

## MINUTES

# SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

**DATE:** Tuesday, March 19, 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:** **Chairman Tippetts** called the meeting to order at 1:30 p.m.

**S 1145** **Thomas Limbaugh**, Commissioner of the Industrial Commission (Commission), presented this bill relating to Workers' Compensation to extend deduction provisions. He said the 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, and is used by the Commission for administering the workers' compensation law. The law does not provide the Commission with authority to reduce the amount of tax collected. However, in 2011, the legislature amended the code to allow for a temporary premium tax rate reduction during the period January 1, 2012 through December 31, 2013.

The Commission collects premium tax on a semi-annual basis and only completed its collections for calendar year 2012, under the reduced rate, in March 2013. The expected decline in premium tax collections was somewhat mitigated by the increase in the volume of premiums written. Therefore, this proposed amendment will extend the legislature's temporary tax relief to sureties and self-insured employers providing workers' compensation benefits. The Commission administration fund balance as of January 31 was \$18,459,000. This represents 160 percent of the current year's budget. The fiscal impact 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 to the Industrial Administration Fund. Including the current statutory reduction for fiscal year 2014, the overall impact should be close to \$5 million.

**TESTIMONY:** **Suzanne Budge**, representing the National Federation of Independent Business (NFIB), said members had some core concerns about business issues. Workers' compensation was one of the concerns, along with unemployment insurance and health insurance. She said they were supportive of the Commission and their efforts to reduce premiums on businesses. They applaud their efforts in considering the business community and they are supportive of the bill.

**MOTION:** **Senator Cameron** moved that **S 1145** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

**Chairman Tippetts** went over the rules for testifying and asked those who appeared to state and spell their name, 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 suggested testimony be in reference to changes between this bill and the previous legislation, S 1042.

**Chairman Tippetts** said he had been questioned about a conflict of interest as chairman of this committee, since he sits on the board for the Idaho Association of Commerce and Industry (IACI). They are primary supporters of the Health Insurance Exchange. He said it is true that he represents his employer, Agrium, on the board of IACI, and he has done so prior to being appointed as a state Senator, but he was here to represent his constituents. He said he has not declared a conflict of interest because his relationship with IACI does not constitute a conflict of interest. He said he checked with the Attorney General's office and they concurred there was no conflict. He said it was important to him that everyone had confidence that the system is fair and impartial.

**H 248**

**David Hensley**, Chief of Staff, Governor's Office, presented this bill relating to the state Health Insurance Exchange (Exchange). He said he wanted to highlight and call attention to some of the changes in the language that has been added.

**Mr. Hensley** pointed out the first major change was on page 2, where the membership of the board increased from 16 to 19 members. The additional members will be legislators, one member from the House, selected by the Speaker of the House, one member from the Senate, selected by the President Pro-Tempore, and a member of the minority party, selected by minority leadership. These legislators will serve as voting members of the board. New language was also added to further restrict the board in the operation of the Exchange. These restrictions include the requirement that the board accept Requests for Proposals (RFP). The Exchange must certify to the Governor and the Department of Insurance that the Exchange user's information is secure, before it begins taking applications from people who are voluntarily looking to purchase insurance.

The board is prohibited from changing its legal structure, asking the state for state funds, taxing or encumbering state assets, or inquiring about gun or ammunition use, ownership, possession or storage. The Exchange is further limited that in any event any provision of the law is overturned by a federal court, the Exchange must cease implementing that provision, unless there is a stay of the decision and an appeal.

Provisions were added to increase transparency and oversight. He said there was new language to make sure meetings of the board are either televised or streamed over the internet, in addition to the previous requirements of the open meeting laws of the State of Idaho. He referred to the bottom of page 3, and said sub-section 11 was added to make sure premium rates charged by a health carrier for a health benefit plan or stand-alone dental plan offered in the Exchange will be based upon Idaho rating areas established by the director consistent with 42 United States Code title section 300gg, *et seq.* **Mr. Hensley** said the legislation recognizes there will be an exchange in Idaho. The state chooses to build and run the Exchange, instead of defaulting to a federal Exchange and encourages using Idaho contractors where practical. There will be a market outside of the Exchange to purchase health insurance. The Exchange is completely voluntary and there is no requirement to use the Exchange to purchase insurance. The Exchange can assume no other functions beyond the powers given, and it is to be a marketplace to shop, compare and buy health insurance coverage.

**Mr. Hensley** said the legislation provides legislative oversight because board members would be subject to Senate confirmation. Three legislators would be on the board as voting members. An annual report must be submitted to the legislature. The board must report to the germane committees of the legislature during session and provide information on changes to its bylaws, changes in federal laws or rules, and any fee changes to Exchange users. Those reports have to be done on or before January 31 of every year. A new provision was added to encourage the board, to the fullest extent practicable, to contract with Idahoans and Idaho businesses as needed, to support the Exchange. Language was also added in the emergency clause, which would require the Governor to delay implementation if the requirements for the completion of the Exchange or federal grants are changed by Congress or Health and Human Services (HHS).

**Senator Cameron** said he thought Idaho had done everything to prevent abortion and potential abortifacients from being covered by the Exchange. There seems to be some consternation about the abortifacients, such as Plan B One-Step® or Ella®, called the "week after" pill. **Mr. Hensley** said he concurred the state has done all they can to prevent abortion. The concern arising about Plan B One-Step® and Ella®, stem from the fact that the Food and Drug Administration has categorized those as contraceptives. Contraceptives will still be offered, beginning in 2014, through the essential benefits package of a qualified health plan through a state, federal, and in some of the plans, outside of the Exchange in the marketplace, as part of the full-grown market reforms of Obamacare.

**Senator Cameron** said there was nothing the state could do except fight against abortifacients, and it would require a change in the federal law. He said one of the common ideas is that if the state does not adopt a state-based Exchange, somehow there is no tax penalty that would occur for businesses. Passage of this bill requires the state and the state Exchange to enforce such a tax penalty. He wanted to know, for the record, if a state-based Exchange would have any authority to enforce any kind of tax penalty. **Mr. Hensley** said the specific language of the bill prevents the Exchange from enforcing or implementing a penalty. He said they have sought the Attorney General's opinion on that subject and they concur it will be the responsibility of the Internal Revenue Service.

**Senator Durst** said the chairman of the House Appropriations Committee was quoted in the "Idaho Statesman" as saying that her perception from the Governor's office was that there would be a cap or restriction on fees. He asked Mr. Hensley to explain why those kinds of changes would be considered. **Mr. Hensley** said he did not know that the chairman of the House Appropriations Committee had said that. He said, as we look at the costs, which have been clearly debated throughout this process, and whether the cost estimates that they believe would be true or not, they have tried to provide flexibility for the board, to operate as a business, make fees necessary to cover costs and to provide oversight to the legislature to review those fees. If the legislature feels those fees are unwarranted or unjustified, then that situation would be addressed.

**Senator Durst** said that his understanding of the federal Exchange was that there is a limit on the amount of fees paid by the user. He said that in this bill there is no limit in the actual value of the fee or the actual percentage of the cost of operation, that is paid by the user. **Mr. Hensley** said the federal government has said, in terms of operating a federal Exchange, they are going to charge a 3.5 percent premium tax on policies purchased through that Exchange. He said that was in the regulations, and he said the federal government may agree to change the tax. He said that was our starting point for the analysis for the potential ongoing costs. He indicated that what we have done is to try to compare that against the information provided over the course of the summer by the Governor's task force, and that the operating cost would be \$10 million. In terms of looking at that, those are estimates and they believe they were provided by experts who understood the information and gave their best guess as to what that means. Also, they are not opposed in the future, if there are appropriate sideboards, to look at the fee structure. They tried to provide flexibility to address costs as they may encounter in operating the Exchange in the first couple of years.

**Wayne Hoffman**, Executive Director of the Freedom Foundation, said he opposes the insurance Exchange. He pointed out areas that he thought were problems remaining with the bill. He said on page 3, subsection 11, under the Affordable Care Act (ACA), rating areas can be put in place without having to create a state Exchange, so it is a fallacy that a federal Exchange will all be under one rating area. He added that by directly referencing the ACA 42 of the United States Code section 300gg, *et seq.*, there is a problem because Congress is writing Idaho statute for the legislature, which is easily remedied by putting in the code section as it exists on a particular date such as January 1. He said he was concerned about the fees outlined on page 4, line 9 of the bill. We do have the ability to set some kind of rate, and we should.

He said when testimony was heard in committee on S 1042, the committee was told the rate was going to be \$4.80 per patient, but he heard on the House floor the figure was now \$7 per patient per month. He felt some amount should be placed in the bill because otherwise the rate cannot be controlled. In the Idaho Individual High Risk Insurance pool, the rates were calculated with no dollar amount, however, the formula is calculated as set by statute. The rate is subject to review by the director of the Department of Insurance. The legislature has the ability to revise the bill to put some limitations in place.

On page 5, subsection g, the language states the board certifies to the director and governor that personal information collected from and about any person who voluntarily uses the Exchange will be secure. They want to see some kind of limitation on which agencies, whether federal or state, that would have access to the data. Where it states the data is secure, hackers like to prove that it is not.

When the bill refers to firearms and ammunition, under the ACA, it specifically says that the secretary cannot cause the collection of information relative to ammunition or firearms. He referred to the part of the bill that says if a section of the ACA is ruled unconstitutional, then the Exchange will immediately cease enforcing a portion of the provisions and said it was vague. He said this was a delegation of the legislature's lawmaking authority.

He referred to the bottom of page 5 and said it causes a potential increase in costs to the consumer. He talked about a part of the old bill on page 3, subsection 6 (a), saying neither the members of the board nor any other person working or performing services for the Exchange, can be considered public officials. According to the Idaho public records law, information concerning the pay of public officials is a matter of public record. He is concerned that if the members are not public

officials, then any employees who are hired by the Exchange would be exempted.

**Mr. Hoffman** said the changes in this bill makes things worse. At a minimum, the legislature should consider putting some sideboards and amendments on this legislation, if they choose to move forward with a state Exchange.

**TESTIMONY:**

The following people submitted written testimony and testified: **Greg Ferch**, who said he represented himself, and said he was in opposition to a state Exchange. He said the House suggested that because there is a \$20 million federal grant, that the Exchange was not going to cost Idahoans very much money. He said he thought that comparing the state Exchange to a high risk pool was not good. He said with the high risk pool, Obama's fingerprints were not all over it. He said some of the arguments for a state Exchange are nebulous, such as a seat at the table and having control. He said we keep hearing statements about what we don't have control over, such as whether or not we will be paying for abortifacients. He gave the example of his 20 years of dealing with medicare, how they tell you what you are to do, and that practical choices are very limited. He said he finds it foolhardy that we are going to sign off on something when we don't know the impact. There are too many unknowns. He said he wanted to add his materials as part of the testimony. See attachment 1.

**Peg Munson** said she was a volunteer for the American Association of Retired Persons (AARP) and testified AARP is in support of **H 248** .

**Kerry Uhlenkott**, Legislative Coordinator for the Right to Life, Idaho, testified in opposition to **H 248**. She said she was concerned there is no explicit protection for unborn life with regards to abortifacients. The Idaho Attorney General's office legal opinion states that under a state or a federal Exchange, insurance companies in Idaho may not provide coverage for either surgical abortion or the abortion-inducing drug RU486. Under a state Exchange, insurance companies would be required to provide for Plan B One-Step® or Ella® (potential abortifacients), which are considered emergency contraceptives, because they are also considered contraceptives. She cited Dr. James Trussell, who is considered a leading authority on emergency contraception, He said doctors have a duty to inform women that emergency contraception could prevent a newly-conceived embryo from implanting in the womb, causing an abortion. She stated that insurance companies in Idaho would be required to provide for emergency contraception, whether there is a state or federal Exchange. Employer-mandated tax can only be imposed under the state Exchange. The ACA requires businesses with more than 50 employees to provide a government-approved health care plan and if they don't, they can face a tax penalty up to \$3,000 per employee. Due to the way the law was written, the ACA is dependent upon the existence of a state Exchange to impose this tax penalty. She urged the committee to vote no.

**Senator Durst** asked if amendments were added to **H 248**, that prevented the coverage of emergency contraception, would Right to Life support the bill. **Ms. Uhlenkott** said they would support the bill. **Senator Durst** said different faiths have opinions on abortifacients, and what would she say to those who were of the evangelical viewpoint. **Ms. Uhlenkott** said that was why they went to Dr. James Trussell, who came out with his position in February. Quoting him, "to make an informed choice, women must know that emergency contraceptive pills prevent pregnancy primarily by delaying or inhibiting ovulation and inhibiting fertilization, but at times inhibit implantation of a fertilized egg in the endometrium."

**Karen Calisterio**, representing the Republican Liberty Caucus of Idaho, testified in opposition to the bill. She said the committee refused to see the facts. What will the people of Idaho do when they discover that Obamacare was brought to Idaho, courtesy of the Idaho legislature, she said. There were other options available, but we didn't explore them. She said she thought we should wait for more facts before making a decision. **Vice Chairman Patrick** said that use of the Exchange was not mandatory and it was not anticipated that there would be many Idahoans using the Exchange. **Ms. Calisterio** said by adopting a state Exchange, the state is opened up to the federal mandate.

**Chad Inman** testified he was in opposition to **H 248**. He said he wanted to leave a copy of a speech that the Honorable Daniel Eismann wrote about Obamacare. See attachment 2. He said in addition to himself, many others are opposed to the Idaho version of the health care Exchange for many reasons, and they feel they have not been told the truth. When people ask how many options do we have, he has heard people say we have only two choices and those are a federal or a state Exchange. He questioned that we have been told that by having the state run Exchange, we will have control and have a place at the table. Lies will come out and will continue to be told, but he does not blame the committee because they are under a lot of pressure from lobbyists and the Governor. He said he hoped the legislature does the right thing because his children and their children are depending upon it.

The following people testified, but did not submit written testimony: **Jack Stuart**, said he was a World War II veteran and was a member of the Board of Directors of the Boise Tea Party, but was representing himself. He testified in opposition to the health care Exchange. He said that since the federal government would be in control and still writing the rules, we cannot estimate the costs, which could be in the millions. He said someone has to pay for it. He urged the committee to wait and see what the rules will be. He said he thought the state Exchange was unconstitutional and an intrusion by Idaho into citizen's affairs. He said he recommends the state refuse the ACA as unconstitutional and let the courts rule on the Act.

**Tom Shores**, representing the Idaho Association of Health Underwriters (IAHU), testified in support of the Exchange. He said he thinks this bill addresses oversight problems of the legislature, the money is not coming out of the state coffers, and starting January 1 of this coming year, no health information will be asked on any of the applications. We will be moving to a community rating system where every 52-year old individual will be rated based on the age, geographic areas and whether or not they smoke.

**Brad Bolicek**, representing himself, testified in opposition to the bill. He said the state Exchange will be at the mercy of the federal government as to how it will be designed and run. He said the state Exchange would operate the same as Obamacare. He asked, why would Idaho republicans create this Exchange? The Idaho Health Exchange Alliance was formed to back Governor Otter's Exchange. These companies have poured money into campaigns and will benefit from a state-run Exchange. The industry stands to gain in the short term. The people will pay the price in the long run for Governor Otter's Exchange. He urged the legislature not to support the bill. He said there are almost 30 states who have said no to Obamacare, so why not wait for the outcome of the Oklahoma lawsuit. He said lobbyists and insurance companies are pushing for the Exchange. He urged a no vote or all of our rights will be gone.

**Toni Lawson**, Vice President of the Idaho Hospital Association (Association), testified in support of the Exchange. She said it was important to the members of the Association because, from their experience, they know what it is like to deal with the feds for state and federal programs. She said it is always best to work with a state agency rather than the feds. She said their Association has conducted a poll and over 70 percent of Idaho voters were in favor of moving forward with a state-based Exchange rather than a federal Exchange. She said their hospitals have taken the same position as the Association.

**James Widmeyer**, representing himself, testified in opposition to this bill. He said he has seen several polls and a majority do not support a federal takeover of health care. He said AARP makes their money through selling insurance and they don't disclose they expect to make between \$1 billion to \$2 billion dollars in profits on the Obamacare fiasco. The health care data, a person's income, and very personal health information is currently scheduled to be transferred through at least three federal government agencies. The information will be there to be hacked. In the 1960s, expenses were considerably less. As other government agencies have become involved, medical costs have skyrocketed. All decisions should be made between the patient and their doctor without the government being involved. He urged the committee to save the people of Idaho by stopping the invasion of our people.

**Steve Millard**, President of the Idaho Hospital Association (IHA) testified in support of the state health care initiative.

**Cory Surber**, representing Saint Alphonsus Health System and the Director of Community Health Initiatives, submitted written testimony, and testified in support of the bill and the changes made by the House. She said a state-based Exchange will be cheaper. Colorado has already demonstrated their state Exchange is cheaper than the feds. She said the State Department of Insurance was better suited to enforce the Exchange.

**Steve Thomas**, representing the Idaho Association of Health Plans, referred to the remarks of Mr. Hensley and Mr. Shores and said that **H 248** has many contributing authors and said it was strong, fair and more conclusive. He testified in support of a state-run health Exchange, but submitted no written testimony.

**Elizabeth Criner**, representing the Idaho State Dental Association, submitted written testimony, and testified in support of the bill. She said it was the best for our state. She said the ACA has been followed closely by her association and is the law they have to work within. The federal law is very clear that in the absence of a state Exchange, a federal Exchange will be enforced. She said our state is far better at responding to the people of Idaho than the federal government. The state health Exchange is not mandatory and it is an on-line marketplace designed to provide information on health insurance policies that are available, where businesses and individuals can choose to purchase insurance. Consumers will be able to make informed decisions about the purchase of health insurance. She said it is important that we keep in mind that concerns about the ACA can only be addressed by Congress. They do not endorse the ACA.

**Stacey Satterlee**, Idaho State Director of Government Relations for the American Cancer Society, Cancer Action Network, testified in favor of the state-based health Exchange because she said it would save money. She said it is important that cancer patients have access to immediate and quality health care. Increased access to health care coverage would be in the best interest of Idahoans, which translates into earlier detection and better outcomes for those fighting cancer and other diseases. For the estimated 7,720 Idahoans who will be diagnosed with cancer this year, having that access to health care coverage is critical. They

appreciate the work that has been done to add transparency to the Exchange. She did not submit any written testimony.

**Senator Sheryl Nuxoll**, representing District 7 and Idaho Catholics, submitted written testimony, and testified in opposition to this bill. She said that Catholic bishops, in their publication, "Forming Consciences for Faithful Citizenship", stated that a direct and intentional destruction of innocent human life from the time of conception until natural death is always wrong, and it must always be opposed. Cardinal Archbishop Timothy Dolan has expressed that it violates our conscience and religious liberty when he said, "In effect, the president is saying we have one year to figure out how to violate our consciences." To force Americans to choose between violating their consciences and foregoing their health care is literally unconscionable. It is as much an attack on access to health care as on religious freedom. She quoted Pope Francis I who has said, "defend the unborn against abortion even if they persecute you, calumniate you, set traps for you, take you to court or kill you. No child should be denied the right to be born, to be fed and to go to school." She said Plan B One-Step® and Ella® are potential abortifacients. Our state has the duty, according to the statute, to protect us in our freedom and our religion. We can't hand this duty over to the mercy of the federal government. The state Exchange implements an intrinsic evil, such as abortion and the loss of our religious freedom, and we need to reject it.

**Christine Tiddens**, Public Policy Coordinator for the Catholic Charities of Idaho, representing the Roman Catholic Diocese of Idaho, who did not submit written testimony, testified in favor of the Exchange. She said their goal in advocating this bill was to promote affordable high quality coverage for all people in Idaho. They believe that human rights must be protected. It is the foundational belief of Catholic Charities of Idaho, the Roman Catholic Diocese of Idaho, Catholic Charities USA and the United States Conference of Catholic Bishops to oppose federal mandates that require health insurance plans to cover contraception, abortion, and abortifacient drugs. They recognize the mandates can only be changed at the federal level. They need to take action now to protect the lives of all vulnerable populations in Idaho. Idaho has already taken proactive measures to limit abortion coverage. A state-based Exchange will promote better value for the dollar. She urged support of **H 248**.

**Woody Richards**, representing America's Health Insurance Plans, submitted written testimony, and testified in support of the bill. He emphasized that, based on the best information we have, the state Exchange will be less expensive. He said we will have a better opportunity to negotiate at the table, and it is the best deal for Idaho citizens. By having a local Exchange, it is the best opportunity for consumers when complaints or problems arise.

**Carol Cassidy**, representing herself, testified in opposition to the bill, but did not submit written testimony.

**Senator Cameron** stated that for the record, he had a conflict of interest because he sells insurance, pursuant to Senate Rule 39, but intended to vote, even though a piece of the bill will harm his business. He said he has been on record long before Obamacare was passed as stating ACA would do harm to Idahoans and health care. He said he believes that the passage of a state-based Exchange is the only option in order to prevent intrusion by the feds, for our health care decisions. He said the state-based Exchange was a Republican idea long before Obama included it in the ACA. He said he thought a state Exchange was our only choice to protect Tenth Amendment rights. He said there are some who believe we have the option of nullification, and he wished he believed that was an alternative, but he does not. He said he was convinced that if the state does not act, the federal government will. It was a difficult decision for the Governor, who took a long time



evaluating, a state-based Exchange, and after counsel with legal entities, he thought it was in the best interest of Idahoans. He is willing to stand behind that decision as we continue to fight. **Senator Cameron** said he has a perfect voting record when it comes to the termination of pregnancy and fighting against abortion. He was elected on the pro-life platform which he still maintains. He thinks Idaho has done all they can to protect the rights of the unborn, and if there are additional provisions or laws that need to be passed or considered, he is certainly willing to help. It is an awkward position between what the federal law says and what the state law says. He said the state protects us so our companies are not required to offer abortion as a required service, both under the state Exchange and the federal Exchange. Once a federal Exchange is established, there will be no more input from state companies. He said companies that are selling in other states where abortion is required will then offer those same plans to Idahoans. He believes the federal government will not, in spite of our actions, force the other states to abide by that decision. He said we are more at risk that abortions will be covered under a federal Exchange than a state Exchange.

**MOTION:** **Senator Cameron** moved that **H 248** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. **Senator Durst** said there was no option given to the Senate to make suggestions for changes. There are things in the bill that are significantly lacking pertaining to the fees that those who use the Exchange will have to pay. Most people who use the Exchange will be of middle to low income and who can least afford to pay the costs for operating the Exchange. He would feel much better if there was some sort of language inserted about the user fee to indicate that those who would profit from this endeavor would pay the fee.

**SUBSTITUTE MOTION:** **Senator Durst** moved to send **H 248** to the Fourteenth Order for possible amendment. The motion died for lack of a second.

**Senator Goedde** stated he wanted to disclose for the record, that he had a conflict of interest pursuant to Senate Rule 39, because he is licensed to sell health insurance, however, he does not use his license, but he intended to vote.

**ROLL CALL VOTE:** **Chairman Tippetts** called for a roll call vote. **Vice Chairman Patrick** and **Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt,** and **Chairman Tippetts** voted aye. **Senator Durst** voted nay. The motion carried. Senator Tippetts will carry the bill on the floor of the Senate.

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

---

Senator Tippetts  
Chairman

---

Linda Kambeitz  
Secretary