

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 12, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

**ABSENT/
EXCUSED:**

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 Tippetts** called the meeting to order at 1:30 p.m.

MOTION: **Senator Martin** moved that the minutes of February 26, 2013, be approved. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Lakey** moved that the minutes of February 28, 2013, be approved. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Schmidt** moved that the minutes of March 5, 2013 be approved. **Senator Durst** seconded the motion. The motion carried by **voice vote**.

H 43 **Jeff Sayer**, Director, Department of Commerce (Department), introduced this bill relating to the Economic Advisory Council (Council). He said this bill clarifies that members of the Council serve at the pleasure of the Governor, and the bill provides that no more than four members of the Council be from any one political party. This is consistent with other boards and councils.

Mr. Sayer said the Council advises the Department and the director in the preparation, development and execution of plans, projects and programs in connection with all decisions concerning the administration and development of plans, projects and programs. The Council consists of seven persons, who are appointed by and serve at the pleasure of the Governor, and who will serve for three-year terms. Members are compensated as provided by section 59-509 (b), Idaho Code. One person represents each of the six planning regions of the state and one member serves in a statewide capacity.

A discussion ensued with **Vice Chairman Patrick**, **Senators Durst** and **Goedde** and **Mr. Sayer** regarding a phrase in the bill that said "no more than four members of the Economic Advisory Council shall be from any one political party". They discussed the idea that not everyone claims a political party affiliation and the possibility someone could be excluded. **Mr. Sayer** said the Department was cognizant of this issue but they try to maintain balance. They also talked about the possibility of someone changing their party affiliation after being appointed to the Council. **Chairman Tippetts** said that if someone was appointed to a position and they changed their party affiliation, they would no longer qualify for that position. **Senator Goedde** commented he could not remember an instance where this issue had come up.

MOTION: **Senator Martin** moved that **H 43** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

Jeff Sayer, Director, Department of Commerce (Department), then introduced this bill relating to the Idaho Opportunity Fund, which codifies the Business and Jobs Development Fund, created through intent language by the Joint Finance and Appropriations Committee (JFAC) in 2006. This bill changes the name of the Business and Jobs Development Fund to the Idaho Opportunity Fund. In addition, it establishes Idaho Code § 67-4736 to provide the director of the Department with rulemaking authority and establishes provisions for use and disbursement of Idaho Opportunity Grant Funds. The bill requires the director to publish an annual report on the state of the Idaho Opportunity Fund. **Mr. Sayer** said while there was no direct fiscal impact to the General Fund, this legislation corresponds with a recommendation by the Governor for a \$3 million one-time transfer from the General Fund to the Business and Jobs Development Fund at the Department of Commerce. JFAC just supported the transfer.

He said there are three important factors in this bill. First, this bill requires a community match and a partnership; second, this bill provides for negotiation directly with the companies and establishes criteria for companies to receive grant monies. He explained the number of jobs and the capital investment required and what the company would be bringing to the table. This lays the foundation for the third factor, which is a performance-based mechanism. Most importantly, the Opportunity Fund would not deploy grant monies until a company has delivered on its promise for job creation and capital investment. In addition, a portion of the grant could be retained for a period of three to four years to ensure job commitments are maintained in the long term. The Department will write out the check but the company must deliver the results. This money can only be used for infrastructure.

Mr. Sayer explained the intent of the Idaho Opportunity Fund was to promote economic development and provide financial assistance, through the Idaho Department of Commerce and to retain, expand or attract quality jobs in industries deemed vital to the health of the local and statewide economy. He went on to say that monies in the Idaho Opportunity Fund may be expended by the Department, according to the provisions of this act, to assist in securing commitments for the retention and expansion of existing businesses and recruitment of new businesses. He outlined the amounts that could be deposited in the fund, including any amounts appropriated by the legislature, repayment of any monies originally distributed from the fund that were improperly disbursed according to the company performance agreement or the local government grant agreement and gifts, grants and other donations received for the fund.

Mr. Sayer said the monies in the Idaho Opportunity Fund may be allocated to local governments for any lawful purpose consistent with the intent of the act. That may include construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations, flood zone or environmental hazard mitigation and construction, upgrade or renovation of other infrastructure related items. Railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects would be included. He said that funds may be disbursed from the Idaho Opportunity Fund only in accordance with agreements entered into between the Department and one or more local governments. He described the types of agreements that were acceptable for compliance.

Mr. Sayer indicated funds could be disbursed from the Idaho Opportunity Fund to the local government only after the local government had demonstrated that the business had complied with the negotiated terms of the company performance agreement.

He pointed out that the director of the Department would annually publish a report regarding the state of the Idaho Opportunity Fund, which would be made available to the public. He discussed the type of information that should be contained in the report and said the goal was to provide more transparency. In addition, quarterly reporting to the existing Idaho Economic Advisory Council would be required. Commerce is developing a series of reporting measurements to publicly report on the economic impact of Opportunity Fund grants. Commerce will be able to come back in a year and demonstrate job creation, capital investment, leverage ratio, break even calculations, and revenues returned to the state and local community as a result of these investments.

A discussion ensued among **Senators Martin, Cameron, Durst, Chairman Tippetts** and **Mr. Sayer** about the appropriation of a one-time \$3 million appropriation by JFAC. **Chairman Tippetts** discussed with **Mr. Sayer** the mandatory agreements outlined on pages 2 and 3 of the bill and the opportunity the director has, previous to the agreement, to review the agreement anticipated between the local government and the grantees. **Mr. Sayer** said the language was meant to be flexible for the companies so the Department could adapt to any situation. He said some of the criteria may or may not apply to different transactions. **Senator Schmidt** asked if a tribal government would qualify as a local government, and **Mr. Sayer** said the agreement was originally intended to be between a county and a city, but he would not be opposed if the application was for an appropriate economic development project.

TESTIMONY:

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, said he was in opposition to this legislation. He said some of the objections were from people in the business community who want to be left alone, don't want to engage in a government program and do not want to receive funds from an agency or entity within the government. He said the businesses want low taxes, less regulation and want to be free to be entrepreneurial. One of his clients complained that his competition was utilizing a particular fund within state government to pay for new employees. This client feels he may have to put his principles aside and join the bandwagon like everyone else. He said what this bill does is set the parameters for a particular business to go to the government to work out a deal and move ahead. Others would not be as successful. He didn't think it was fair for certain people to receive waivers for fees while others didn't. The bill is problematic and creates an unlevel playground. **Mr. Hoffman** said he did not like the performance agreement outlined on page 2 of the bill where it says "a provision allowing the director or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this act". He said he could not think of any other provision within the state law that allows what is being proposed in the bill. He said this bill would allow the inspection of all records in the possession of the business.

Senator Cameron asked Mr. Hoffman if his organization was against economic development and what sort of strategies he would support. If this bill was created with no requirements for sharing information, no additional jobs, no commitments, and the director was allowed to do what he thought fit, would Mr. Hoffman support it? **Mr. Hoffman** said he thought there was a right way and a wrong way; when government sits in judgment of certain types of economic development, that is a problem. **Senator Cameron** said the legislature was in favor of reducing taxes and the economic burden. He stated that the legislature is attempting, when they allocate resources, to earn a return on investments. When improvements are made, businesses and others benefit. **Mr. Hoffman** pointed out that judgments were based on artificial parameters, and this bill is saying that one business is better than the other. He further stated that the government should not be in the business of allocating money, and there should be some fine delineation of their role in the marketplace. He would take out the provision opening up records for government inspection.

Senator Goedde pointed out there was similar legislation in the past that brought Cabela's and a Super Walmart to this area, and without that development, Cabela's would have been in another state paying taxes. He said the infrastructure was being paid back time-and-time again and asked Mr. Hoffman if he supported this type of growth. **Mr. Hoffman** said that other things are impacted when there is that kind of development. He suggested that legislation should avoid economic planning and not choose winners or losers. He said he believed in the free market. **Senator Schmidt** said he disagreed with Mr. Hoffman's interpretation of inspection of business records and said the language did not mean all records. **Mr. Hoffman** said he thought the state inspection could be unlimited under this bill.

MOTION:

Senator Goedde moved that **H 100** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. **Senator Goedde** said in the past we were putting money on the table to entice new businesses. Now we are saying we will give new businesses money based on performance, after the fact, and he said he thought this was a good way to approach the issue. **Senator Durst** said he concurred with the motion and wanted to add that, unlike other attempts of economic development that have been done in the state in the past, he thought we were being much more precise, and we have expectations about outcome, so that businesses know what to expect from the investment. The motion carried by **voice vote**. Chairman Tippetts will carry this bill on the floor of the Senate.

H 199

Bill Deal, Director, Department of Insurance (Department), presented this bill relating to self-funded health care plans. He gave a brief history of the legislation for self-funded plans. He said this bill, when enacted, will amend existing chapter 40, title 41, Idaho Code, currently relating to employer-based self-funded health care plans, to provide that certain qualified public or private postsecondary educational institutions may, as a plan sponsor, establish a self-funded student health benefit plan and trust for student and dependent beneficiaries and the regulation of such plans and trusts. There is no fiscal impact.

This particular bill came to the Department via Brigham Young University (BYU), Idaho to have an employer-based, self-funded employee benefit plan for that institution. **H 199** authorizes colleges and university-level schools to set up self-funded student benefit plans in a trust that says plans must be registered under Idaho law and subject to public supervision. It also provides for trust fund surplus requirements and ongoing regulation and oversight to help maintain financial stability of these plans. Under current Idaho law, the self-funded Health Care Plan Act applies to any single employer or multiple employer arrangement to the extent that the state regulation of the arrangements or a plan is not preempted by the Employee Retirement Income Security Act of 1974 (ERISA). Idaho law would not be changed by this bill and how it interacts with ERISA with regard to employer-based self-funded benefit plans. This bill would authorize postsecondary educational institutions to establish a self-funded student health benefit plan, and it also provides for certain reporting requirements and minimum surplus requirements.

Mr. Deal said **H 199** does not apply to student health insurance plans, but only to self-funded student health benefit plans. A self-funded student plan is not subject to the requirements of the Public Health Services Act because it is neither health insurance coverage, nor is it a group health plan, but individual. The Public Health Service Act and the Affordable Care Act give the United States Health and Human Services (HHS) regulatory authority over health insurance issuers in the group and individual markets and over non-federal government group health plans, but self-funded student health benefit plans do not fit into these categories. These self-funded student plans may be regulated by the states. Just a few days ago, HHS proposed a new rule that would deem self-funded student health benefit plans offered by an institution of higher learning a "minimum essential coverage" plan.

Mr. Deal defined the term "minimum essential coverage" as the type of coverage an individual needs to have to meet the "individual responsibility requirement" under the Affordable Care Act. He said in Internal Revenue Code, this includes government-sponsored coverage, employer-sponsored plans, individual market plans, grandfathered health plans and other coverage, including self-funded student health benefit plans.

He said the bill provides that postsecondary schools may establish a self-funded health benefit plan. In both employer-based and postsecondary school self-funded health benefit plans, there is a special relationship between the employer and the employee and between the school and the student. This bill recognizes this special relationship.

Mr. Deal added that some of the other amendments to this plan were definitions added for an irrevocable trust, definition of a post-educational institution, registration required exemption (basically a dental plan that has a benefit of \$5,000 or less), plan requirements, application for registration, grant or denial of registration, requirement for a trust fund, investment of trust funds, requirement of reserves and surpluses, records accounts or annual statements, and prohibited pecuniary interests in plan management. He asked for support from the committee.

Senator Durst had a question about the impact on existing private "for profit" institutions that may have operations in states beyond Idaho, and if they could currently offer these types of plans. He gave the example of the University of Phoenix that has operations on-line, but also a physical campus in Meridian, and asked if they were considered to be in Idaho. **Mr. Deal** said the intent of this bill was to apply to institutions of higher learning in Idaho only and referred to page 4, lines eight through thirteen, which included the definition of a postsecondary educational institution. **Senator Goedde** wanted to know if an annualized enrollment of 800 or more full-time students was sustainable and who was going to fund 50 percent of the estimated minimum surplus. **Mr. Deal** answered that one of the issues that the

Department found with a self-funded plan was that it was easy to create, but the hard part was to maintain the self-funded plan in a financially solvent way. He said one of the biggest problems the Department has seen is that self-funded plans do not begin with enough cash to maintain their solvency.

Senator Guthrie referred to page 4, line 8 of the bill and asked if a postsecondary institution was a "person". He said he thought that the wording should have been "institution". **Mr. Deal** replied that in legal terms, a person can be any of these entities. **Chairman Tippetts** pointed out there was a definition of "person" on page 4, which would indicate it includes individuals, corporations, and other organizations. A discussion ensued among **Senators Lakey, Durst, Schmidt, Cameron** and **Mr. Deal** about the definition of "person", expanding this idea to public entities and that this bill is specific to institutions of higher learning. They discussed private career colleges who don't have enough enrollment possibly banding together to reach the minimum requirement of 800 full-time students as long as they qualified for institutions of higher learning and met the other criteria.

TESTIMONY:

John Keenan, Deputy Attorney General, stated that Multiple Employers' Welfare Arrangement (MEWA) rate would not be applicable to the schools because they have to be an employer. They could probably band together for their employees, but not for the students. **Senator Cameron** said the purpose of having the language was to allow that permissiveness, and asked what was the purpose of having the multiple employer welfare language. **Mr. Deal** said this same chapter allows the Department to have registration and oversight regarding the new laws. Plans are limited by ERISA, but there is a plan for a higher institution of learning. **Senator Cameron** clarified that the language could not be used for students, but could be used for employees of those organizations. **Mr. Deal** verified that was the case as it is today. **Senator Cameron** asked about adding in the terminology (page 6, line 22) of multiple employer welfare plans and the requirement that they contribute to the trust fund, clarifying that was the intent for those multiple employer plans. **Mr. Keenan** clarified the language regarding employer-based plans to make a clear distinction between university student plans and that employers and employees were required to contribute to the plan. **Senator Durst** asked if there was a definition of an educational degree, such as an Associate of Arts, Bachelor of Arts or Science degree, and he was wondering about those institutions that offer technical certificates, if they would qualify. **Mr. Deal** responded by saying, that in his opinion, this was something technical schools could use if they could get the approval of the State Board of Education.

MOTION:

Senator Martin moved to send **H 199** to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Hill will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:32 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary