Rule 12 to its original previous language.

Rick Stark - I'm sorry, as part of that there was the, I think 11 would come before twelve. It's probably easier to show you that paragraph. Sorry I can't...

Tim Frost - I'm very comfortable since this is current language of unstriking the previous temporary installation and power provider language and knowing what that means to incorporate that in. I don't think we need to over complicate the motion.

Rick Stark - No, that's fine. Thank you.

Tim Frost - So unstriking the power provider and temporary installation requirements that were previously in rule. Next is to make the adjustments to rapid shutdown in the 2020 NEC, as recommended by Mr. Wilson. Those are very slight changes. I think we're missing a couple words. I'm making the adjustments to that. We would also, based on the conversation related to Rule 100, add in continuing education for lifetime apprentices as detailed by Mr. Wilson of adjusting the language of once they complete their hours if they do not pass the exam within two years, they're required 24 hours of continuing education every year thereafter. It's very slight adjustments in the actual language, but I think the motion just needs to account for continuing education for lifetime apprentices. Then I will need guidance from the Board on both ratio and contractors. You could probably, based on the conversation, go two ways with the contractor registration rules. One could be unstrike the majority of the language but add in where it says master or limited electrical installer. You could add master comma, journeyman comma, or limited electrical installer. That would be one option. You are clarifying what the statute says on master or journeyman. You could keep it struck as is to get more public comment on it. If you went with the first option of unstriking the majority of those requirements, like the July one in 2008, that language isn't helpful for unstriking it. We need to clean that up, but we'll work through that as we detail. One additional thing we could add is clarity around what Mr. Marchetti said of a rule that essentially states the contractors' allowable scope of work is the same as the scope of its licensed employee and so that's a very clear rule that connects

back to the statutory differences of the definition of a master electrician versus a journeyman electrician. That's an option. I can probably come up with 15 options on the fly. Before we move on, Chairman, what is the Board looking on that particular item?

Rick Stark - Mr. Marchetti, do you have something in particular you'd like to see there?

James Marchetti - No, no comment right now.

Rick Stark - I guess unless other board members have a comment, I would kind of maybe lean to adding the paragraph for clarity saying that the work is limited to what the contractors, i.e. the journeyman or masters license allows them to do. That seems a little cleaner to me. Any other board members have comments on that?

Casey Wilson - Would that be a prevailing license? Is that what you are looking for?

Rick Stark - I think the intent I'm getting at is if a journeyman holds a contractor's license, to make it very clear, they are not to do the work a master is capable of doing.

James Marchetti - Chairman, I agree with that. That's where I wanted to go with that.

Rick Stark - Okay, I think adding that paragraph, in my opinion, clarifies it. If you disagree, please speak up.

Tim Frost - Okay, Chairman, we can do that. Just to clarify, I think based on the comments we've heard, what the Board is saying is unstriking some of the language under the electrical contractor and limited electrical contractor to add clarity of what was previously there, and also adding a clarifying sentence that the work is limited to the scope of your employees that you're hiring. Without wordsmithing on the fly, staff is making sure that is captured.

Rick Stark - I think so.

Tim Frost - And then Chairman, the other item I think the motion needs to address, just based on the conversation, would be on page ten, subsection (a) and (b), journeyman to apprentice ratio, as well as subsection (b), which is the waiver. How would you like us to proceed?

James Marchetti - Once again, Mr. Chairman, Mr. Frost, if we unstrike that and have that language remain, we can't get any more public comment on it, right? It would stay as is.

Tim Frost - Chairman, Mr. Marchetti, if you unstrike it, we can obtain public comment. It would be difficult for us to legally defend changing it at a pending level. I don't want to say that's going to stop the conversation. We wouldn't recommend the Board making a change if you're unstriking it. This may be a conversation of the Board if you need clarity around different settings on how you want to go. I think the Board needs to make this decision and our job is to defend the decision of the Board. This is a risk-based decision on the legal analysis of what your statutory authority is and isn't. I would recommend the Board make a risk-based decision on what you think is necessary for the life safety of our consumers related to this industry. If that means unstriking it now, that is a decision of the Board. That also could mean unstriking the provisions that are clear alignment and not unstriking the provisions that aren't so unclear. I think if I go back towards the comments we received, it is very clear on commercial industrial setting that there's agreement in the industry to a two to one ratio. I don't think it's clear on the residential side of what the ratio should be, or whether or not that ratio should be allowed to be determined by the contractor themselves based on their business model. That's a long-winded answer. I think the Board has to make a decision on how you want to approach the next steps, and I can probably help guide you with what that means when it comes to rulemaking, but the Board needs to have that discussion now, not myself.

Rick Stark - Any thoughts or comments from board members based on what Mr. Frost has provided?

James Marchetti - Mr. Frost, Chairman, obviously I haven't been as involved in it as you Mr. Frost. I guess I need to do my homework as a board member for the comments for the residential end of it because it's very obvious on the commercial industrial end what the public wants and what I believe us as a Board wants. If we leave it struck out for now, at least we can do our homework and get public comment on it because I did not see that. I'll be honest with you, I did not see what you are saying as far as the residential goes, and I believe, in my opinion, the intent back when we changed it as a Board, to go to the four to one for the residential is because the whole nation was just booming, especially the state of Idaho. It's slowing down right now. These are some things that we need to consider. I'd like to hear from other board members.

Rick Stark - I understand this will be a risky decision one way or the other. It may end up that a judge does decide what our authority is. The legislature has the ability to strike at their level as well. They may very well pick apart what we put forward as our best effort. We're clearly not qualified to make that legal call. It'll go to court if it has to, I guess, but I think we need to listen to what's been said, and I agree on the commercial side of things. It's very clear that two to one is what the public wants. Residential is a little different when we talked about it a little bit already in regard to this, but, at the moment, nobody I've heard is wildly opposing what has been in the rules to this point, right? The four to one? If we leave it in, it could be challenged. If we take it out, it could be challenged. My opinion is the status quo might be the safest or least risky approach moving forward. It doesn't mean it won't get challenged, but it's been accepted to this point. Maybe it will continue, maybe it won't, but that's my opinion on it.

James Marchetti - Mr. Chairman, you know a year ago we tried to get in and change that to the four to the one. So, we have tried to do our part as a board, and you are right, it is risky, but it might be worth the risk to leave it as is.

Chad Fields - I guess I'm wondering what kind of risk we're looking at.

Rick Stark - The risk that the public is going to chew it up or the legislature could strike it, and there was a move at the legislature to strike it completely at one point. I think, at least in my memory, the four to one sort of was in hopes of preventing that from happening and taking it away completely.

Tim Frost - Chairman, if I may, if we're talking about risk here, we're talking about two different types of risk. One would be the risk the legislature may or may not accept what the Board decides. That's a risk we could never control. In other words, that's a part of the process of all rulemaking in Idaho. It goes back before the legislature for approval, your rules in House Business and Senate Commerce and then, in order to be final, the legislature has to pass a concurrent resolution. Risk from a legislative perspective, it's the same risk every year, either they agree with it or disagree with it. I think we should consider the actions of the legislature in the past three years as it relates to ratio, and where their opinion has come from and what settings they've really been focused on. I don't think there's a risk that board members should feel towards that. Separately, there is a legal risk if it were to be challenged, and that risk is to both the Division as well as board members. In a legal risk scenario, depending on the situation, if a lawsuit were to come it's either going to come at the Division or at the Board and mention board members themselves. That's typically how it happens. Again, rare. Not saying it's going to happen, but that's how it would be challenged if there was litigation surrounding it. So, there is a legal risk and us being able to defend the enforcement of whatever we adopt. We do have to keep that in mind, whatever the decision the Board makes, we need some industry partnership to get clarity in the statute to make that whole. I'll put it as if we're looking at making something permanent, that we need some clarity in the statute for the long term to reduce that legal risk.

Rick Stark - Thank you. I guess in that vein, again, I'm not saying four to one is the magic number in residential, but if we don't include that and send that to public comment, it's a change. There are those that would oppose that. If we changed it to two to one across the board, we already know that will also be challenged. I guess from my perspective, since we've been living with the four to one now for a while, that is the least risky opportunity for public to pick it apart. If we change it, then I think it's a bigger risk of nonacceptance.

James Marchetti - Mr. Chairman, I agree.

Rick Stark - It sounds like perhaps leaving the two paragraphs in, unstriking them as written, is acceptable to the Board? Is that correct?

Tim Frost - One point of clarification. It's clear from the Board that unstriking it, we're not looking to get more feedback on the commercial industrial.

Rick Stark - That is correct.

Tim Frost - And so unstriking it would essentially remove that from this rulemaking. Does the Board want to see more feedback on residential, and if so, you would need to, in some way, strike residential to get that feedback. If the Board does not want feedback on residential then unstriking it is completely appropriate. This goes back towards if you want to act or not act on residential this year, you would need to propose a change right now.

Rick Stark - I haven't mentioned this before, but it's been brought up a couple times today and in the past about a residential wireman. There's obviously an appetite for that in the public. I don't know how big of an appetite there is for that, but if the Board were to consider that, and I don't think this is the time for that consideration, but if the Board were to consider that, it seems appropriate to me at that point, we would strike or modify any apprentice to journeyman ratios for that particular type of work.

James Marchetti - Mr. Chairman, I agree with that. It's something we, as a Board, I would like to see us look into having a residential license, but for now, my opinion as a board member is we unstrike both (a) and (b), and then if we unstrike those, we have to unstrike 300.04, civil penalties.

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Rick Stark - Is there any other discussion on the rules as presented and discussed and modified? Hearing none, I would entertain a motion.

James Marchetti - I'll make a motion. Tim, I'm going to ask for your assistance on this. I make a motion to modify the draft as follows: For Rule 12, unstrike the original language as per Mr. Stark; make the adjustments to the rapid shutdown as proposed by Mr. Wilson; and in Rule 100, add in the CEU, the continuing education for the lifetime apprentices. We need to clear up the language for the master journeyman limited license to become a contractor, but once again, only if we define their scope of work in that language, and the last one would be on the apprenticeship ratio, both (a) and (b), and the civil penalties I talked about, to unstrike (a), (b), and the civil penalties.

Rick Stark - Is that sufficient?

Tim Frost - For clarity, I would just add the motion of what Mr. Marchetti just said, approving the rules as presented by staff with the exceptions Mr. Marchetti just mentioned and that provides a substantive motion.

Rick Stark - Is there a second?

Chad Fields - I will second.

Rick Stark - Chad has seconded. All those in favor, signify by saying, aye.

Board Members - Aye.

Rick Stark - Any opposed, signify by saying nay. Just to double check, were there any nonvoters among us? Okay, it sounds like it passes unanimously. Thank you. Meeting adjourned.

The meeting adjourned at 11:49 a.m. (MT).

10/21/22reb