

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 05, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Chairman Tippetts

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: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m.

TESTIMONY: **Thomas Limbaugh**, Commissioner, Industrial Commission (Commission), made a presentation regarding **RS 22162**. The Industrial Commission is required by Idaho Code § 72-523 to collect a tax each year from insurance companies and self-insured employers equal to two and one-half percent of the net premiums collected on all workers' compensation insurance policies written by an insurance company in Idaho (or on the premium that would have been paid for an insurance policy from the state insurance fund by a self-insured employer). This tax is deposited in the Industrial Administration Fund, created by Idaho Code § 72-519, and is used by the Commission for administering the worker's compensation law. The law does not provide the Commission with authority to reduce the amount of tax collected. **Mr. Limbaugh** said in 2011 the legislature amended Idaho Code § 72-523 to allow for a temporary premium tax rate reduction (from two-and-a-half percent to two percent) during the period of January 1, 2012 through December 31, 2013. The Industrial Commission collects premium tax on a semi-annual basis and only completed its collections for calendar year 2012 at the reduced rate in March of 2013. The expected decline in premium tax collections was somewhat mitigated by the increase in the volume of premiums written. This proposed amendment will extend the legislature's temporary tax relief to sureties and self-insured employers through December 31, 2015. This temporary premium tax reduction may be passed on to businesses in the form of lower workers' compensation insurance premiums for all insured Idaho employers. The fiscal impact to the Industrial Administration Fund is estimated to be a \$1.6 million revenue reduction in each of fiscal years 2015 and 2016 for a total impact of \$3.2 million.

Senator Goedde asked for unanimous consent for **RS 22162**, relating to a premium tax on Worker's Compensation Insurance, to be sent to a privileged committee for printing. There were no objections.

S 1045 **Senator Marv Hagedorn** proposed an amendment to the wording of this bill. He said "active duty" meant full-time duty in the active military service of the United States. Such terms included full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or designated by the secretary of the military department concerned.

MOTION: **Senator Cameron** made a motion to send **S 1045** to the amending order. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

Sandra Evans, Executive Director, Board of Nursing (Board), presented this bill relating to criminal history checks for nurses. She said that in order to safeguard public health, safety and welfare, it was in the public interest to regulate and control nursing in the State of Idaho, to promote quality health care services, to prohibit unqualified and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public. She said that a recent Federal Bureau of Investigation (FBI) audit of the Board's existing statutory authority to conduct criminal background checks of applicants for a nursing license, revealed some deficiencies and resulted in recommendations to amend Section 54-1401, Idaho Code. This legislation seeks to adopt the auditor's recommendations eliminating the inadequacies identified in the statute. **Ms. Evans** stated that only a person who holds a valid and current license to practice registered nursing in this state or a party state pursuant to Sections 54-1408 and 54-1418, Idaho Code, may use the title "nurse", "registered nurse," "graduate nurse" or "professional nurse" or the abbreviation "R.N." or any other designations, titles or abbreviations to indicate that the person was practicing nursing in this state. She said all applicants for original licensure and for license reinstatement must submit a full set of their fingerprints and any relevant fees directly to the Board for forwarding to the appropriate law enforcement agency for processing. Criminal background reports received by the Board from the Idaho State Police and the FBI would be used only for licensing decisions and handled and disposed of in a manner consistent with requirements imposed by the Idaho State Police and the FBI.

She said the legislation was intended to improve and clarify the Board's grounds for denying or disciplining a nurse and denying a license as found in Section 54-1413, Idaho Code. First, she said, the legislation aimed at correcting an oversight in the current statutory language that allowed room for an argument that the statute did not apply to applicants for licensure. Second, the legislation would authorize the Board to impose discipline on an applicant or licensee holding a professional license (not just a nursing license) when the license had been revoked or suspended, if the applicant or licensee has had any formal discipline, in any jurisdiction. These changes are consistent with the Uniform Licensing Requirements of the National Council of State Boards of Nursing that have been endorsed by the Idaho Board of Nursing. This bill has no fiscal impact.

Senator Cameron and **Ms. Evans** had a discussion about the definition of "discipline" and violations in the past by holders of two licenses. **Senator Lakey** commented he thought some of the wording in the bill was imperfect, even though it was in the statute. **Senator Schmidt** questioned how the Board could discipline an applicant for a license when they did not yet possess a valid license. **Ms. Evans** explained that if an applicant, for example, failed to disclose a felony, that would be grounds for discipline or denial of a license and would be reportable to other states and to the national database. **Senator Schmidt** clarified that the Board was trying to delineate having the authority to report the refusal of an applicant or what would be considered non-reportable reasons. **Senator Durst** queried if this bill would set a precedent by raising the level of scrutiny. He asked how many other boards in other states used the same language for discipline.

TESTIMONY:

Roger Gable, Attorney General's Office, testified on behalf of the Nursing Board. He said he had not researched Senator Durst's question about how many other boards used the language as outlined in this bill.

Senator Durst and **Ms. Evans** had a conversation about discipline and the intent of the Board not to automatically discipline someone, how the National Council of State Boards of Nursing works on behalf of all of the member boards and the idea that this bill would give the Board the authority to investigate allegations to better protect the public.

Senator Goedde and **Ms. Evans** discussed reciprocity and endorsement of nursing licenses from state-to-state. **Senator Goedde** expressed a concern that if Idaho did not adopt the uniform licensing requirement, the other 23 states, based on reciprocity, would extend privileges to someone even though there was a problem with another license. They would not be granted a license in that state. **Ms. Evans** stated she thought the Idaho Board was conscientious in granting licenses with the understanding that the privilege was granted to practice in other states. The State of Idaho can grant a single state license that does not provide the privilege of reciprocity, but the Board has to have grounds to do that. **Senator Durst** indicated it would be helpful to know whether other boards, such as Occupational Licenses, medical or others having the same purview, have had the same authority to discipline that is being sought for in this bill of nursing. He repeated this could be a precedent-setting decision, and he had a concern that we understand the potential and unintended consequences. **Vice Chairman Patrick** said we had other agencies with similar requirements.

A conversation ensued among **Senator Cameron**, **Mr. Gable**, and **Ms. Evans** relating to the revocation of dual licenses for behavior on the part of an individual that did not result in a criminal conviction, but was considered a violation of nursing law. They also discussed the jurisdiction of the Board and the ramifications for someone who engaged in and was convicted of a criminal violation. **Senator Guthrie** and **Mr. Gable** discussed the broad authority and latitude outlined on page 2, line 23 of the bill referring to "failing or refusing to report criminal conduct or other conduct by a licensee that endangers patients" and the interpretation of that language. **Senator Lakey** and **Mr. Gable** talked about the language that related to conduct of a licensee or a licensed nurse and the word "applicant" and how each term was applied. **Senator Cameron** said adding the words "applicant" and "current licensees" was confusing. He said he thought one set of actions should be for each one and the definitions on lines 27 and 28 were too broad. He said the term "otherwise disciplined" broadened the spectrum and thought the language needed to be reworked and brought back next year.

Senator Schmidt mentioned the wording "grounds for discipline" and the idea that professional boards wanted more latitude. **Senator Martin** said he thought the word "applicant" and "licensee" should be separated so the parameters could be understood.

MOTION: **Senator Cameron** made a motion to hold **S 1019** in committee. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

S 1020 **Sandra Evans**, Executive Director, Board of Nursing (Board), gave a presentation relating to disciplinary fines for nurses. She stated the Board of Nursing did not currently have statutory authority to impose disciplinary fines, except in the rare case of unlicensed practice. The legislation would amend Section 54-1404, Idaho Code, to add "fining authority", in an amount consistent with several other licensing boards. This amendment will grant the Board the option and ability to impose a fine against a nurse who has violated Board statutes or rules, but where revocation or suspension of the license might not be warranted, which, she said, would be too harsh a sanction. There was no impact on the general fund. She indicated additional historical information had been provided at the request of Senator Martin, on the number of fines that had been assessed by the Board over the last short-term period.

Senator Martin said he commended nurses and wanted to disclose he had a conflict of interest pursuant to Senate Rule 39 because he has a daughter who is a Registered Nurse at St. Alphonsus and a son who works in the emergency room at St. Luke's. **Senator Martin** and **Ms. Evans** had a conversation relating to fines of \$100 per incident, per day and the cap of \$1,000 and how the Board arrived at the amounts. Citing page 1 of the bill, lines 34 to 41, an "administrative fine not to exceed \$1,000 for any violation of this chapter or the rules promulgated by the board", **Senator Cameron** and **Ms. Evans** discussed using the current practice relating to fines and the change in statute which would extend to other violations. **Senator Schmidt** asked that if the previous bill had not been held in committee, would the applicant be susceptible to a fine? **Mr. Gable** replied "yes, as literally written", however, in reality, the application would be denied.

MOTION: Due to the lack of a motion, the bill died in committee.

S 1021 **Sandra Evans**, Executive Director, Board of Nursing (Board), gave a presentation relating to sharing investigative information for nurses. She indicated this legislation revised a provision on sharing investigative information and provided authority for the Executive Director of the Board of Nursing to cooperate with government regulatory and law enforcement agencies. She said the Board defines investigative information to be "information that the Board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, has reason to believe is not groundless. If proved true, more than a minor infraction would be indicated; or investigative information could indicate the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and has had an opportunity to respond." **Ms. Evans** indicated the proposed legislation was identical to legislation signed into law in 2010 granting this same authority to the 29 regulatory boards within the Idaho Bureau of Occupational Licenses and was similar to statutory language authorizing the Boards of Pharmacy and Medicine to share information.

MOTION: **Senator Martin** moved to send **S 1021** to the floor of the Senate with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

PRESENTATION: **Teresa Luna**, Director of the Department of Administration, gave a PowerPoint® presentation regarding group insurance and the composition of the Office of Group Insurance. She said the annual operating budget was \$896,500. They administer over nine different plans. She talked about the notable achievements of her department, including the medical plan design, premium rates, and enrollment by plan type. She explained the insurance plans for employees and retirees. **Ms. Luna** went over cost sharing history and premium splits, and the idea that one percent of the plan was shifted to employees, costing each between \$4 and \$28 a month. She outlined the appropriation of \$9,100 per employee for insurance in 2014.

Senator Guthrie and **Ms. Luna** discussed different plan options with the possibility of implementing health savings accounts (HSA) in the future and the lack of incentives for employees to move to a HSA because of the amount of money the state is currently paying (90 percent) for employee premiums. **Senator Cameron** had a conversation with **Ms. Luna** about Voluntary Employees' Beneficiary Association (VEBA) plans, which is funded by the amount of unused sick leave that an employee has at the time of retirement, (contributed by the employer into the plan) and whether the Department of Administration was looking into that type of cost-effective plan as a HSA. **Senator Martin** and **Ms. Luna** discussed obtaining bids and re-signing with the current insurance companies. **Senator Lakey** and **Ms. Luna** talked about **S 1106** and that the bill encourages group insurance and

removes any statutory language that would prohibit the state from moving in that direction should they find that is the best thing to do.

Ms. Luna introduced **Nicole Fitzgerald**, Wellness Benefits Coordinator, who gave a PowerPoint® presentation and talked about the Wellness Program Proposal, which included State of Idaho statistics; a Wellness Program Assessment; program vision and recommendations; and the actual program proposal. She said the top five disease were diabetes, coronary artery disease, asthma, heart failure and chronic obstructive pulmonary disease (COPD). She talked about implementing a program to reduce health risks, increasing the quality of life, enhancing personal effectiveness and benefits to the organization's bottom line. Recommendations included developing an in-house wellness program, implementing a five-year strategic plan, implementing an annual health screening and health risk assessment, implementing health status rewards, and providing ongoing programs, support, education and workplace policies. **Ms. Fitzgerald** went over the program proposals for each of the five years.

She discussed with **Vice Chairman Patrick**, **Senators Martin**, **Guthrie** and **Cameron** how many employees were in the program, the annual premium, incentives for healthy lifestyles, management of the incentives for each year, the idea of tying points to premiums for an incentive and the legal ramifications of this approach. **Ms. Luna** said the program was voluntary. There would not be a premium differential, but a reward for employees who stay healthy and participate in the program. She said the program had been reviewed with the Attorney General, but this plan was not mandatory and they were still gathering information.

ADJOURNED: There being no further business, **Vice Chairman Patrick** adjourned the meeting at 3:02 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary