

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 14, 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.

H 76 **Kris Ellis**, representing the Idaho Land Title Association, presented this bill about trust deeds relating to an invalid trustee sale. She said this legislation will clarify that when a rescission of the trustee's deed is recorded within 15 days, it puts all affected parties in a status quo position as of the time the trustee's sale was held, and not when the trustee's deed is recorded, which can be several days later.

She said when a trustee sale held pursuant to section 45-1506, Idaho Code, is invalid by reason of automatic stay provisions of the United States bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed will restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the trustee's sale. There were more properties going into foreclosure than ever before and because of that, there were errors in the process. A loan modification could have been taking place with the bank, and sometimes the trustee didn't realize that and took the property into foreclosure. This section of code would return the title of the home to the homeowner prior to the date of sale. The change clarifies in statute that the property returns status quo to the homeowner prior to the date of sale.

Vice Chairman Patrick asked if the liens were taken care of at the time of the sale. **Ms. Ellis** introduced Jesse Hamilton and deferred the question to him.

TESTIMONY: **Jesse Hamilton**, General Counsel for Pioneer Title Company and President of the Idaho Land Title Association, said if the sale should not have occurred by bankruptcy or otherwise, meaning the bank was working in good faith for the borrower for modification and there was a lack of communication, this bill gives the beneficiary of that deed of trust the right to instruct the trustee to rescind the sale. These subsequent liens that showed up in the interim during the 90-day period from when the trustee sale was held versus when the trustee's deed actually recorded (which could be weeks later), puts everyone in the status quo position. That means that any subsequent liens attached to that property are going to be junior in line to everybody that previously existed.

Vice Chairman Patrick asked if during a typical sale the title report shows which liens are on the property, if that makes the title completely clear. **Mr. Hamilton** said assuming all steps in the statutory process were strictly complied with and a valid sale was held, in the case where the deed of trust was being foreclosed and the trustee's deed resulted, that would wipe out any junior lienholders. A federal tax lien has a redemptive right. They have 120 days to redeem their interest, but they would have to make the purchase before the auction. He said, in his experience, he has never seen the federal government do that. **Vice Chairman Patrick** and **Mr. Hamilton** had a conversation about the first mortgage holder who owns the property, and who has a secured interest, and the trustee sale pursuant to the beneficiary's instructions. **Mr. Hamilton** said the bank could bid entirely on what they are owed or less than what they are owed. They are supposed to bid what the property is worth. In a third party purchase, where \$1 more is bid than the beneficiary's credit bid, then they would receive the property free and clear of all liens and encumbrances, junior to the deed of trust being foreclosed.

Senator Lakey said he could see where this could be a problem. He asked if this was being done to avoid a problem or had there actually been problems. **Mr. Hamilton** said they were being proactive. He said they had one of their title insurance underwriters call this to their attention. They wanted to clarify and put all parties in the status quo position prior to the trustee's sale. Due to a lapse in time that exists, the beneficiaries or trustees who facilitate these sales don't record the trustee's deed for two or three weeks, so they want to be very clear. Everyone is put in the same position for protecting the consumer, working with the bank in good faith, protecting the beneficiary and the rights they have under the deed of trust, and protecting the trustee. They do not want a third party to say, "I don't care if this sale should not have been held because it was not pursuant to the statutory code." They don't hold title, but want money. They did have those situations prior to this legislation, and this bill is a point of clarification. **Ms. Ellis** said she has talked with the Bankers' Association, and they support this legislation.

MOTION: **Vice Chairman Patrick** moved that **H 76** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Patrick will carry the bill on the floor of the Senate.

H 127 **Tana Cory**, Bureau Chief, Occupational Licenses, presented this bill relating to fees for Criminal Background Checks. She said this bill would allow the Bureau of Occupational Licences (Bureau) to collect and pay fees for background checks required by law for the Driving Business Licensure Board. These licensees are instructing students between the ages of 14-and-a-half and 17 years of age. In order to process these applications, estimated at four per year, the Bureau will need to be able to collect fees and process the fingerprint background checks through the Idaho State Police.

Senator Durst asked what the current practice was regarding fees and **Ms. Cory** said the Idaho State Police has been working with them, but with this bill they can collect the fee.

MOTION: **Senator Lakey** moved that **H 127** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Lakey will carry the bill on the floor of the Senate.

H 185 **Tana Cory**, Bureau Chief, Bureau of Occupational Licenses (Bureau), presented this bill relating to drinking water and wastewater professionals and fees relating to certain examinations.

The Bureau is a service agency that serves 29 self-governing boards and commissions by providing their administrative, fiscal, investigative and legal services. She introduced Mr. Barry Burnell who was in the audience and who serves on the Board of Drinking Water and Wastewater Professionals (Board). **Ms. Cory** said she was there on the Board's behalf to present **H 185** which makes a change on line 14 by striking "equal to" and replacing it with "not greater than". This change will allow the Bureau to do two things: 1) Charge less for the on-line exam; and 2) Not cause delay for examinees.

By way of background, the Board currently offers on-line and written exams around the state. An examinee pays \$36 dollars to take the exam. The Bureau collects the fee and then pays the exam administrator. This is in accordance with the current language in the law that states the Bureau shall "collect a fee equal to that charged by the exam administrator". A few weeks ago, the exam administrator sent the Board a new contract in which the on-line fee increases to \$39 dollars, and the fee for written exams increases to \$37 dollars. Last week, when the Board met, the Bureau explained that this disparity in fees will cause an issue for examinees and may cost more to administer the tests. In 2012, there was a total of 691 exam takers. Out of that number, 40 to 50 changed from written to on-line exams after they submitted their exam applications. With the fee being the same, the Bureau could make the change and accommodate the request. The current law requires that the Bureau collect a fee equal to that charged by the exam provider. Now the Bureau will have to charge an additional \$2 when a request is made. Administratively, it may cost more than \$2 to collect and process, and it may cause a delay for examinees if the Bureau has to wait to schedule the exam until it receives the additional \$2. By changing the language on line 14 to "not greater than", the Board can charge \$37 for both exams. The law still does not allow the Board to charge more than that charged by the exam administrator, but this bill would allow them to charge less.

As stated in the Fiscal Note, based on last year's numbers, this change would reduce the Board's cash balance by approximately \$1,100. This reduction will not be an issue for the Board as it does have a positive balance. **Ms. Cory** said that it was her understanding that the Idaho Rural Water Association and the Association of Idaho Cities support this change. This is a customer service issue, and the Board is asking the committee to approve this change so that administrative costs can be saved and they can provide seamless service to examinees. She said she was not aware of any opposition.

MOTION: **Senator Durst** moved that **H 185** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Durst will carry the bill on the floor of the Senate.

H 162 **Kris Ellis**, representing Northwest Career Colleges Federation and the Cosmetology School Association of Idaho, presented this bill relating to cosmeticians. It requires that all schools whose student's receive Title IV funding to be designated as post-secondary institutions. She indicated the legislation is the result of a new United States Department of Education rule scheduled to go into effect July 1. Schools of Cosmetology are defined as "post-secondary" institutions and the bill clarifies that the schools are licensed by the Board of Cosmetology through the Bureau of Occupational Licenses. An emergency clause is added to allow the Board of Cosmetology to change their licensure designation before July 1.

Ms. Ellis pointed out there are 27 licensed schools in Idaho. They educate an average of 2,000 students a year. Over 90 percent of these students utilized financial aid. Approximately 85 to 95 percent of these students have jobs upon graduation. The default rate for students in this industry averages nine percent or lower, which is significantly below the national average for students across-the-board.

This legislation has been worked on collaboratively by the Board of Cosmetology, the attorneys at the Bureau of Occupational Licenses, as well as both associations representing cosmetology schools in Idaho. She said this legislation is critical to maintaining a workforce in the cosmetology industry in Idaho.

Senator Schmidt and **Ms. Ellis** had a conversation regarding the definition of a post-secondary school versus the designation for a cosmetology school and the idea that some of the attendees at a cosmetology school may not be high school graduates. **Senator Schmidt** pointed out that the definition of post-secondary does not match with the Department of Education definition. **Senator Goedde** asked if the language for this bill was discussed with the State Board of Education and **Ms. Ellis** said they reviewed the language and brought forth a couple of changes.

TESTIMONY:

Phillip Scott, representing Toni & Guy Hairdressing Academies in Boise and Coeur d'Alene, testified in support of this bill. He said their concern was there would be a complete segment of students who would be disenfranchised if this bill is not passed and put through as of July 1. The Department of Education said they will discontinue all student aid for those students if this change is not made. He urged the committee to pass the bill. **Senator Goedde** asked what the debt load was per student. **Mr. Scott** said if a student qualifies for a Pell Grant, that would reduce their amount of debt. A Pell Grant is made up of two award years because of the length of the program of 2,000 hours so \$11,000 of a student's tuition would be paid. The school charges \$15,000 for tuition, so their students when they graduate would have debt between \$5,000 to \$10,000, depending if they chose cost-of-living as part of their student aid. Currently, the frustration is that their schools get lumped in with public colleges and universities, which have spiraling default rates. Their default rate was five percent. He said they were held to a much higher standard and if their default rates were to ever approach 25 percent, they would lose their ability to provide student aid.

Senator Durst commented that the federal government came out with rule changes to ensure that students were not getting into debt for the degree they were going to earn and could never pay for. He said he was not very excited about defining a cosmetology school as a post-secondary institution because he thought it had a degree of academic meaning, but at the same time, he did not want to stand in the way of a student that chooses cosmetology as a profession. He said we have to look at the bigger picture.

MOTION:

Senator Guthrie moved that **H 162** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Senator Martin will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 1:56 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary