

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 23, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

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

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

S 1288 **Relating to Employment Security Law Training Funds (TF). Kenneth Edmunds**, Director, Department of Labor (DOL), said Idaho is currently facing a labor shortage. With an annual estimated nonfarm job growth rate of 1.5 percent continued through 2025 and a projected population increase of 52,000 during that same timeframe, Idaho faces a gap of 63,000 unfilled positions. The proposed amendments will help address the labor shortage by providing the DOL greater flexibility in managing the Idaho Workforce Development Training Fund (IWDTF).

Director Edmunds said this legislation will help address the situation by eliminating the requirement to transfer unencumbered balances in excess of \$6 million to the Employment Security Fund (ESF). The appropriation will also be changed from "perpetual" to "annual." Retraining would be added as an allowable activity. The use of the TF would be expanded to include innovative training solutions. The importance of coordinating TF activities with employers and the Idaho Division of Professional-Technical Education would be emphasized by moving this requirement to its own section in the bill. The program sunset clause would be extended to 2022.

Director Edmunds remarked these changes are necessary because the demand for TFs fluctuates based on the level of economic activity for new or expanding businesses. Also, Idaho's aging workforce is creating a demand for incumbent worker training. Education and employer partnerships are creating a demand for new and innovative training programs. The benefit of these changes will result in increased opportunities to fund innovative and demand-driven Industry Sector Grants (ISG) that are usually \$500,000 to \$1 million for each project (such as the recently drafted Educational Improvement Tax Credit (EITC) Program Sector application. Another benefit is the ability to fund more than three industry ISGs per year. Other benefits would be the increased ability to fund customized training programs designed to meet the need of the projected 63,000 unfilled positions and a greater ability to fund rural workforce training and development projects through current microgrants.

TESTIMONY: **Dwight Johnson**, representing Idaho Division of Professional -Technical Education, testified in support of this bill. He said the recommended changes are important and will enhance opportunities for workers.

DISCUSSION: **Senator Schmidt** pointed out that on page 2, line 25, a training tax is imposed. **Director Edmunds** replied that it is a tax. **Senator Schmidt** wanted to know if this bill would be called a tax bill. **Director Edmunds** said the amount of the tax involved is unchanged and the only changes would be how the funds are used. They then had a discussion about raising or lowering the cap and how removing the cap does not affect tax calculations.

MOTION: **Senator Schmidt** moved that **S 1288** be sent to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Keough will carry the bill on the floor.

S 1346 **Relating to Health Savings Accounts (HSA).** **Senator Thayne** explained the intention of the bill is to increase access to care, reduce negative outcomes and stabilize costs. The plan is voluntary. **Senator Thayne** noted this bill was inspired by the state of Indiana. He said that Indiana launched their consumer-driven health plan in 2006. At that time, only 4 percent of the eligible employees enrolled in the plan. By 2014 the number of enrolled employees had continuously grown to 98 percent. Indiana has not found any evidence of employee avoidance of care; however, there has been a greater use of cost-effective treatments. These treatments include generic versus brand name drugs, fewer hospital admissions, less frequent use of emergency rooms, more outpatient versus inpatient procedure visits and the use of primary physicians instead of specialists when possible and appropriate. Preventative care has also increased. From 2006-2009 Indiana saved roughly \$28 million through the use of the consumer-driven health plans. Indiana projected savings in 2010 to be between \$17 million and \$23 million.

Senator Thayne remarked that medical costs in the United States consume approximately 17.5 percent of Gross National Product (GNP). The advantages of an HSA are reflected in the lowering of costs as employees take ownership and tend to shop around and make wiser choices when selecting medical care. The Idaho State Controller has indicated it will cost \$64,000 to make changes to the computer program.

TESTIMONY: **Michael Berry**, President and Executive Officer (CEO) of American Health Value (AHV), said that AHV is a national HSA administrator founded in 1996 and headquartered in Boise, Idaho. He noted his company works with insurance agents and account holders in 49 states. He testified in support of the bill. He said he understands the value HSA plans provide to both the individual participant and to the states that provide them to their public sector employees. The overwhelming evidence is that HSAs provide state employees with more savings choice and control over their health care expenses while reducing health care costs in the states where they have been created.

HSAs are one of the fastest growing options available in today's marketplace. As of December 2015, there are 16.7 million accounts with asset totals of \$4.2 billion. Projections by the end of 2018 show asset totals in excess of \$50 billion covering almost 30 million accounts.

Mr. Berry mentioned the positive impact HSAs have had in the state of Indiana. He said that with the passage of this bill, Idaho has the opportunity to put in place an HSA program that will make employee health insurance more cost-effective, turn Idaho's health program into a more consumer-driven plan, give the employees more choice and educate the consumer on the real cost of health care, while saving Idaho a significant amount of money.

DISCUSSION: **Senator Ward-Engelking** and **Senator Thayn** had a conversation about the idea that Idaho does not currently have a qualified HSA plan. **Senator Ward-Engelking** queried whether Senator Thayn had thought about having an interim committee look at the costs involved. **Senator Thayn** said the Change in Employee Compensation Committee (CECC) had suggested a task force be created to look at options. He stated that one of the main options was a high-deductible HSA plan. He noted the benefit of passing this bill now is that it would give the Department of Administration (DOA) a chance to make changes before the next session.

Senator Lakey wanted to know if there was going to be a single person administering the program. **Jennifer Pike**, Administrator, Group Insurance, DOA, said that having a third party administrator to facilitate the HSA can be explored. **Senator Lakey** commented that the amount determined by the DOA that does not exceed 60 percent of the deductible annually of the high-deductible health plan in the HSA sounded to him like the amount could vary. **Ms. Pike** replied the 60 percent allows the DOA some flexibility, and the deductible amount would be worked out with the carrier.

Senator Schmidt said it appeared the statute would allow the DOA flexibility in working out the deductible amount with carriers and he was wondering why this has not been done in the past. **Ms. Pike** said there was a study that was done in 2014, but she was not aware of any decision to negotiate deductibles. She said she could send a copy of the study to Senator Schmidt.

TESTIMONY: **Russ Hendricks**, representing the Idaho Farm Bureau, remarked that the Farm Bureau has a policy that supports legislation that would permit, promote or assist in individuals' HSAs. This is of interest to the members of the Farm Bureau. He testified in support of the bill.

DISCUSSION: **Senator Rice** referred to lines 36 and 37 of the bill and pointed out that the language regarding the amount deposited shall not exceed the United States Internal Revenue Service's (IRS) maximum allowable contribution to an HSA seemed vague. **Senator Thayn** said the plan was optional and it is important to have an HSA.

Senator Schmidt said there was an obvious cost implication and wondered if the State should move forward. He wanted to know if there was any estimate of projected enrollment. **Senator Thayn** referred to the study conducted in 2014 and pointed out the savings were estimated at \$1,500 to \$2,000 per enrollee. The main costs would be for the State Controller to make changes to the computer program. He was unsure of the fees for a third party administrator.

Senator Guthrie stated the intent was to be revenue neutral and asked if this would occur over time or immediately. He wanted to know if the provider would be willing to break out the program costs and work with a differential. **Mr. Berry** said he could not speak for a provider in Idaho. He said that typically in most states there is a bearing between a high-deductible and a low-deductible Preferred Provider Organization (PPO) plan. There is usually a flat fee that is charged. Any administrative fee can be paid out of an individual's HSA. The usual fee is a flat \$36 per account.

Senator Heider wanted to know if this was voluntary for State employees, then why do employees not go to their bank and set up their own account? **Senator Thayn** replied that Blue Cross is the current plan and an HSA is not currently available to employees.

MOTION: **Vice Chairman Martin** moved that **S 1346** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor.

S 1345 **Relating to Insurance Producer Licensing, Bail Bondsmen.** **Mark Estess**, Eiguren and Ellis Public Policy Firm, said this issue was initially brought up by the Kootenai Sheriff's office. The proposed legislation allows the Director of the Idaho Department of Insurance (DOI) to impose a fine on a bail agent or suspend or revoke a bail agent's license if the bail agent, his employees, contractors or agents acting under his supervision compensates, employs or solicits any person incarcerated in any courthouse, jail or prison for the purpose of the incarcerated person referring business to the licensed bail agent.

MOTION: **Senator Heider** moved that **S 1345** be sent to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. **Senator Rice** commented he worked in Corrections and when there is this kind of activity in a jail or prison setting, this creates problems. He said this was a good bill. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 377 **Idaho Global Entrepreneurial Mission (IGEM).** **Megan Ronk**, Director, Idaho Chamber of Commerce (IDOC), said this bill makes several important changes to the existing IGEM statute. She said these changes provide clarification on the program's administration and the distribution of commercialization revenue from sponsored projects. Revisions have been crafted in collaboration with Idaho's public universities: Boise State University (BSU), Idaho State University (ISU) and the University of Idaho (U of I). **Director Ronk** remarked there are three primary reasons behind these changes. The first one is program maturity. The IGEM program was originally established in 2012 and is now in its fourth year. It is time to make a few changes. The second reason is industry input. Industry partners have brought forward suggestions to make IGEM a more responsive program to private sector financial planning needs. The third reason is consistency. Some changes, while minor, ensure legislative language is consistent throughout various parts of Idaho Code. Some changes have been recommended by the Legislative Services Office (LSO) to clean up the statute.

Director Ronk went over the four main changes. She said the first change refers to the Innovative License Plate program. This program is now defunct and reference to this should be stricken since no funds will be received. The second change clarifies the designation of the IGEM Council chairman. She said current language states, "The Governor shall designate a chairman from the IGEM Council's private-sector membership and the IGEM Council shall designate such other officers from its membership as it deems necessary." By statute, there are only four members on the IGEM Council from the private sector. This limits the chairmanship to only 25 percent of the IGEM Council membership. The recommended language provides greater flexibility and provides an equal opportunity for any member of the IGEM Council to serve as chairman with the Governor's designation. Third, the IGEM Grant Program is founded on partnerships between Idaho's public universities and private sector industry. The inclusion of "industry partners" provides clarifying language on the necessity for the university-industry partnership. Fourth, clarification of commercialization revenue and distribution provides an outline of how the State of Idaho will recuperate its investments into IGEM projects. Previous language provided a very broad definition of commercialization revenue generated by the industry partner as a result of the IGEM grant funding to the university. This broad definition inappropriately reached into revenues that were not rightfully attributed to IGEM.

Director Ronk said that current language states "up to 25 percent" of remaining funds will be reimbursed to the General Fund. The proposed language eliminates

the subjectivity with a definitive amount of 25 percent to be reimbursed to the General Fund. The reimbursement amount is capped to equal the amount of the IGEM award, with these funds being returned to the General Fund. Current language states "up to 5 percent" of remaining funds will be deposited into the IGEM Grant Fund to support future IGEM grants. The proposed language eliminates the subjectivity with a definitive amount of 5 percent to be deposited in the IGEM fund for future grants.

Director Ronk said these changes are responsive to the maturing nature of the IGEM program support and ensure responsible and agreeable reimbursement to the State's General Fund and the IGEM Grant Fund.

DISCUSSION: **Vice Chairman Martin** referred to page 4 of the bill and wanted to know if faculty, staff or students would be compensated per university policies and what were those policies. **Carmen Achabal**, IGEM Program Manager, IDOC, said that BSU utilizes a 50/50 split, meaning 50 percent of any royalties would be put into the faculty, team or staff who participated in that particular project and 50 percent would go to the university. ISU and the U of I use a 40/40/20 split, meaning 40 percent goes to the university, 40 percent goes to the particular staff or team responsible for the project and 20 percent goes to a specific department that the project originated from. **Vice Chairman Martin** wanted to know if there was a history of revenue going to the General Fund from the IGEM program and if so how much. **Ms. Achabal** said not as of yet. There are products that are about to be commercialized to bring in some revenue.

MOTION: **Senator Thayn** moved that **H 377** be sent to the floor with a **do pass** recommendation. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

RS 24151 **Unanimous Consent for Referral to Senate Judiciary and Rules for Printing - Relating to Idaho Equipment Dealer Protection Statute.** **Roger Batt**, Western Equipment Dealers Association, gave a brief summary of the bill. He said the Idaho Equipment Dealer Protection Law was passed to protect equipment dealers from changes imposed by equipment suppliers if those changes are substantial and negatively impact the equipment dealer's business.

He pointed out that on page 1 of the Routing Slip (RS), this legislation provides clarity to the original intent of the law by making it a violation for an equipment supplier to substantially change the dealer's competitive circumstances or threaten to substantially change the dealer's competitive circumstances without good cause. **Mr. Batt** explained that substantially changing the dealer's competitive circumstances means the industry recognizes this as materially impacting a specific dealer's ability to compete with other dealers who sell the same brand and product line. Equipment dealers each have a geographic area of responsibility assigned to them by the supplier to sell and service that supplier's brand of equipment. Dealers purchase parts and special tools and invest in buildings and rolling stock, education and training, inventory and product support to promote the supplier's product. Idaho equipment dealers have understood that once they are assigned an area of responsibility by the supplier, this area belongs to them to sell equipment to customers and to meet market share requirements in their dealer agreement with the supplier. Dealers have also understood and recognize that a free-trade system is not to be restricted; someone from one area of responsibility may sell equipment or parts to someone in another's area of responsibility. He remarked that what dealers are not accustomed to is a supplier working with a dealer to build another dealership that sells the same product line within an existing dealership's area of responsibility. **Mr. Batt** pointed out that after decades of large capital investment, selling equipment and building a client base, the dealer is suddenly notified that another dealership has been given approval by that same supplier to

build a physical plant within the same area of responsibility to sell the same product line. This is viewed by equipment dealers as wrongful, harmful to existing business owners, against the intent of the Idaho Equipment Dealer Protection Law and it substantially changes the dealer's competitive circumstances.

DISCUSSION: **Senator Heider** asked Mr. Batt if this was the same legislation that was brought forward in 2015. **Mr. Batt** said it was the same but there was not enough time to finalize this and he was waiting for language from the equipment dealers.

MOTION: **Senator Schmidt** asked for unanimous consent to send **RS 24151** to the Senate Judiciary and Rules Committee for printing. There were no objections.

RS 24371 **Unanimous Consent for Referral to Senate Judiciary and Rules for Printing - Relating to Farm Equipment and Implements.** **Mr. Batt** went over the changes in this RS. He gave a brief background and said that whenever an equipment dealership sells farm implements, repair parts or equipment, it enters into a written contract with a manufacturer, wholesaler or distributor to do so. The dealer maintains a stock of parts for repairs, machines and attachments and may have demonstration and rental equipment as part of their business. If the agreement between the dealer and supplier is terminated, unless the dealer has a contractual right to keep such merchandise then the manufacturer, wholesaler or distributor shall pay the dealer 100 percent of the net cost of all unused, unsold and undamaged complete farm implements, equipment, machinery or attachments in new condition that were purchased from the supplier within 36 months preceding notification by either party of intent to cancel or discontinue the contract.

Mr. Batt said this legislation provides clarification that parts older than 36 months are eligible for return from the time the contract is terminated. The reason for this change is the current Idaho statute limits parts returns to parts purchased within 36 months prior to the termination of the contract. This is not consistent with surrounding state statutes or industry practices and a correction to this provision is requested.

MOTION: **Vice Chairman Martin** asked for unanimous consent to send **RS 24371** to the Senate Judiciary and Rules Committee for printing. There were no objections.

PRESENTATION: **Supreme Court Decision Regarding Regulatory Boards.** **Mitch Toryanski**, Attorney, Bureau of Occupational Licenses (BOL), briefed the Committee about a U.S. Supreme Court opinion that increases the legal exposure of Idaho's regulatory boards to federal antitrust claims.

He gave an overview of antitrust facts, procedural history, opinions and issues to consider. He said the ruling was that if a state uses active market participants as regulators, it must provide active supervision if the regulatory board is to qualify for state-action immunity from federal antitrust laws. He talked about the Sherman Act which prohibits restraint of trade agreements and monopolies. The Federal Trade Commission (FTC), established in 1914, prohibits unfair competition and deceptive practices. The Clayton Act prohibits price discrimination, tying arrangements and mergers and acquisitions that lessen competition.

Mr. Toryanski cited an example of the North Carolina State Board of Dental Examiners (NCSBDE) that petitioned the FTC about dentists and non-dentists who whiten teeth. The dentists complained about non-dentists whitening teeth at a lower price. The NCSBDE concluded that whitening is the practice of dentistry despite whitening's omission from the North Carolina Dental Practice Act. However, no one took action to amend the statute or rules. In 2006 the NCSBDE issued 47 cease-and-desist letters that state or imply that whitening is the practice of dentistry and warn that unlicensed practice is a crime. This case wended its way through the courts and finally ended up in the hands of the U.S. Supreme

Court. The primary question was whether the active market participants, acting as unsupervised state regulators, qualify for state-action immunity from antitrust law or is the NCSBDE truly a state agency. The majority opinion of the court said that because the "controlling number" of the Board's decision makers are "active market participants," the NCSBDE is treated as a private actor and must show active state supervision. On the dissenting side, North Carolina created a state agency and gave that agency the power to regulate. The decision was 6 to 3 with Justices Alito, Scalia and Thomas dissenting.

Mr. Toryanski pointed out that the government character of the NCSBDE is not enough. The NCSBDE must be more than a mere facade of state involvement to ensure political accountability. A "non-sovereign actor," controlled by active market participants, is immune only if anti-competitive state policy is clearly articulated and the state actively supervises the policy. State supervision does not mean day-to-day involvement in operations or micro-management of every decision. State policy must be promoted instead of personal interests. A state supervisor must review the substance of anti-competitive decision, not merely procedure. The state supervisor must have the power to veto or modify decisions and not be an active market participant.

Mr. Toryanski pointed out the Idaho Attorney General issued an opinion. Based on that opinion, the Governor is proposing **H 480** and **H 482** to reduce exposure of boards and board members to federal antitrust claims. He remarked that there is no State supervisor to review board decisions and that the Idaho boards do not qualify for state action immunity.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:54 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary