

MINUTES

HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Monday, February 11, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW05
- MEMBERS:** Chairman Hartgen, Vice Chairman Anderson(31), Representatives Loertscher, Anderst, Hancey, Harris, Holtzclaw, Mendive, Romrell, VanOrden, King, Woodings
- ABSENT/
EXCUSED:** None
- GUESTS:** None
- Chairman Hartgen** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Woodings** made a motion to approve the minutes of February 7, 2013.
Motion carried by voice vote.
- RS 21990:** **Rep. Burgoyne** presented **RS 21990**. He cited a recent lawsuit that cost the State of Idaho \$1.3 million. In that case, Idaho Code prevented the Department of Transportation (the State) from talking to or negotiating with the claimant who ultimately sued the State and won. He stated that this proposed legislation would amend Idaho Code Section 67-5342 to permit the State to settle employment related claims made by classified and exempt employees in exchange for a release of those claims and upon approval of the Board of Examiners. He said that such settlements would be a matter of public record and would be reported to the Legislature at its next Regular Session. They would be the subject of a request for a supplemental appropriation, however, Rep. Burgoyne said that the intent of the proposed legislation is to save the General Fund money by providing the State better risk management tools. He stated that this change would give the State the same right exercised by private employers.
- In response to questions, **Rep. Burgoyne** stated that requests for supplemental appropriations would be retroactive. Once the Board of Examiners approved a settlement, the payment would go through. Agencies would submit formal reports to the Legislature and would make requests for supplemental appropriations during the Legislative Session. If the Legislature did not approve a supplemental appropriation, the agency involved would have to find the money within its own budget to cover the funds.
- MOTION:** **Rep. Anderst** made a motion to introduce **RS 21990**.
- Rep. Burgoyne**, in response to questions, stated that he will research the amount of money that could be requested through supplemental appropriations due to settlements. The Human Rights Act provides a process that assists employers and employees to broach the subject of settlements and severance. If an employee has an arguable claim but isn't able to negotiate with their agency, the employee could move beyond negotiations with the agency. Private sector employers routinely adopt strategies to deal with settlements. Interpretation of Idaho Statute is up to the courts. Rep. Burgoyne stated that private sector employees generally have tools to manage risk that the State of Idaho has not been allowed. This proposed legislation would only be applied to State employees and would not impact school district, city, or county employees. The statute in question only applies to State agencies. This proposed legislation would allow agencies to conditionally decide whether to settle or not. Agencies would then be required to secure a final determination from the Board of Examiners. The Board of Examiners is made up of the Governor, Secretary of State, Attorney General, State Controller, and Superintendent of Public

Instruction. Because the Legislature is not in Session year-round, the Board of Examiners makes many financial decisions for the State.

Rep. Anderst spoke to his motion, saying that if **RS 21990** is introduced, he has a concern and will require more information.

In response to additional questions, **Rep. Burgoyne** stated that severance payments are illegal. This proposed legislation would allow an exception for settlement payments. Generally something has to be given up in order to get a release of claims. Settlements can involve an agreement to provide a positive letter of reference or other non-financial items, although generally settlements do involve money. Providing a settlement must be weighed against attorney fees, time, and other costs, as well as the risks involved in litigation. "Any and all claims" means "absolutely everything". The Attorney General (AG) did not provide an opinion on this proposed legislation but is not opposed. Generally the AG does not support or oppose legislation. Rep. Burgoyne has not yet asked agencies for their support. Rep. Burgoyne does believe that if **RS 21990** is introduced, discussions and interest will take place. State agencies are currently capable of settling claims, but under current law they cannot pay money. Rep. Burgoyne stated that certain people, when they feel wronged, will seek out legal assistance and attempt to secure a payment. He does not believe that this proposed legislation would cause more or fewer of those individuals to seek financial settlements. He believes all incentives are against agencies presenting claimants with financial settlements. To do so would involve being examined by the Board of Examiners and the Legislature. This proposed legislation would simply allow an agency that believes a settlement is prudent and financially responsible to make that settlement.

**ROLL CALL
VOTE:**

Chairman Hartgen requested a roll call vote on the motion to introduce **RS 21990**. **Motion carried by a vote of 11 AYE, 1 NAY.** Voting in favor of the motion: **Reps. Anderson(31), Loertscher, Anderst, Hancey, Harris, Holtzclaw, Mendive, Romrell, VanOrden, King and Woodings.** Voting in opposition to the motion: **Rep. Hartgen.**

Chairman Hartgen announced that the presentation from **Jeff Sayer**, Department of Commerce, will be rescheduled.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:12 p.m.

Representative Hartgen
Chair

Mary Tipps
Secretary