

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, March 07, 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.
- GUBERNATORIAL APPOINTMENT:** The appointment of Terry Gestrin, Donnelly, Idaho, to the State Insurance Board to serve a term commencing April 30, 2012 and expiring December 1, 2014. **Terry Gestrin** said he is currently a member of the House of Representatives, and he also owns and operates Long Valley Farm Service in Donnelly, Idaho, which is a general store that was established in 1956 by his father, F. W. Gestrin, that sells plumbing, hardware, electrical, Purina feed, lawn and garden supplies, and oil. He has been a board member of the Idaho Foundation for Parks and Land for over ten years. He has served as a Valley County Republican Precinct Committee member for several years and is currently Chairman of the Valley County Republican Central Committee. He holds a Bachelor's Degree in Business Administration from Idaho State University, Pocatello, and completed a six-month life underwriter's training course while employed with Farm Bureau Mutual. He is a fourth generation Valley County resident, has been married for 36 years, has two children and two grandchildren. He enjoys snow and water skiing, golf, jet boating and fishing.
- MOTION:** **Senator Goedde** moved to send the gubernatorial appointment of Terry Gestrin to the State Insurance Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the appointment on the floor of the Senate.
- S 1106** **Senator Thayne** presented this bill relating to setting up a funded health savings account (HSA) system for state employees.
- Senator Thayne** said low deductible policies contribute to high premiums. He said the intent was to fund the Health Savings Accounts with savings from insurance. He referred to an article called "Hoosiers and Health Savings Accounts" from the Wall Street Journal, relating to a study done in Indiana about health savings accounts. He cited from the article that "individually owned and directed health-care coverage has a startlingly positive effect on costs for both employees and the state." He said that when someone was spending their own money with a high deductible plan, they tended to visit the doctor and emergency rooms less, and were much more likely to use generic drugs as compared to those enrolled in a conventional plan. He pointed out that consumer decision-making was a major factor in the Indiana study. He said his intention was not to remove funding from employees, but to offer an alternative.

Senator Nonini explained the Total Loss Ratio chart for group insurance. He focused on the total loss ratio figures on the chart, stating that the total loss was 123.32 percent. For the year 2011 for every dollar the insurance company received, they paid out \$1.23. They lost money. He referred to plans that were offered to employees on the chart. One was \$250 deductible with 90 percent of employees subscribing and the other plan was \$1,000 deductible with 10 percent of the employees subscribing. The third plan was \$1,500 deductible, qualifying-type health savings account plan. With that plan, there would be a \$250 deductible with 25 percent subscribing, 10 percent with a \$1,000 deductible and 65 percent moved to the \$1,500 deductible. He said the total loss ratio was 88.92 percent, which was a drastic drop. Renewal rates were attractive on the HSA plan. Premiums were \$317 a month per employee who had a \$1,500 deductible and \$490 a month premium for the \$250 deductible. He said the high deductible HSA plans brought costs down.

Senator Guthrie and **Senator Nonini** talked about deductibles, HSAs and the impact underwriting and actuarial work could have on the costs. **Senator Nonini** said discussions were held with the insurance companies and currently there were not many options. Due to larger profit margins, insurance companies wanted to offer the \$250 deductible plan. **Senator Goedde** and **Senator Nonini** discussed the difference between an HSA and a Voluntary Employee Beneficiary Association (VEBA) plan. They also talked about the idea that a VEBA was only for government agencies and they could be more expensive because of the management fees. **Senator Nonini** pointed out that banks were best at managing HSAs, because they charged less. **Vice Chairman Patrick**, **Senator Schmidt** and **Senator Thayn** had a conversation about the fiscal impact of an HSA and the idea there would be no added cost. The intent of the bill is to take away any obstacles for the Department of Administration.

Chairman Tippetts stated he has a potential conflict of interest pursuant to Senate Rule 39 because he has a couple of sons who work in the insurance industry and they occasionally work with states. He asked Senator Thayn to outline what the Department of Administration would have to do to implement an HSA. **Senator Thayn** wanted to direct that question to Director Teresa Luna, Department of Administration, after he went through the bill. He said it was the intent of the Legislature to encourage, facilitate and fund health savings accounts for employees of the State of Idaho who are enrolled in a high deductible health plan. By encouraging state employees to create a health savings account, they will be empowered to make sound, responsible decisions and better manage their own medical care. All state officers or employees may, for themselves and their eligible dependents, create and maintain a health savings account and choose a high deductible health plan in accordance with the provisions of the bill. He said that for each pay period, the employer would deposit into the health savings account the difference between the employer premium for a State of Idaho high deductible health plan and the employer premium of the lowest deductible group health plan offered by the Department of Administration. **Senator Thayn** said the deposits should not exceed the United States Internal Revenue Service's maximum allowable contribution to a health savings account. Nothing should prohibit state officers or employees with a health savings account from contributing to an account of their own. The Division of Human Resources may promulgate rules to implement the provisions of the bill. He asked the committee to send the bill to the 14th Order, saying he felt the Department of Administration should make the rules and not the Division of Human Resources.

TESTIMONY:

Donna Yule, Executive Director of the Idaho Public Employees' Association, said she opposed this bill. She said she spent time conversing with Senator Thayne and Director Teresa Luna from the Department of Administration regarding this bill and she had many unanswered questions. She wanted to know where the money was going to come from to fund the HSA, the deductible was too high, and she felt the Department of Administration was not prepared at this time to administer the program. She said it would make more sense if the Department of Administration would come up with a plan.

Bruce Krosch from Southwest District Health, testified in favor the bill. He said he thought line 13 of the bill encouraged state employees to create a health savings account, which would empower them to make sound, responsible decisions and better manage their own medical care. He referred to line 39 of the bill saying that for each pay period, the employer would deposit the difference between the employer premium for a high deductible health plan and the employer premium of the lowest deductible group health plan offered, which potentially would drive down costs in the long run. He said he could see why there was a conflict with the Division of Human Resources promulgating rules as opposed to the Department of Administration.

Teresa Luna, Director of the Department of Administration (Department), said she had met with Senators Thayne and Nonini regarding this legislation. She said this legislation would create an option to pursue HSAs on a voluntary basis. Currently, the Department cannot offer an HSA. They would have to restructure a high deductible plan because the current plan does not qualify, since an HSA plan cannot provide prescription benefits. Premium differentials would have to be created that would allow for monies to be deposited into an account. The Department would have to do some bookkeeping with the provider to make the funds available.

Chairman Tippetts and **Ms. Luna** had a conversation about implementing a HSA high deductible plan through the state. **Ms. Luna** indicated the state could manage the administration of an HSA by turning the current plan into a high deductible/health savings account plan. She said this bill would allow the state to manage a HSA, since they are currently not allowed to do so.

Senator Durst and **Ms. Luna** had a conversation about the possibility or potential of having an HSA be the only option for state employees and the intent of the Department. She indicated they were looking at all sorts of options for administering insurance in a better fashion that is more financially responsible and would require the state employees to take a larger role in how they spend their health care dollars. However, she said, an HSA would not be mandated by the Department or the legislation. **Senator Martin** asked Ms. Luna if her department was in support of the bill, and she said they had no problems with this bill.

Senator Guthrie and **Ms. Luna** had a conversation about the fiscal impact on employees with an HSA and the costs involved with depositing money into the account. **Ms. Luna** said currently, the state pays for the cost of the claim plus the administrative fee of six percent, which is very close to being self-funded without doing the administrative work and claims processing. The cost of the plan is the cost of claims, which will continue no matter what kind of plan is implemented. They would have to create a premium differential within the state's budgeting system that would allow for the difference to be more visible than it is today.

Keith Reynolds, Chief Fiscal Officer, Department of Administration, explained the current insurance structure. He said all of the money is appropriated across the state based only on the number of employees. They do not differentiate by plan type. He said this bill would put in process a system that does differentiate by plan. Currently, the difference between those premiums is zero. A zero impact is anticipated because the state would be saving money because someone has enrolled in a high deductible plan at a lower cost. They are making up the difference between those two plans, and there is no premium differential. What the state has done is maintain the same system of paying the same amount per employee, but are rewarding them for saving the state money by giving them the money in the HSA.

Senator Schmidt and **Mr. Reynolds** had a conversation about the extensive studies and documentation done by the State of Indiana for their transition to an HSA . They talked about preliminary research that had been done by the Department and the Group Insurance Advisory Committee. Senators Thayne and Nonini were involved in discussions, but no actual in-depth study had been done. **Mr. Reynolds** pointed out that if the Department was going to do a global change to the current plan, they would conduct a study.

Senator Goedde and **Mr. Reynolds** talked about Preferred Provider Organizations (PPO)s, the differentiation of premiums, with more money going into the HSA with someone who is in a PPO, and encouraging the use of HSAs to make a substantial difference in the state's cost of insurance. They discussed the incremental piece of additional costs between the basic plan and the PPO and that an in-depth study would have to be done regarding the fiscal impact.

Senator Thayne made some closing remarks about rising health care costs, the new legislation being a tool and that HSAs, in order to work, had to be funded. He encouraged the committee to pass this bill and move it forward to the Fourteenth Order of business.

MOTION:

Senator Schmidt moved that **S 1106** be sent to the Fourteenth Order of business. **Senator Martin** seconded the motion. **Senator Schmidt** said the bill needs further study. He liked the voluntary choice. He commented that the State of Indiana made the HSA attractive to its employees by funding the account. He said he didn't think the State of Idaho was ready, and he would expect the State Employee Insurance Council to consider HSAs carefully before moving forward.

The motion carried by **voice vote**. Senator Thayne will carry the bill on the floor of the Senate.

H 26

Steve Keys, Deputy Administrator of Operations, Division of Building Safety, presented this bill relating to the installation of heating, ventilation and air conditioning (HVAC) systems. He said that prior to the adoption of statutes establishing the HVAC regulatory scheme in 2004, the plumbing industry installed fuel gas piping, steam and chilled water piping, and hot water boiler systems. Since 2004, such installations have fallen under the jurisdiction of the HVAC Board, and HVAC installers were expressly provided the authority to make such installations. Since that time, however, HVAC installers, as well as plumbers and plumbing contractors, have performed such installations. It has been widely accepted throughout both industry trades that historically such installations have been a component of plumbing work. That understanding served as the basis for the original exemption. The statute does not clearly establish that a holder of a plumbing license may perform fuel piping or piping for steam and hot water boiler systems, thus clarification of the exemption is necessary. The plumbing industry would like to clarify the legal authority of plumbers to perform these types of installations within the scope of a plumbing license and to continue to provide these services. This proposal has received wide support from both the

plumbing and HVAC industries, as well as both the plumbing and HVAC boards. This statutory amendment would clarify that a holder of either a plumbing or HVAC licence may make such installations. The separation of "fuel piping" and "piping for hydronic systems" is intended to clarify that both systems may be installed with either license. Amending "gas" to "fuel" aligns the scope of fuel piping with that identified in the Idaho State Plumbing Code. This bill has no adverse financial impact.

This legislation clarifies the permissive language that allows licensed plumbers to perform work that falls under the purview of the HVAC board. The changes were instigated by the plumbing industry, and originally brought before the plumbing board. The resulting legislation reflects a cooperative effort involving both boards and both industries. The language in this legislation in line four on page two changes the term "license" to "certification" reflecting the actual statutory reference to certificates of competency applicable to plumbing. Changes reflected in language found in lines seven through ten on page two clarify that plumbers are allowed to perform specific portions of HVAC work traditionally performed by plumbers, namely piping comprising parts of fuel systems, hydronic systems, and steam and hot water boiler systems. This legislation imposes no additional costs in the form of fees or actual construction costs to the building owner. The division is aware of no opposition to this proposed legislation.

Chairman Tippetts and **Senators Goedde, Schmidt** and **Durst** asked Mr. Keys to define several terms. **Mr. Keys** explained that a hydronic system was a system that circulates hot or cold water for heating or cooling purposes. He also explained that gas was changed to fuel to accommodate and include oil heat. He said a steam fitter was someone who was a pipe fitter who deals with steam. **Mr. Keys** said the trades were very supportive of this bill.

MOTION:

Senator Martin moved that **H 26** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Goedde** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

H 46

Mark Larson, Idaho State Fire Marshall, Department of Insurance, presented this bill relating to fire escapes and doors. He said the sections of Idaho Code that the Department of Insurance was asking to repeal were put in place prior to the existence of any building codes or fire codes. The International Code Council Fire Code (aka International Fire Code) is a companion code to the International Code Council (ICC) building code. The chapter in the building code that deals with exiting is reproduced in the fire code, and, according to Idaho Code § 41-253, the International Fire Code is adopted as a statewide minimum standard. It is enforceable even if a city or county has not adopted the building code.

The enforcement of the code is covered by Idaho Code, § 41-256 in that fire chiefs (or their deputy) of every city or fire district act as assistants to the State Fire Marshal in carrying out the provisions of the fire code. In those areas outside any fire jurisdiction, the county sheriff (or his deputy) is given the authority to enforce the fire code.

This provides the opportunity for enforcement of the exiting requirements in all areas of the state. The safety of the citizens of Idaho would not be jeopardized if the provisions in Title 39, Chapter 19 were repealed, and repeal would reduce confusion and redundancy of applicable provisions. He said it was not anticipated there would be any fiscal impact.

He indicated the first three sections of the fire code deal with fire escapes in that the requirement that all buildings over two stories have an external fire escape, how they are to be attached and the penalty for not complying with the law. The fourth statute requires that all doors in a public building open outward. He said the first four sections of the code were first passed in the early 1900s. Current fire and building codes do not have similar requirements. These sections have not been enforced in years, and removing them would eliminate an opportunity for confusion and misapplication.

Vice Chairman Patrick asked for a clarification on doors opening outwards and the idea that any regular door would qualify. **Mr. Larson** explained that currently when the occupant load exceeds 50, the doors must open outward. **Senator Durst** expressed a concern about the Fire Fighters' Association not being involved in this decision.

MOTION:

Senator Guthrie moved that **H 46** be sent to the floor with a **do pass** recommendation. **Senator Goedde** seconded the motion. **Senator Durst** said he would be inquiring with the Fire Fighters' Association and if there was an objection, he may change his vote on the floor. The motion carried by a **voice vote**. Vice Chairman Patrick will carry the bill on the floor of the Senate.

H 44

Bob Fick, Communications and Legislative Affairs Manager, Department of Labor (Department), presented this bill relating to the Employment Security Law. He said the Federal Trade Adjustment Assistance Extension Act of 2011 requires states to amend their unemployment insurance laws to impose a monetary penalty on benefit claimants whose fraudulent acts result in overpayments; to require the first 15 percent of an assessed civil penalty to be paid into the Employment Security Fund; to prohibit employers from being relieved from charges to their unemployment insurance accounts when their actions lead to improper benefit payments; and to amend the definition of "rehire" in the State Directory of New Hires to include individuals previously employed by the employer who were separated from that employer for at least 60 consecutive days prior to reemployment.

There is no fiscal impact to local government funds. The Office of the State Controller has reviewed the bill and determined that modifying the Controller's computer to accommodate the change in rehire reporting will cost between \$2,000 to \$5,000. The requirement to deposit into the Employment Security Fund 15 percent of civil penalties imposed on benefits collected due to fraud or misstatement of fact, will reduce revenue to the Department's Penalty and Interest Fund by \$460,000 a year.

Mr. Fick said that an experience-rated employer's account may not be relieved of liability for benefits paid to a claimant that are subsequently determined to be overpaid, if the covered employer or an agent of the covered employer is at fault for failing to respond timely or adequately to the Department's written or electronic request for information relating to a claim for unemployment insurance benefits and the covered employer or agent of the covered employer has established a pattern of failing to timely or adequately respond. He went over what defined "timely", "adequate" and a "pattern of failure to respond".

He said a covered employer should be notified in writing of the Department's determination, which would become final unless, within fourteen days after notice as provided in section 72-1368 (5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with the provisions of section 72-1361, Idaho Code.

Mr. Fick talked about the civil and interest penalties for any person who receives benefits or overpayments to which he was not entitled.

H 44 contains three changes to Idaho's Employment Security Law required by the United States Department of Labor to keep Idaho's unemployment insurance program in compliance with federal requirements. The first provision requires employers to respond in writing to the Idaho Department of Labor within seven days of the filing of an initial unemployment insurance benefit claim by a former employee. If the employer fails to respond, the employer's account will be charged with any benefits allowed the employee even if the employee is later determined ineligible for benefits. Currently, employers are notified by mail the day after a claim is filed and asked if they dispute the claim. They are also contacted by phone within a week. But if they fail to provide their side of the story, the Department has no alternative but to base a decision on benefit eligibility relying on the employee's side of the story. The employer is then notified of the determination and given 14 days to appeal. If the employer wins on appeal and benefit eligibility is withdrawn, the Department stops benefit payments and begins collection of the previously paid benefits as an overpayment. The employer is not charged for those erroneously paid benefits. Instead, the charge is spread among all employers, and that can have a negative effect on their future tax rates. **H 44** would charge the employer account for benefits paid. Employers would be given a pass on the first failure to comply with the seven-day response deadline and would not be charged for any benefits granted and later withdrawn. Last year, about 100 claimants were allowed benefits after the employer failed to respond to the initial claim and then successfully protested the eligibility determination. In these cases, over \$110,000 was paid in what were determined to be overpayments after the employer finally responded. Under the current law, the employer was not charged for those benefits. The cost was spread among all the employers in the state.

The second provision requires that 15 percent of any civil fine imposed on benefit overpayments due to misstatement of fact or fraud be deposited in the Unemployment Insurance Trust Fund rather than the Penalty and Interest Fund, which is used to subsidize other Department operations, such as the Human Rights Commission.

Idaho currently has a three-tiered penalty system for overpayments. Twenty-five percent of the overpayment on the first instance, 50 percent on the second and 100 percent on the third. All that money currently goes into the Penalty and Interest Fund. **H 44** would deposit the first 15 percentage points into the main trust fund. This would have the advantage of building up the trust fund, which tempers employer tax rates. It also would mean the Department will have about \$460,000 a year less in penalty and interest fund revenues for its other operations. The final provision reduces the period for reporting rehires under the New Hire Reporting law from one year to 60 days. The law was implemented as part of welfare reform in the mid-1990s. Its primary purpose was to identify parents who had obtained jobs and had back child support so their paychecks could be garnished. The United States Department of Health and Human Services is requiring the shorter reporting period for rehires under penalty of withholding operating grants from the State Department of Health and Welfare.

As a by-product of this law, the Department of Labor is able to more quickly identify benefit claimants who have returned to work but are still collecting benefits. Because new hires must be reported within 20 days of hire, the Department cross-matches that list with benefit claimants and more quickly identifies those who are trying to obtain benefits improperly. The relatively quick notification of new hires keeps the amount of improper benefit payments down so the money is easier to collect. Last year the Department identified over 1,500 individuals who had gone to work without reporting to the Department and continued to try to collect benefits. The overpayments involved totaled about \$3 million. Had the Department relied on the quarterly reports filed by employers to identify these

claimants, the overpayments would have been triple or quadruple that amount, since the difference in timing can easily be five or six weeks versus five months.

The first two provisions of **H 44** take effect October 22, 2013, the deadline set by the United States Department of Labor for adopting those requirements. The new hire provision takes effect July 1. Failure to adopt these mandated changes will put the state's unemployment insurance program out of conformity with federal requirements. That would subject Idaho employers to a loss of the 5.4 percent federal tax credit on the first \$7,000 paid to each worker every year. Employers now pay a 0.6 percent tax, or \$42 per employee. Loss of the tax credit would increase that tax to \$420 per employee. In addition, the state would lose the \$28 million it receives from the federal government to operate the unemployment insurance and employment services programs.

A discussion ensued among **Senators Cameron, Goedde and Durst and Mr. Fick** regarding when the federal requirements for the civil penalties of the bill were paid. **Mr. Fick** said the penalties were three-tiered or 25 percent for the first offense, 50 percent for the second offense and 100 percent for the third offense. He explained the federal government has mandated they want 15 percentage points or 3/5ths of the \$25 penalty, in the case of a 15 percent penalty, they want 15 percentage points of that or 3/10ths and in the case of the 100 percent penalty, they wanted 15 percentage points. The federal government is requiring all states to have a penalty. He said the penalty was not additional. When the state receives the cash, the civil penalty is paid to the United States Department of Labor. The Department has the strategy and plans in place to deal with tighter resources as they have had to do in the past.

He also said that in the case of failure to comply within seven days or a first offense, there is a "pass" issued to the employer. He further stated the Unemployment Insurance Trust Fund is a federally held trust in the name of Idaho and is the fund where employers tax payments are held. Only benefits can be paid from this trust fund. The trust fund is built up to a point that when there is a downturn, the trust fund has the ability to withstand 18 months of severe downturn. However, when the fund is drawn down, it triggers higher payments for employers until the fund is built back up. When the account balance is maintained at a higher level, costs for employers decrease.

The committee members and **Mr. Fick** discussed whether the employer or employee would win or lose with the impact of the legislation. The 45,000 employers who do respond, don't have claims filed against them. They benefit because they would no longer be liable, and the claims would not be spread upon their liability. New hires lose if, for example, this is a person who has failed to pay his child support. Employers win because they are able to identify more quickly people who have gone back to work and who have failed to notify them and continue to collect unemployment. That leaves more money in the trust fund that the Department can avoid paying out, which keeps the balance higher. When workers are found who are taking advantage of the system and identified and penalized, it increases the confidence and the credibility of the program. That ultimately benefits workers and employers.

MOTION: **Senator Goedde** moved to send **H 44** to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. **Senator Durst** said he was not in favor of the bill because the scales were in the favor of the employer. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:52 p.m.

Senator Tippetts

Chairman

Linda Kambeitz

Secretary