

MINUTES
SENATE EDUCATION COMMITTEE

DATE: Wednesday, January 11, 2012

TIME: 3:00 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Goedde, Vice Chairman Mortimer, Senators Fulcher, Winder, Toryanski, Malepeai, and LeFavour

ABSENT/ EXCUSED: Senators Andreason and Pearce

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.

MINUTES: **Chairman Goedde** called the meeting to order at 3:01 and asked the secretary to take silent roll. He welcomed the audience, introduced new page, **Renaë Feist**, and secretary to the committee, **LeAnn South**. He outlined the federal level agenda for education and the foreseeable plans for the Education Committee in Idaho. There are written newspaper articles in members' folders for them to read to get acquainted with the issues of education around the region. Adjustments will be made to the existing bills.

INTRODUCTION **Senator Winder** introduced his two interns **Greg Wilson** and **Janelle de Weerd**. **Senator Mortimer** introduced **Shannon Dearing** staff secretary and education back-up.

RS20887 **Jason Hancock** stood before the committee to present **RS 20887**, legislation relating to parent evaluations. This change brought to the Department of Education stated that in the legislation of "Students Come First" that clarification needs to be made regarding timing for the parental input during the teacher evaluations. There is the necessity to reorder it in the bill so that the timing is correct.

Senator Winder asked if it was up to the individual School Boards or school districts' discretion as to the weight that the parental input would have in the teachers' evaluations. **Mr. Hancock** stated that it was up to the individual districts as to how much weight parental input will have in teachers' evaluations. **Senator Winder** asked if in the original legislation was 50 percent the weighted value given to parental evaluations. **Mr. Hancock** stated "No" that was not the requirement. The 50 percent was in regard to student achievement. **Senator Winder** asked **Mr. Hancock** to remind him what the other 50 percent of the evaluation is based on. **Mr. Hancock** stated that had to do with the Charlotte Danielson model that is in the state board rule for teacher evaluations. The parental involvement piece is incorporated in that model. There is a component in domain where it can be incorporated. **Senator Winder** asked if merit pay based on teacher evaluations was on a school wide basis? **Mr. Hancock** stated that growth in student achievement is the pay for performance piece and this legislation does not change that.

MOTION: **Vice Chairman Mortimer** moved, seconded by **Senator Winder** to print **RS 20887**. The motion carried by **voice-vote**.

INTRODUCTION: **Chairman Goedde** recognized **Penni Cyr** from the Idaho Education Association. **Chairman Goedde** passed the gavel to **Vice Chairman Mortimer** who proceeded with the rules.

**DOCKET
08-0104-1101**

Docket 08-0104-1101 in regards to residency classification. **Vice Chairman Mortimer** called **Traci Bent** with the State Board of Education to present the rule for review. **Ms. Bent** explained currently in legislation there is a criterion for residency to attend state universities programs and that rule **08-0104-1101** moves to change that language making certification more efficient and effective. **Senator LeFavour** asked if there was any opposition to this rule. **Ms. Bent** stated that all the institutions involved were in agreement with this process.

MOTION:

Senator LeFavour moved, seconded by **Chairman Goedde** to accept **Docket 08-0104-1101**. The motion carried by **voice-vote**.

**DOCKET
08-0109-1101**

Traci Bent introduced **Docket 08-0109-1101** pertaining to the rules governing the GEAR UP Idaho Scholarship Program. **Ms. Bent** stated that this rule outlines the procedures and processes for students to apply for scholarships. **Vice Chairman Mortimer** asked **Ms. Bent** if this whole rule is new. **Ms. Bent** indicated that it was a temporary rule and through application it has been modified to the pending rule presented.

MOTION:

Senator Goedde moved, seconded by **Senator Malepeai** to accept **Docket 08-0109-1101**. The motion carried by **voice-vote**.

**DOCKET
08-0111-1102**

Traci Bent introduced **Docket 08-0111-1102** Rules of Post-Secondary Educational Institutions and Proprietary Schools. This incorporates enforcement language into the rules from legislation that was passed in the 2011 session. This also sets out civil and criminal penalties for those people who do not follow the rules. In addition, Federal Rules mandate that there be a student complaint process. Most significant in the rule is new language for the start up educational companies working to obtain security bonding. This ensures that students graduating from the schools have a creditable degree. They did receive some comments during the comment time period and took those comments into consideration but were not able to accommodate all the requests.

Ms. Bent took the committee through the changes one at a time. These changes were to clean up the language and protect the students from fraudulent institutions. **Senator Toryanski** asked if these rules applied to those schools for people who were looking to obtain a private pilot license. **Ms. Bent** responded that if it is on-going training and if there is a full amount of payment where the student would be eligible for employment after completion, then the standards would apply, but if is a pay per flight/class basis the instructor or institution would be exempt.

Vice-Chairman Mortimer asked about how they determined the 120 days. **Ms. Bent** stated that the number of days came from their program director who stated that it was a reasonable amount of time.

MOTION:

Senator Fulcher moved, seconded by **Senator LeFavour** to accept **Docket 08-0111-1102**. The motion carried by **voice-vote**.

**DOCKET
08-0114-1101**

Docket 08-0114-1101 Idaho Rural Physician Incentive Program was introduced by **Traci Bent**. Those students that participate in the Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) program and if the student after completion choose to practice in rural Idaho they receive a loan repayment from the state. The loaning institutions are reluctant to directly accept the state money. The rule change has the practicing physician sign an affidavit to pay the loan and the state payment then goes directly to the student.

MOTION:

Chairman Goedde moved, seconded by **Senator Fulcher** to adopt **Docket 08-0114-1101**. The motion carried by **voice-vote**.

Luci Willits introduced **Docket 08-0201-1101** Rules Governing Administration, this rule change deals with two aspects of collective bargaining and negotiations. First, the Students Come First law now requires district negotiations with personnel be conducted in open session and available for the public to attend. This rule would clarify that open negotiations should adhere to Idaho's Open Meeting Law. Second, the Students Come First law now limits collective bargaining to compensation and benefits. This rule change defines salary as "any monies paid to an employee pursuant to an employment contract, the form of which is approved by the Superintendent of Public Instruction pursuant to Section 33-513, Idaho Code, and the process by which the school district board of trustees will determine local student achievement share awards." The rule change also specifies that the inclusion of any other items in a negotiated agreement is prohibited. **Ms. Willits** stated that the Idaho Department of Education must go through the State Board of Education to accomplish its rulemaking. These rules were also available for public comment in which only 33 comments were given and most were in opposition.

Senator Toryanski asked if the comments from the public were posted for people to see. **Ms. Willits** stated that they were not but they are available upon request.

TESTIMONY:

Paul Stark, General Counsel for the Idaho Education Association stated that the IEA objected to this rule on three different bases: 1. The State Board of Education was not provided the comments from the Association when it was voted on; 2. There is nothing within the subject's statute that authorizes to the State Board of Education to make rules and; 3. The proposed rule attempts to rewrite legislation and directly contradicts the statute. **Mr. Stark** then further explained the State Board of Education didn't have the benefit of those comments to make the rules. The Board of Education lacks the authority for rulemaking according to Idaho Code 675231.01, and the Idaho Supreme Court has upheld this statute and overruled decisions. Finally, this rule oversteps and rewrites the legislation that is on the books. Idaho Code 331272.5 and S1108 define benefits. The verbiage of "shall be limited to" in the rule conflicts with statute which states "includes."

Mr. Stark also cited an Idaho Supreme Court decision *Convalescence Center vs. Department Health and Welfare*, a 2005 case that stated that a rule shall not rewrite a statute. *Idaho County Nursing Home vs. Department of Health and Welfare*, a 1991 case, stated when a conflict exists between a regulation and a statute the regulation must be set aside. **Mr. Stark** recommends that these rules be sent back to the Board of Education to allow them to consider these comments along with the 33 others. To make these rules they must have rulemaking authority. **Chairman Goedde** stated that he has a letter dated October 24, 2011 from the IEA stating that information that **Mr. Stark** just testified. He sent it to **Brian Kane**, Idaho Attorney General's Office, for a legal opinion.

Chairman Goedde would like to have **Mr. Stark's** testimony to let **Mr. Kane** review and give an opinion and would like to hold this rule until an opinion is delivered.

Senator Toryanski supports **Chairman Goedde** suggestion to hold this rule until there is more clarification from **Mr. Kane**. **Senator Toryanski** asked **Mr. Stark** if it was his position that the Boards lack of rulemaking authority applies to all of their rules or to just to this one rule. **Mr. Stark** stated that he was on only speaking to this rule.

Senator Malepeai asked for clarification that they were taking **Mr. Stark's** testimony and turning it over to the Attorney General's office before any motion is taken. **Chairman Goedde** responded that he had taken this letter to **Mr. Kane** in October and would like to wait until he gets an opinion to share with this committee before moving on this rule.

Mr. Stark would like the opportunity to respond to **Mr. Kane's** opinion. **Senator Goedde** will provide that opportunity to **Mr. Stark**.

Vice Chairman Mortimer stated that this rule will be held until sometime next week when an opinion is provided.

TESTIMONY: **Karen Echeverria** from Idaho School Boards Association stated that their counsel did review the letter: The ISBA stands in favor of the rules of **Docket 08-0201-1101**.

ADJOURN: **Vice Chairman Mortimer** returned the chair to **Chairman Goedde**, who adjourned the meeting at 4:30 PM.

Senator Goedde
Chairman

LeAnn South
Secretary