

MINUTES
SENATE EDUCATION COMMITTEE

DATE: Tuesday, March 19, 2013

TIME: 3:00 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Goedde, Vice Chairman Mortimer, Senators Pearce, Fulcher, Nonini, Thayn, Patrick, Durst and Buckner-Webb

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 Goedde** called the Education Committee (Committee) to order at 3:06 p.m., and a silent roll was taken.

GUBERNATORIAL APPOINTMENT HEARING: **Ken Edmunds**, candidate for Gubernatorial Appointment to the State Board of Education (SBE), stated that he had served on the SBE for the past five years. The SBE has instituted the goal that 60 percent of all persons between the ages of 24 and 35 will have an educational certificate or degree by the year 2020. In addition, a task force for educational improvement (task force) has been put in place. **Mr. Edmunds** believes it is a "perfect time for change," and looks forward to the opportunity to serve in the new focused direction.

Senator Durst asked about the use of the word "flagship" in the University of Idaho (UI) mission statement. **Mr. Edmunds** replied that he felt Idaho's institutions of higher learning should not create a competitive environment, but rather a unified system based on collaboration. **Senator Durst** asked Mr. Edmunds his views on the requirements for online learning which had been repealed with the defeat of Students Come First. **Mr. Edmunds** replied that he is a believer in local control and that districts should have the latitude to include online learning requirements as appropriate for their districts. The task force is reviewing this issue, and he will reserve opinion until that process has been completed.

Senator Patrick stated that people have been unhappy that one school is getting all the attention because of the focus on football, that he has been asked to vote no on the appointment, and asked why this has not been addressed. **Mr. Edmunds** replied that the SBE understands the issue and realizes that one institution is more politically focused than others. He would prefer to see a more system-based approach.

Senator Pearce asked about the qualifications and changes needed from a new president at UI. **Senator Pearce** voiced concerns that a university president determines the climate of their institution, which in turn can influence the state and its policies. **Mr. Edmunds** replied that the universities are now at a tipping point. One president is leaving and two more are nearing retirement. He believes it is time to consider a chancellor system in Idaho which could solve several problems. **Mr. Edmunds** further responded that the UI land grant status is very important so that UI can reach into every country and have influence. A future leader needs to know the value of that status and ensure that it continues.

Vice Chairman Mortimer voiced his belief in the chancellor system. He then directed Mr. Edmund's attention to K-12, for which the SBE is also responsible, and asked about the direction for K-12 education. **Mr. Edmunds** acknowledged that in the past, higher education had been a large focus of the SBE; however, he believes that any separation between higher education and K-12 is counterproductive. The task force has been meeting with all stakeholders as well as business representatives to discuss a model for future K-12 education that aligns with the 60 percent goal of higher education. Through the process of stakeholder meetings and community feedback, he is hopeful that necessary changes can be made.

Senator Patrick asked about the resignation of both the president at UI and the Dean of Agriculture, and wanted to know whether or not an interim president would be able to appoint a new dean. **Mr. Edmunds** answered affirmatively, stating that no restrictions would be placed on the interim president.

Senator Buckner-Webb asked **Mr. Edmunds** to discuss his vision for an education system with diverse needs, levels of ability, language and competing priorities. **Mr. Edmunds** replied that the best way to deal with the big picture is to work at the local level. They have the ability; let them do their job.

Chairman Goedde thanked Mr. Edmunds for his testimony and advised that the Committee would vote on his appointment on March 21, 2013.

S 1149

Karen Echeverria, Idaho School Boards Administration (ISBA), explained that **S 1149** contains two elements dealing with collective bargaining. Subsection (3) sets out the first major element of the bill which states that the local education organization must prove that they represent "50 percent plus one" of professional employees in order to negotiate. Subsection (5) states the second major requirement of the bill, stating that both the local education organization and the board of trustees must provide written evidence that their respective parties have ratified the agreement. Negotiations are conducted every year, therefore, the ISBA believes that proof should be provided every year. Additionally, requiring proof every year allows for other qualified teacher organizations to enter the school district. Those organizations can then work with the teachers in that school district to garner their membership.

Ms. Echeverria continued that, through negotiations with the Idaho Education Association (IEA), the amendment to **S 1149** changed the requirement to prove 50 percent plus one representation only if the local school board requested it. In addition, if requested by the local school board, this proof must be provided annually. The definition of professional personnel was clarified to exclude superintendents, supervisors, or principals in the 50 percent plus one representation clause. The amendment also defines good faith bargaining and clarifies who may negotiate.

Senator Nonini said he had been told by other groups that when they have gone to meetings, they are asked to leave. **Ms. Echeverria** explained that one reason they were asked to leave is because the IEA has been representing those at the meeting. The requirement to prove 50 percent would allow other organizations to come in to determine if teachers may want to join a different organization. In answer to a question from Chairman Goedde, **Ms. Echeverria** stated that the amendment language for the definition of "good faith" had been provided by the IEA.

TESTIMONY:

Bert Marley, Director of Public Policy, IEA, testified in opposition to **S 1149**. He stated that the IEA believes that asking for proof of representation is more appropriately an issue for the professional employees rather than the school board. Requiring proof every year is unduly cumbersome and unnecessary for an organization which has twice confirmed representation of 97 to 99 percent in the past. Further, requiring joint notification of contract ratification before contract signatures was based on one incident involving a new local leader. **Mr. Marley** stated that had this bill contained a sunset clause, the IEA would be supporting it; but that without the sunset clause, the IEA stood in opposition. When asked by Chairman Goedde if one year sunsets would be supported by the IEA on provisions of the education budget, **Mr. Marley** responded in the negative.

Senator Patrick asked why the IEA felt a sunset clause was necessary when the proposals have been operative for two years. **Mr. Marley** replied that it provided consistency with other legislation which contain sunset clauses.

MOTION:

Senator Patrick made a motion that **S 1149** be sent to the Senate floor with a **do pass** recommendation. **Vice Chairman Mortimer** seconded the motion. The motion passed by **voice vote**. **Senator Buckner-Webb** voted **nay**. Senator Patrick will carry the bill on the floor.

S 1150

Karen Echeverria, ISBA, explained that **S 1150** outlines which decisions a district court can make should a teacher termination be appealed. Currently, when an action is appealed to the district court, the district court has the ability to consider new information in making its decision. Under the current law, the board of trustees will conduct a hearing on a teacher termination and make a decision based on the information that has been presented. Once that decision is made, an employee has the option to appeal the board's decision to the district court. Again, under the current law, a whole new trial begins at that level. The certificated employee's attorney now has all the information that was presented to the school district. No record is forwarded, and the judge is free to take new evidence that was not presented to the school district. In the end, the judge can make a decision that is completely separate from the one made by the local board of trustees.

Ms. Echeverria stated that to the ISBA's knowledge, this option is not available with either city or county employees nor is this option available for non-certificated employees in a school district. In those cases, the judge's decision is limited to the criteria outlined in this legislation. The judge can determine that (1) the findings of fact are not based on the evidence, (2) that the board acted without jurisdiction or authority, or (3) that the findings of law do not support the decision made by the board of trustees. In other words, the judge cannot simply rule on his or her own accord, but must remand it back to the local trustees. During negotiations with the IEA, the ISBA delineated the criteria found in section 67-5279, Idaho Code.

TESTIMONY:

Paul Stark, General Counsel, IEA, testified in opposition to **S 1150**. **Mr. Stark** stated that **S 1150** impairs a person's right to a fair hearing under the constitution, and would restrict a judge's ability to ensure justice. **Mr. Stark** delineated several due process issues and asked that **S 1150** be held in committee. He requested that the statute governing school board hearings first be reviewed and revised to ensure that hearings at the school board are fair.

Vice Chairman Mortimer suggested that since **S 1150** addresses a hearing procedure, a terminated employee could still bring a civil suit. **Mr. Stark** agreed, but countered that **S 1150** limits the action the court can take.

In answer to questions by **Senator Thayne, Mr. Stark** agreed that administrators had the right to terminate employee's contract midterm for just and reasonable causes, such as a felony conviction, but he challenged the fairness of the process. **Chairman Goedde** pointed out that **S 1150** is consistent with other state agencies, the city council, and at the county level.

MOTION:

Senator Patrick made a motion to send **S 1150** to the Senate floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. In discussion, **Senator Durst** argued that school boards and teachers are not experts in education policy and law, and feared that termination hearings could be tainted by politics. **Vice Chairman Mortimer** countered, saying that the trustees are elected to do a job and they do the very best they can. They consider all information fully and make a decision. The employee has the right to have that decision reviewed. **Senator Patrick** agreed, adding that the school boards ask legal and policy experts. The motion carried by **voice vote**. Senators **Durst** and **Buckner-Webb** voted **nay**.

H 261

Karen Echeverria, ISBA, said that **H 261** addresses the use of seniority when a school district reduces its workforce. The language in this bill consists of a new section of code found in section 33-522A. Subsection (1)(a) sets out the conditions under which a reduction in force may be imposed and clarifies that seniority cannot be the only factor. Subsection (2)(b) indicates that a school district 'may' adopt a policy establishing an equitable recall of those employees who were subject to any reduction. After meeting with the IEA, the ISBA rewrote the legislation and used language proposed by the IEA. Further negotiations then took place. The language of **H 261** represents a compilation of those discussions and compromises. In addition, the ISBA added a one year sunset clause to this legislation. **Senator Durst** said that decisions by the board of trustees would supersede the master contract agreement. **Ms. Echeverria** replied that the ability to reduce employees has always been at the discretion of the board.

TESTIMONY:

Robin Nettinga, IEA, testified in support of **H 261** for two reasons. First, the bill is comprised of language developed by IEA to counter the language outlined in HB 165. This language is much less prescriptive and allows more latitude for local school districts to make decisions about how they address this issue. Second, this legislation imposes a sunset date, which would ensure that the governor's task force has time to complete their work.

MOTION:

Vice Chairman Mortimer made a motion to send **H 261** to the Senate floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Vice Chairman Mortimer will carry the bill on the floor.

H 226

Jason Hancock, State Department of Education,, said that **H 226** addresses the Idaho Youth Challenge (IYC) program and the method of counting Average Daily Attendance (ADA) which forms the basis of state funds distribution. **Mr. Hancock** posited that the current method of calculating ADA based on actual attendance on November 1 of the school year, does not "fit" with this organization. The IYC hosts 100 students at a residential facility, and provides a full year of instruction (990 hours) during the fall semester. The IYC can provide those instructional hours because they are not limited to a traditional school day. The IYC then hosts another group of 100, again providing a full year of instruction, in the spring semester. The November 1 date only accounts for 100 students, when in fact, the IYC is providing a full year of instruction to 200 students.

Vice Chairman Mortimer and **Senator Nonini** asked several clarifying questions concerning the fiscal impact. For example, if 100 students came from one school district, and the loss of those students triggered the 97 percent student funds guarantee program, then all school districts would be required to pay for the guarantee funds. **Vice Chairman Mortimer** suggested that taxpayers would, in effect, be "paying twice" due to the increased ADA and support of the 97 percent guarantee program. **Mr. Hancock** cited a case some years ago in the Meridian Joint School District wherein the schools were forced to hold "A and B days" because the schools were too small to manage rapid student growth in the district. In that case, the ADA was adjusted to account for all days, not just for one-half of students who would attend on November 1.

MOTION:

Vice Chairman Mortimer requested that **H 226** be held in committee for one day to allow time for reflection. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

Having no further business before the Committee, **Chairman Goedde** adjourned the meeting at 3:32 p.m.

Senator Goedde
Chairman

Elaine Leedy
Secretary