

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, February 05, 2013
- TIME:** 1:30 P.M.
- PLACE:** Auditorium Room WW02
- 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:** The meeting was called to order by **Chairman Tippetts** at 1:30 p.m.
- MOTION:** **Senator Guthrie** moved to approve the minutes of January 22, 2013. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Martin** moved to approve the minutes of January 24, 2013. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.
- Senator Lakey** said he would make a motion to approve the minutes of January 29, 2013 at the next meeting.
- Chairman Tippetts** went over the rules for testifying and asked those who appeared to state and spell their names, to say who they represented, testify and stand for questions. Testimony would be limited to three minutes. He cautioned the audience about maintaining a sense of decorum and there should be no applause or booing. He indicated there would be a new sign-up sheet available on Thursday and that the committee would meet in the auditorium from 1:30 to 3:00 p.m.
- S 1042:** Relating to the Health Insurance Exchange, was presented by **David Hensley**, Chief of Staff, Governor's Office. He said he wanted to open his testimony with an explanation of the bill and costs associated with the exchange. He said there were an estimated 278,800 Idahoans who didn't have health insurance. He said more than 1.3 million people in Idaho would continue coverage outside of the exchange and said it was going to be a marketplace where people could voluntarily shop to compare and purchase health insurance. The obvious question facing the governor was why not let small businesses go through a federal exchange to purchase health insurance. The answer was twofold. The first was we didn't want to leave those individuals and small businesses at the mercy of the federal government. Second, even with the restrictions of Obamacare, we know we can do a better job than the feds.
- Of the sixteen members appointed to the board, two would be ex-officio members who could not vote, namely, the Director of the Department of Insurance and the Director of the Department of Health and Welfare. There would be 14 voting members who would be appointed by the governor and be subject to Senate confirmation.
- Three members would be appointed who represent three different health carriers, two members would represent producers, three members would represent individual consumer interests and four members would represent employer business interests. One of each of those four positions would represent certain types of businesses and two members would represent health care providers.

None of the board members or any person working or performing services for the exchange would be state employees. They would not be entitled to or be eligible for any benefits under the state plan or policies.

Mr. Hensley said the mandatory provisions included that all of the meetings of the board would be subject to the open meetings law of the state of Idaho and an annual independent audit would be required. The board would develop, adopt and implement procurement policies and guidelines. Reporting would be to the governor, the Department of Insurance and the legislature, beginning in January 2014 and every year thereafter.

Mr. Hensley said some of the discretionary duties of the board would be to perform all duties that would be necessary and appropriate to implement a health insurance exchange and to adopt bylaws, which would be subject to the approval of the Director of the Department of Insurance. The board would be allowed to assess and collect fees from participating health carriers, exchange users or participants. The exchange would not be subject to income taxation. They could appoint advisory committees, take legal action, enter into contracts, and adopt and implement a plan of operation for the governing of the exchange.

He noted the board had no power to change its legal structure. It had to be self-supporting, and could not request financial support from the state, nor did it have the power to tax or encumber state assets. The exchange had to serve as a voluntary marketplace. Neither the board nor the exchange could require any person to use or participate in the exchange. The exchange did not have the authority to impose upon or collect from a person any penalty for failure or refusal to participate in the exchange or failure to purchase health benefits outside of the exchange. The exchange would not be allowed to attempt, prohibit or preclude a health carrier from offering insurance of a stand-alone dental plan outside of the exchange.

The State of Idaho would not be liable for any of the obligations of the exchange. There was an emergency clause in the bill that would be in force immediately upon the signature of the governor.

Mr. Hensley stated it was estimated the cost of building and implementing the exchange could be around \$20 million or more. Today, there is \$20 million of federal funding available for this board, if it is created to use, develop and implement the exchange. There would also be an opportunity for the board to apply for further federal grants up to January 1, 2015 for the completion of the exchange. He stated one of the benefits now was the development of technology that may prove to reduce the cost of implementing or developing the exchange. The board would be able to take advantage of some of the cost savings. He indicated they had been told they could estimate \$10 million of ongoing operating costs for the exchange. That could be achieved through a per member, per month fee or a premium charge of (177,000 people multiplied by \$4.80) \$4.80 to cover the cost of operating the exchange on an annual basis. That worked out to approximately \$58 a year per member. He contrasted the Idaho operating costs with the federal government costs of running a federal exchange. The federal government estimated generating \$28 million a year from a 3.5 percent premium tax on the same 177,000 people who participate in the exchange, with an average premium on an annual basis of \$4,650. That works out to a per member, per month fee of approximately \$13.55. He said if we can save Idahoans money, we should.

Senator Durst and **Mr. Hensley** had a conversation regarding defining the words "person" and "producer". They discussed the fact there were multiple definitions for different terms. **Mr. Hensley** said they tried to make the definitions simple that could be incorporated by reference, and easy to understand. They discussed the importance of trying to provide clarity of terms within this bill, including the terms "one at-large member" and "a small employer business interest". **Senator Durst** asked if, hypothetically speaking, a large corporation could fill the at-large position because there was not a definitional requirement for the size of the at-large position. **Senator Durst** expressed a concern about the lack of oversight of the legislature over the creation of the board. He was also concerned about the governor being the only one to appoint members and to control this huge piece of our state economy. **Mr. Hensley** said the governor did not have the final say, and they were very specific that the governor make the appointments subject to confirmation by the Senate. He said they believe that level of oversight, which is very consistent across many other gubernatorial processes and appointments, works. Having individuals come before a body, having discussions about their approach, would be key to insuring they have the right people at the table.

Senator Schmidt had a discussion with **Mr. Hensley** about the risk of having this entity handling money and the non-liability of the state, exchange or the board. They talked about how the entity could sue and be sued.

Senator Lakey and **Mr. Hensley** discussed the possibility of waiting to see what happened with regulations, deadlines, and the risk for the State of Idaho in not making intentions clear, in fear of the federal government imposing regulations. They talked about control and oversight the federal government could have over this legislation and the fact the State of Idaho had already received conditional approval by the federal government for the plan.

Senator Goedde asked **Mr. Hensley** what would happen if the State of Idaho did not have this plan in place to meet the deadline. **Mr. Hensley** indicated that if the State of Idaho did not have an exchange, the feds would impose a federal exchange. He indicated that if the feds didn't allow Idaho to have any latitude, the states had another option of partnering on specific provisions of the act. If approved, every effort would be made to be successful to create the exchange and meet deadlines. He stated if the State of Idaho was making progress, the federal government would make every effort to talk with the state.

Senator Durst and **Mr. Hensley** had a conversation about the ability to contract for the implementation of a health insurance exchange and specific contractual relationships with providers. They talked about the ability of the exchange to make sure they had a marketplace that was voluntary for people to shop, compare and buy insurance. **Mr. Hensley** said the exchange had to be self-sufficient. He said the board had the flexibility to address that issue and one possible way was the per member, per month fee figure. He said they could also look at the costs borne by insurance providers in the exchange. The goal was to have the most cost-effective marketplace possible for the consumer.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, a non-profit, non-partisan public policy research organization, testified in opposition to the state insurance exchange. He said he was appointed to the Governor's Task Force on the Health Insurance Exchange. As a matter of full disclosure, he said he bought an insurance policy from Senator Cameron in the mid 1990s. He presented the committee with a petition signed by over 1,100 people and a policy analysis on why other states had rejected a state insurance exchange.

Mr. Hoffman discussed the idea that Idaho would be able to control its destiny, when in fact, the state would have to conform to very specific regulations from the federal government. He called this phony federalism. He said just because a state agency was running the exchange, the state could not assume it was in control and this would result in little accountability. He compared the exchange to the federal food stamp program, where the federal government set the parameters, and the state administered the program to help Idahoans who live in poverty. Idaho innovations were not allowed by the feds and there was little if any flexibility. He said he felt because the federal government sets the rules, the states get penalized if they don't comply. He indicated that if the federal government really wanted to collaborate with the states, they would have invited them to sit down to write the rules for a state exchange. Idaho could back out of the exchange later, but that is also true of Medicaid, food stamps, or any other entitlement program we administer for the federal government. The states are not required to administer these programs, but we have not been able to back out whenever we wanted. Choosing to do an exchange later would be a much better decision. He pointed out that if Idaho did an exchange, Idaho insurance agents would lose their jobs and we would be facilitating the dismantling and destruction of the insurance industry as we know it.

There is an assumption that under a federal exchange, insurance premiums would go up because we would be part of a national rate pool. The truth is, we would not be part of a national rate pool. The law specifically allows states to set rate areas within state borders. Rates would be going up regardless of what kind of exchange we have, and in some cases, rates would double.

Mr. Hoffman cited there were certain laws of the land that were never overturned. He gave the example of Fred Korematsu, who refused to go to an internment camp during World War II and became a fugitive. The Supreme Court upheld the Executive Order of Franklin D. Roosevelt requiring all Japanese-Americans be removed from designated "military areas" and be placed in internment camps. He talked about the Fugitive Slave Act, which required everyone in northern states to assist with the capture and return of escaped southern slaves. He stated that people who disobeyed the laws were right.

He said the states were no better off creating a health exchange act, as they would be under the thumb of the federal government, which would hurt constituents. He cited the letter from the Secretary of Health and Human Services, dated January 3, 2013, informing Governor Otter that Idaho had received conditional approval to establish a state-based exchange. He spoke about the letter outlining the contingencies of the conditional approval.

He referred to the first page of the bill and to the public policy of the state to actively resist federal actions that would limit or override state sovereignty under the Tenth amendment of the United States Constitution. There is nothing in this bill that protects the sovereignty of the state. He talked about his concerns on page three of the bill relating to the powers and authority of the exchange, and the adoption of bylaws for the regulation of the affairs of the exchange, subject to review and approval by the director. He thought it was interesting that a non-agency "agency" had been created by the wording of the definition of the exchange. The oversight by the legislature was restricted because they could only confirm the appointments to the board and nothing else. He said he would prefer the state own the agency.

Mr. Hoffman said there were two issues with part of the bill where it referred to assessing and collecting fees from participating health carriers, exchange users or participants. He said he had never seen anything in the statutes where assessing and collecting fees were not defined as to what kind of fee, how it was assessed or how much. "Participants" was also not defined in the legislation, and it seemed to be different than an exchange user.

He cited page 5 of the bill in relation to other laws and the fact the board and the exchange were entitled to rely upon the work performed by the directors of the Department of Insurance and Health and Welfare, and this may have some sort of impact on the work of the other agencies.

He summarized the fact that we are already at the mercy of the feds. There is no shield or sword or any protection from them. We can do a better job than the federal government, but we don't know enough about the Affordable Care Act to know what it looks like. He asked if we would really do a better job than the federal government. He said costs were unknown and there were no clear guidelines about the costs, and the rules keep changing. He said he felt this was a bad piece of legislation and so was Obamacare. He said this bill was hurtful to Idaho both in the short term and the long term. He was in opposition to the bill.

A conversation ensued between **Senator Cameron** and **Mr. Hoffman** regarding the Joint Finance Appropriations Committee (JFAC) bill that was passed two years ago. At that time JFAC thought the state would be forced to have a federal exchange. **Senator Cameron** declared he may have a potential conflict of interest, which he wanted to disclose for the record. **Senator Cameron** said that when this happened, Mr. Hoffman indicated he would support a state-based, state-run exchange, and he was opposed to a federal exchange. **Senator Cameron** indicated that Mr. Hoffman said he would not stand in the way of a state-based exchange. He asked Mr. Hoffman what had changed in the past two years. **Mr. Hoffman** said he did not recall that conversation, and he had very consistently opposed a state-run exchange. He reminded the senator that this whole thing was a moving target, and they have always objected to a state insurance exchange. He felt the legislature could wait another year.

Senator Cameron said he did not like the provisions of the Affordable Care Act (Obamacare), but he wanted to find a better strategy for the state. He said it was unclear to him, from Mr. Hoffman's perspective, why he thought the state should not be proactive and why we should not be acting like sovereign states. **Mr. Hoffman** replied there was no sovereignty in the bill. He said what he thought Senator Cameron was talking about was creating an entity and hoping and praying that luck would turn their way. He said we should look at what the other 26 states were doing because they recognize there are too many unknowns.

Senator Cameron followed up by saying that some of the general provisions were outlined by rule and law and many of the current policies would be met, whether in or out of the exchange. If we have established a state-based exchange and the federal government says we didn't complete something correctly, we can say we will fix that, if it is good public policy. One of his concerns was if we don't act, do we have legal standing to sue the government should they try to impose something further on us through the exchange. Was there some way we could say we have been harmed if we refused to act? He gave an example of whether termination of pregnancy would be excluded. Under a state exchange, the law typically says a state can exclude such provisions, but under the federal exchange, that would potentially be forced upon our citizens. How do we legitimately argue that non-action would be an appropriate course? **Mr. Hoffman** said it was his understanding of all of the rules and regulations and with the guidance of Health and Human Services (HHS), by having a federal exchange, the state was not surrendering control to regulate the insurance market in Idaho. He said the State of Oklahoma was pursuing a lawsuit against HHS with regards to tax credits.

Senator Guthrie asked Mr. Hoffman to clarify if he favored a federal exchange or was his message that we should do nothing. **Mr. Hoffman** said his argument about the law of the land was coming from some of the supporters of implementing a state insurance exchange. He said that in history, patriots said the law of the land was wrong. His advice to the committee was to do what Idahoans were asking them to do, which was to continue fighting. Other states, he said, were concerned about Idaho adopting their own insurance exchange.

Senator Lakey had a conversation with **Mr. Hoffman** regarding Idaho not having an insurance exchange, the federal government would not be able to implement the plan. Fees and money appropriated by Congress were discussed. They talked about agreeing or disagreeing on the general conservative concepts of "better the state than the feds". **Mr. Hoffman** said he did not necessarily agree with Senator Lakey. They discussed whether it was better to have state control or federal control. **Mr. Hoffman** referred to his previous example of the food stamp program and how the state really had no control. **Senator Lakey** asked the question, "why not move forward, as it would be easier for the state to let go?" They discussed the procedure that was in place to take a federal exchange and move it to a state exchange.

Senator Goedde told Mr. Hoffman that it would be helpful if he could put dates to quotes and indicate the dates when states have made a decision on what to do with the state exchanges. **Mr. Hoffman** said he could do that and that he knew some of the dates were fairly recent.

Senator Cameron had a discussion with **Mr. Hoffman** about pooling insurance and how prices in Idaho were lower for consumers. They talked about a federal exchange program and how Idahoans were not much better off than other states, based on per capita income. **Senator Cameron** said that it was his understanding that a federal exchange would be limited to one nationwide carrier, a for-profit carrier and one not-for-profit carrier. A nationwide carrier would not provide a specific policy for Idaho. If it was a federal exchange, they would provide a policy that had most of the mandates that all the 26 other states had. The policy would include all of those mandates, which would lump Idaho in with the poor decisions of other states. He asked Mr. Hoffman if his organization had looked at the mandates of other states and how those mandates would be enforced upon Idaho citizens. **Mr. Hoffman** said they had not done that kind of research. His understanding was a little different than that of Senator Cameron in that the insurance carriers said they had competitive prices versus the other carriers.

Chairman Tippetts invited all who had traveled a great distance and felt a need to testify, to come forward and sit in the reserved seats to testify. He apologized, saying there would not be enough time for everyone, but there would be another hearing on February 7 at 1:30 p.m.

TESTIMONY:

The following people testified in support of the bill: **Fernando Veloz**, representing the Employers' Health Coalition of Idaho, said he believed in a market-driven system and that one size did not fit all. He indicated the federal exchange would put local jobs at risk and the state exchange would cost less. He said we want local control of the marketplace and should not allow the federal government to take over such an important aspect of businesses and employees' lives. A state exchange would be accountable to Idaho businesses, local healthcare providers, local insurance plans, individual consumers and other stakeholders. Employers were concerned about anything that would increase the cost of health insurance.

The following people testified in opposition to the bill: Joe Kawalec, Eric Peterson, Dominick Gelsomino, Jon Menough and Gary Smith.

The following people submitted written testimony and testified: **Dominick Gelsomino**, a college student, compared the Affordable Care Act Bill to the United States Constitution, indicating the Constitution was much smaller. He said the more corrupt the state, the more it legislated. He said the Supreme Court interpreted Obamacare as a tax. He said the state exchange would be an extension of Obamacare and a breach of the Tenth Amendment. He said employers and the people of Idaho did not want an exchange.

Senator Durst and **Mr. Gelsomino** had a conversation regarding what to say to those people who either supported or opposed Obamacare and the fact that many disagreed about the Affordable Care Act and the state run exchange.

Jon Menough stated that, in his opinion, we were on the edge of a cliff. He said the states were being asked to serve the federal government. He said the states had the ultimate authority. He wanted to know how the approximately 177,000 low income people in Idaho were going to be able to pay for insurance. Some states said they were not going to use Obamacare, and this was another case where we should not do it either.

Gary Smith, said every American today has health care and they have been able to get it before Obamacare. Cost was the problem and he said the state could not afford it. If the state had those funds, he believed we would be much better off using the money to promote job growth and industry within the state. He urged the committee to say "no" to the implementation of the Affordable Care Act because it was not consistent with the needs and desires of the residents of Idaho.

The following people submitted written testimony, but did not testify, in support of the bill: Frankie D. Hickman, Executive Vice President of the Idaho Building Contractors Association; and Mark Estess, State Director, AARP Idaho.

The following people submitted written testimony, but did not testify, in opposition to the bill: Steve Ackerman, Craig D. Campbell, Valerie Candelaria, Marge Arnzen, Chairman of the Idaho County Republicans; Jim Auld, Ada County Property Owners' Association; and Paul W. Pyle.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:04 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary