

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 08, 2018

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

**ABSENT/
EXCUSED:** None

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

CONVENED: **Vice Chairman Guthrie** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:02 p.m.

H 527 **Relating to Labor. Pam Eaton**, Idaho Retailers Association, stated the key to a successful franchise is the protection of the business format and the franchisor/franchisee relationship. She remarked this legislation would effectively codify the traditional joint employer standard of "direct and immediate control" for purposes of State law; it would protect businesses in those states from certain joint employment claims. She noted the legislation proposes to codify the multi-decade status quo and eliminate uncertainty created by the National Labor Relations Board (NRLB) "indirect or potential to exert indirect control" standard. Additionally, **Ms. Eaton** commented, this bill provides clarity to State agencies when presented with joint employment claims. For decades, the test to determine joint employment was based on having "direct and immediate" control over the employment conditions of an employee. This legislation removes any uncertainty.

Ms. Eaton remarked this legislation does not impact existing worker rights and or limit potential redress of any employment claims of an employee. This legislation makes clear a franchisee is the owner of the business and the ultimate employer of individuals who work in that business. A franchisee's employees are not employees of the franchisor.

Ms. Eaton reported there is no fiscal impact to the General Fund, since this pertains to a private business.

PASSED THE GAVEL: Vice Chairman Guthrie passed the gavel to Chairman Patrick.

MOTION: **Senator Souza** moved to send **H 527** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 26344 **Unanimous Consent Request Relating to An Interim Committee, Regulatory Reform Joint Subcommittee (RRJS).** **Senator Lakey** commented this resolution, recommended by the RRJS, would authorize the Legislative Council to appoint an interim committee to: (1) study occupational licensing and certification laws and rules in Idaho, and (2) evaluate the necessity for such laws and rules. The purpose of the RRJS's study would be to ensure Idaho's occupational licensing and certification laws and rules are in the public interest and are not anti-competitive in intent or effect. The RRJS's cost would not exceed \$10,000 and would be paid out of the Legislative Account.

**UNANIMOUS
CONSENT:**

Senator Lakey asked for unanimous consent to send **RS 26344** to a privileged committee to print. There were no objections.

RS 26317

Unanimous Consent Request Relating to An Interim Committee, Pharmacy Benefit Managers (PBMs). **Chairman Patrick** remarked this resolution would authorize the Legislative Council to form an interim committee to resolve issues dealing with PBMs, the Idaho Department of Insurance, and the Idaho pharmacists, in order to lower costs. The cost of the PBM meetings - amounting to no more than three meetings and including per diem and travel - are not expected to exceed \$10,000.

**UNANIMOUS
CONSENT:**

Chairman Patrick asked for unanimous consent to send **RS 26317** to a privileged committee to print. There were no objections.

**MINUTES
APPROVAL:**

Senator Ward-Engelking moved to approve the Minutes of March 1, 2018. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

H 621

Unanimous Consent to Refer Back to the Floor of the Senate To Be Reassigned to Another Committee - Relating to Private Land Surveying. **Representative Terry Gestrin** reported this bill proposes to amend Idaho's land surveying statutes by providing procedures for access to private land for professional land surveyors performing a land survey. He noted this legislation does not have any fiscal impact on the General Fund or any county or other government fund.

**UNANIMOUS
CONSENT:**

Chairman Patrick asked for unanimous consent to send **H 621** to the floor of the Senate to be reassigned to another committee. There were no objections.

H 433

Relating to Director Control. **Keith Reynolds**, Deputy Director, Idaho Department of Administration (DOA), stated this bill clarifies the authority of the DOA to promulgate rules for multi-agency facilities; the bill also clarifies the ability of the DOA to use the proceeds from rents received for the operation and management of those locations. The need for these changes is a result of the purchase of the office complex located on Chinden Road in Boise, Idaho. He asserted neither change obligates the State and there is no fiscal impact.

Mr. Reynolds explained Idaho Code § 67-5708 charges the DOA with managing multi-agency facilities "constructed, acquired or refurbished through the State building authority." This includes the Chinden Campus and State office buildings in Lewiston and Idaho Falls which are all managed by the DOA. He reported the changes are a companion to the management directive in Idaho Code § 67-5708. In addition to defining the Capitol Mall, Idaho Code § 67-5709 addresses rulemaking authority for State-managed facilities and the use of rent proceeds received from the tenants of those facilities.

Mr. Reynolds remarked the changes proposed in this bill add clarity to the DOA's ability to promulgate rules for the new location and the ability to collect and use rents for the maintenance and operation of the facility.

MOTION:

Senator Burgoyne moved to send **H 433** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

HCR 41 **Relating to Group Insurance and Total Compensation Study.** **Senator Todd Lakey** stated this resolution would authorize the Legislative Council to reappoint the State Employee's Group Insurance Benefits Interim Committee (SEGIBIC) to negotiate a new contract with the SEGIBIC's contractor. It would also authorize the Legislative Council, in conjunction with the Department of Administration (DOA), to issue a new Request for Proposal (RFP) for an array of options for healthcare benefits for State employees. The RFP would be issued according to the 2017 SEGIBIC's final report recommendations.

Senator Lakey advised the cost of the SEGIBIC meetings, including per diem and travel, are not expected to exceed a total of \$10,000. The cost to retain the services of a health care plan consultant or analyst, with prior approval from the Speaker of the House and the President Pro Tempore of the Senate, is estimated not to exceed \$135,000. He explained these costs will be paid by the Senate and the House of Representatives by a General Fund transfer to the Legislative Account. **Senator Lakey** indicated - to the extent possible - existing data, analysis, and resources will be utilized to complete the study; however, there may be additional expenses incurred by the DOA for actuarial analysis related to the State employee group insurance component of the study.

MOTION: **Senator Burgoyne** moved to send **HCR 41** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1343 **Relating to Cosmetologists and Estheticians.** **Senator Den Hartog** reported this is a trailer bill to **S 1324** and only amends the definition to add eyelash extensions. This bill would clarify eyelash extensions are within the scope of practice for cosmetologists and estheticians. This clarification is necessary because the application of eyelash extensions is a public health issue; it was deemed a public health issue as it poses risks of infection and to client safety.

MOTION: **Senator Souza** moved to send **S 1343** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

H 478 **Relating to Electrical Contractors and Journeymen.** **Warren Wing**, Electrical Program Manager, Idaho Division of Building Safety (DBS), outlined the proposed changes. He clarified inspectors can be journeymen or master electricians. **Mr. Wing** advised language in this bill would allow the DBS to administer their own inspector test. DBS has the ability to test inspectors to ensure they understand the National Electric Code (NEC) requirements, amendments, statutes, and administrative rules of the State of Idaho.

Mr. Wing stated the requirements to maintain the certification mandate require inspectors to submit 24 hours of continuing education courses; the courses must be approved by the certifying agency. The inspectors must also pay the certifying agency a renewal fee. He explained Idaho electrical inspectors are already required to take 24 hours of continued education courses to maintain their electrical licenses. The change would eliminate the cost of renewing certifications every three years and would not create any additional requirements or services to be provided by the certifying agency.

MOTION: **Senator Ward-Engelking** moved to send **H 478** to the floor with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

H 479

Relating to Electrical Contractors and Journeymen. **Warren Wing**, Electrical Program Manager, Idaho Division of Building Safety (DBS), outlined the proposed changes. He clarified the code adopted by the Idaho Electrical Board (EB) and the Legislature through the rulemaking process can be amended. He commented the bill would remove the need to update the date of the National Electrical Code each time it is adopted. He asserted the legislation clarifies only the amendments adopted by the EB and Legislature through the rulemaking process are applicable. He remarked the National Fire Protection Association (NFPA) makes tentative amendments between code-making cycles. These would not be applicable in Idaho unless adopted through rulemaking.

Mr. Wing reported the changes make facility accounts legal and provide a way for other municipalities to sell permits. He asserted only the State can issue non-transferable registrations. He noted the DBS is provided options that align with technological changes to notify contractors of required corrections. **Mr. Wing** advised code and safety violations are enforced, but if something is defective but meets code and is not a safety issue - it is not within the authority of the DBS to enforce. Inspection tags are no longer used. Several of the other changes are housekeeping measures.

DISCUSSION:

Senator Lakey and **Mr. Wing** discussed the changes in the bill, including NFPA amendments. **Senator Potts** and **Mr. Wing** addressed licensing of maintenance workers related to installations. **Mr. Wing** pointed out currently maintenance workers cannot do installations. This bill is an attempt to align statutes with rules.

Vice Chairman Guthrie remarked the proposed legislation would give more latitude to a maintenance person. **Senator Burgoyne** agreed with Vice Chairman Guthrie's remark.

Senator Souza stated this legislation is an attempt to align statute with rules, but it appears to be reversed. **Mr. Wing** explained there are some aspects of the rules which do not align with the statute, but this legislation is an attempt to align with statute. He remarked some rules are in violation of the statute. **Senator Souza** stated she did not think rules which did not match statute should be accepted. **Mr. Wing** reiterated the DBS is attempting to align them now.

MOTION:

Senator Martin moved to send **H 479** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. **Senator Potts** voted **nay**.

H 480

Relating to Electrical Contractors and Journeymen. **Warren Wing**, Electrical Program Manager, Idaho Division of Building Safety (DBS), outlined changes which were mostly housekeeping measures. He stated there were wording changes, such as "special" to "limited," and "classification" to "categories." **Mr. Wing** clarified licensing provisions are required for "limited electrical contractors." "Limited electrical installers" are restricted to limited types of electrical installations.

MOTION:

Senator Ward-Engelking moved to send **H 480** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

H 522

Relating to Certificates of Insurance. Randy Pipal, Vice President and Legislative Chairman, Independent Insurance Agents and Brokers of Idaho, gave a brief background of the bill. He remarked a Certificate of Insurance is intended to be a brief summary of an insurance policy at the time it was issued. He noted a vast majority of these certificates are issued in the construction and service industries to prove active liability and workers' compensation coverage.

He asserted the proposed legislation repeals the first sentence of Idaho Code § 41-1850(10) and replaces it with language which would allow for a Certificate of Insurance to include reference to a contract number or description, or a project number or description. **Mr. Pipal** noted this inclusion would not create any additional rights to the certificate holder or replace or extend coverage on the policy. The legislation would allow for contract or project descriptions to be referenced on the Certificate of Insurance. The legislation would eliminate some of the paperwork involved.

Mr. Pipal reported there is no fiscal impact to the General Fund or any other State fund or expenditure because all Certificates of Insurance are prepared by individual businesses that sell liability insurance. The State regulates what appears on the certificate, but does not participate in the cost of producing the certificates.

MOTION:

Senator Burgoyne moved to send **H 522** to the floor with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

H 519

Relating to Title Insurance. John Nielsen, Plumbing and Heating, Ventilation, and Air Conditioning (HVAC) Manager, Idaho Division of Building Safety (DBS), stated the purpose of this bill is to amend portions of Idaho Code Title 41, Chapter 3, to allow title insurance companies to reimburse bona-fide employees for both title insurance premiums and escrow fees, otherwise payable by the employee to the insurance agent or company, in connection with the employee's non-business real estate transactions.

MOTION:

Vice Chairman Guthrie moved to send **H 519** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 481

Relating to Plumbing and Plumbers. John Nielsen, Plumbing and Heating, Ventilation, and Air Conditioning (HVAC) Manager, Idaho Division of Building Safety (DBS), stated this bill allows property owners to perform plumbing work; it provides exemptions from plumbing licensure and certain maintenance plumbing work. The exceptions currently allow property owners of a single or duplex family dwelling to perform plumbing work and allow employers to perform alterations, extensions, and new construction on the premises of their place of employment using regularly employed maintenance plumbers without a certificate of competency.

Mr. Nielsen indicated the DBS Plumbing Board members and industry representatives recommend the statute should more clearly indicate a homeowner should be allowed to perform plumbing work on the owner's primary or secondary residence, accessory buildings, quarters, and grounds used for non-commercial purposes. **Mr. Nielsen** advised in places of employment in commercial buildings, maintenance personnel should be allowed to perform repairs and replacements of fixtures and equipment. Any alterations, extensions, or new construction must be done by a licensed plumbing contractor.

He affirmed there is no fiscal impact on the dedicated DBS Plumbing Board fund or the General Fund, as permits are required regardless of the licensure exemption.

He advised there could potentially be a negative impact on facility owners currently utilizing non-certified plumbers to perform new installations on their own premises.

DISCUSSION: **Senator Thayne** inquired as to the definition of "non-commercial purposes." **Mr. Nielsen** remarked residential and rental properties were defined as non-commercial. A discussion ensued between **Senator Thayne** and **Mr. Nielsen** about what constituted exempt and non-exempt, as it related to property owners. **Senator Thayne** stated he did not think rentals were residences of the property owner and the language did not correspond in the bill. **Mr. Nielsen** explained a rental is considered residential in code.

Senator Burgoyne inquired as to clarification of an owner's primary and secondary residence. **Mr. Nielsen** explained a renter is not a property owner. A renter can ask the owner to come over to do work. **Senator Burgoyne** commented the bill should be amended. **Senator Potts** stated he was concerned with the wording in the bill.

MOTION: **Senator Potts** moved to hold **H 481** in Committee, subject to the call of the Chair. **Senator Souza** seconded the motion. **Senator Thayne** declared a conflict of interest as he owns rental properties. The motion carried by **voice vote**.

H 482 **Relating to Heating, Ventilation and Air Conditioning (HVAC) Certificate of Competency.** **John Nielsen**, Plumbing and HVAC Manager, Idaho Division of Building Safety (DBS), stated this bill was the same as **H 481**, except it related to HVAC.

MOTION: **Senator Potts** moved to hold **H 482** in Committee, subject to the call of the Chair. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 483 **Relating to Heating, Ventilation, and Air Conditioning (HVAC) Exams.** **John Nielsen**, Plumbing and HVAC Manager, Idaho Division of Building Safety (DBS), stated, currently, there is no provision in Idaho Code that establishes a standard for HVAC apprenticeship schooling programs in Idaho. This statutory amendment would provide general authority for the HVAC Board, in conjunction with the Division of Career-Technical Education, to standardize an approved curriculum offered by a school providing HVAC apprenticeship courses of instruction. The proposal would also provide some administrative oversight to ensure schools meet those standards. He indicated there would be a fiscal impact of approximately \$42,000 to the HVAC dedicated funds from this legislation.

MOTION: **Senator Potts** moved to send **H 483** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 484 **Relating to Plumbing and Plumbers - Removal of a Provision.** **John Nielsen**, Plumbing and HVAC Manager, Idaho Division of Building Safety (DBS), stated the current statute allows plumbing and specialty contractors to renew their license annually on an inactive basis at a reduced fee of \$36; inactive basis is permissible if the plumber is not actively engaged in plumbing contracting in the State of Idaho. **Mr. Nielsen** advised the Plumbing Board, industry, and the DBS agree after the payment of the initial fee for placing a license in an inactive status, there should not be any additional annual fee for maintaining inactive status. He explained there would be no significant impact to the dedicated fund of the Plumbing Board and there would be a positive impact on the plumbing contractors.

MOTION: **Senator Thayne** moved to send **H 484** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. **Senator Burgoyne** voted **nay**.

H 642 **Relating to Homeowner Associations (HOAs) and Condominiums.** **Representative Anderst** reported this legislation would require a HOA or its agent to provide a statement of account to a member of the HOA and to the owner's agent, within a reasonable time period, and to disclose, at a time certain, any fees in connection with any transfer of ownership of property or unit. The time period has been shortened from five days to ten days. **Representative Anderst** commented some HOAs charge fees in escrow, such as a rush fee, recording fee, and others. The fees are unknown to a homeowner until the close of escrow. The intention is to direct HOAs to disclose charges once a year.

MOTION: **Senator Lakey** moved to send **H 642** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion.

DISCUSSION: **Senator Potts** expressed concern about excessive regulation. **Representative Anderst** explained existing code is being amended for transparency.

VOTE: The motion carried by **voice vote**. **Senator Potts** voted **nay**.

H 405 **Relating to Unfair Sales Act.** **Senator Burgoyne** explained information contained in a binder accompanying the bill (Attachment 1). He reported the purpose of this legislation is to repeal the Unfair Sales Act, Idaho Code Title 48, Chapter 4. **Senator Burgoyne** advised this Depression-era statute became law in 1939 and, with limited exceptions, required merchandise to be marked up over cost by a minimum, statutorily-set amount. He explained it is common for merchants to offer wares at or below cost as an inducement to patronize the merchandiser and purchase other goods.

Senator Burgoyne stated the petroleum industry wanted the percentage to be kept as a protective measure. He cited an opinion from the Idaho Attorney General's Office that indicated price fixing is prohibited. The Unfair Sales Act does not protect deceptive advertising. **Senator Burgoyne** reported other merchants, such as grocery stores, commonly set prices at very low margins and profit through high volume. Although the law is generally not enforced, violation is a misdemeanor and potentially carries fines and jail time.

Senator Burgoyne stated this Act should be repealed, as the enforcement of such a price-fixing scheme would harm consumers and reduce competition. There is no fiscal impact on State or local government, as this bill does not affect revenues.

MOTION: **Senator Souza** moved to send **H 405** to the floor with a **do pass** recommendation. **Senator Potts** seconded the motion.

Senator Lakey disclosed pursuant to Senate Rule 39(H) he represents some companies that sell fuel and have convenience stores in his private law practice.

TESTIMONY: **Suzanne Budge**, Idaho Petroleum Marketers and Convenience Store Owners, testified in opposition to **H 405**. She remarked some of the members do not have the same level of confidence as the sponsors of the bill.

VOICE VOTE: The motion carried by **voice vote**.

H 401

Relating to Public Employee Retirement System of Idaho (PERSI) - Revise Definitions. **Chairman Patrick** stated this bill was continued from the Committee meeting of Tuesday, March 6, 2018 and testimony was heard at the meeting. He remarked Judge Barry Wood, Senior District Judge, Fifth Judicial District, serving as Administrative Director of the Courts, and Don Drum, Executive Director, PERSI, met and discussed the issue surrounding this bill. They tried to devise a solution. **Chairman Patrick** stated he had a copy of the lawsuit; if this bill fails to pass, PERSI would be in violation of Internal Revenue Service (IRS) code.

Vice Chairman Guthrie commented he wanted a process to move forward to amend this bill; however, that was not possible. The problem is larger and cannot be solved in the amending order. **Chairman Patrick** stated the bill could be rewritten to reflect the same wording as what the teacher's union agreed upon. **Chairman Patrick** said he would allow questions.

DISCUSSION: **Mr. Drum** remarked the problem would be solved if the Judges Retirement Fund (JRF) adopted the same wording as the teacher's union; however, the bill would have to be rewritten. He advised the PERSI Board wanted to include wording as soon as possible and would work with the judges to draft legislation to resolve the problem.

Senator Burgoyne queried if there was any discussion with the Senate leadership to rewrite this bill. **Mr. Drum** stated he had not had any discussions with Senate leadership or the judges. **Chairman Patrick** stated there was not enough time to rewrite the bill.

Senator Potts inquired if any judges were negatively impacted. **Judge Wood** affirmed his understanding that the delay was due to litigation and remarked this bill was brought forth late in the session. His understanding was the way PERSI interpreted the decision, judges were protected by the court's decision until June 30, 2018.

Vice Chairman Guthrie and **Judge Wood** discussed the PERSI Board and the judges working together to find a solution to the issue.

MOTION: **Vice Chairman Guthrie** moved to send **H 401** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Burgoyne** inquired of Judge Wood if it was his understanding the courts were amenable to delaying the effective date to July 1, 2019 or sending the bill to the amending order. **Judge Wood** stated it was his understanding PERSI is protected by the court decision. The delay would be beneficial to the courts, but there is a risk.

SUBSTITUTE MOTION: **Senator Burgoyne** moved to send **H 401** to the **14th Order** to change the effective date to July 1, 2019. **Senator Martin** seconded the motion.

DISCUSSION: **Chairman Patrick** stated he understood from PERSI that was not acceptable. **Mr. Drum** stated the court order technically resolved the issue for the judges in question. PERSI is out-of-compliance with the IRS. **Mr. Drum** explained the IRS could return to the Legislature. In order to make the fund whole, there would be a cost of \$1.5 to \$2 million. The General Fund would have to reimburse PERSI.

Vice Chairman Guthrie spoke in favor of the first motion; he indicated there was too much of a risk in not passing the bill. He advised next year a solution could be crafted with an emergency clause.

Senator Lakey remarked regarding the substitute motion and stated it would be a challenge to amend the bill. He spoke in support of the judiciary. He stated he did not want to put PERSI at risk.

Senator Ward-Engelking advocated for talking to Senate leadership to expedite a bill. **Senator Burgoyne** said he agreed, but did not know if that was possible.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

The following Committee members voted **aye**: **Senators Martin** and **Burgoyne**. The following Committee members voted **nay**: **Senators Lakey, Thayn, Souza, Potts, Ward-Engelking, Vice Chairman Guthrie, and Chairman Patrick**. The motion failed.

**VOTE ON
ORIGINAL
MOTION:**

The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:51 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary