

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 23, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

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. **Chairman Tippetts** welcomed former Senator Jim Hammond and announced the order of the agenda had changed because former Senator Hammond had to catch a flight.

RS 22546 **Relating to Health Reimbursement Arrangements** was presented by **Jim Hammond**, former State Senator and former State Board of Education member. He explained that the Health Reimbursement Arrangements-Voluntary Employees' Beneficiary Association (HRA-VEBA) provides the employer with an opportunity to reduce premium costs while providing the employee an opportunity to grow funds for non-reimbursed health care costs.

He said the funds are deposited into an employee-managed trust. The funds are tax free when deposited by the employer and withdrawn by the employee. This strategy, while reducing employer cost, provides the employee the opportunity to build a substantial fund for health care costs upon retirement.

He said the Department of Administration (DOA) may offer a health reimbursement arrangement as an approved benefit for all state employees or officers. (All state employees and their eligible dependents would participate in a health reimbursement arrangement if the employer chooses to offer the health reimbursement arrangement.) He explained that a "health reimbursement arrangement" meant an arrangement where employees may reimburse themselves for health care costs approved by the Internal Revenue Service (IRS) from a tax-exempt employee benefit trust known as a VEBA. He explained that a VEBA is managed by trustees elected by the employee members of the trust. He noted the DOA may promulgate rules to implement the provisions of the IRS regulations.

In addition, he added, the value of this legislation was that employees would become more involved in trying to save money towards the cost of their own health care. In other words, a HRA-VEBA is an account-based health reimbursement arrangement for an employee to reimburse qualified out-of-pocket health care expenses. It is not an insurance plan. The account is funded with employer contributions. The employee does not pay a premium for coverage. There are no co-pays or deductibles. The funds can be used from the HRA-VEBA account to reimburse qualified expenses. The maximum benefit (reimbursement) amount is equal to the available account balance at the time the claim is processed. **Mr. Hammond** and **Chairman Tippetts** had a discussion about the idea that not all units of government would offer this plan. The offer could be through one institution, such as Boise State University (BSU), and everyone from that institution would have to

participate. If offered statewide it would be overwhelming, **Mr. Hammond** said.

Should the State institute this program, there is potential for substantial long-term savings due to lower premiums and better health care management. Start up costs would be less than \$5,000. Ongoing costs could vary. Currently, the cost per participant per month ranges from \$1.50 to \$7.50.

MOTION: **Senator Goedde** moved to print **RS 22546**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

RS 22474 **Relating to Medical Retainer Agreements - Direct Primary Care** was co-presented by **Senator Steven P. Thayne** and **Representative Lynn Luker**. **Senator Thayne** said this bill created a simple format for medical retainer agreements to provide routine health care services on a contract, non-insurance basis, which is exempt from regulation by the Department of Insurance (DOI). These services are otherwise known as "direct primary care" under the Patient Protection Affordable Care Act (PPACA) or as "concierge" medical services. Direct primary care is a process where physicians and other health care professionals provide routine services to patients in exchange for the patient's direct payment and without any insurance company reimbursement. This bill is patterned after a similar Utah provision.

Representative Luker told the Committee this was not an insurance product and did not need to be regulated by the DOI. He said it did give people another avenue to seek health care. This sets up a simple format that everyone can agree with. It provides for routine health services and it can be combined with a high deductible insurance policy if one chooses. Direct Primary Care allows doctors to focus more on prevention and to spend more time with their patients. **Senator Thayne** said this practice is emerging in New York, California and in the State of Washington. Initially the insurance industry fought this because they saw it as competition, but eventually came to see that it helps lower costs.

Senators Patrick, Goedde, Lakey, Schmidt and Guthrie had a discussion with **Representative Luker** about deductibles; catastrophic injuries; exemption from DOI oversight; direct primary care; what would be included in routine health care services; the written contract between a medical provider and an individual patient (in which the medical provider agrees to provide routine health care services to the individual patient for an agreed upon fee and period of time); billing of insurance companies; and medical licensing and the definition of a medical provider. **Representative Luker** said he would get more information about medical licensing and the definition of a medical provider, but commented that the guideline was intended to refer to physicians.

Senator Cameron asked Representative Luker, if one of the primary purposes of the DOI was to regulate insurance and to protect consumers. **Representative Luker** responded that he thought the ordinary process that would protect anyone outside of insurance transactions would protect consumers. He gave the example of the Idaho Medical Association and said there are licensing agencies who also protect consumers. **Senator Cameron** stated that if he were a physician and a consumer signed up for his service and then he skipped town and went to Mexico, would Representative Luker suggest the consumer contact their lawyer or the Idaho Medical Association. **Representative Luker** responded by saying he didn't see how that approach was any different from any other business relationship. **Senator Goedde** asked Representative Luker if this could be done now. **Senator Goedde** said his concern was that people may sign up for this program and then think that was all that they needed. This does not replace insurance **Representative Luker** stated.

MOTION: **Senator Martin** moved to print **RS 22474**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 22492 **Relating to the State Insurance Fund** was presented by **Senator Goedde**. He said that in 1998 the Idaho Legislature made major changes in statutes dealing with the State Insurance Fund (Fund). It came under the oversight of the DOI and was directed to operate as an insurance company. The operation became hindered by statutes which originally created the Fund in 1917 and created conflicting requirements. This bill repeals most of the code passed in 1917 dealing with the Fund and allows it to operate as intended in the 1998 amendments. There would be no fiscal impact.

MOTION: **Senator Guthrie** moved to print **RS 22492**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:** Chairman Tippetts passed the gavel to Vice Chairman Patrick.

**DOCKET NO.
09-0130-1301** **Relating to Unemployment Insurance Benefits** was presented by **Bob Fick**, Department of Labor (Department), Communication and Legislative Affairs. He said the rule had two components which were the elimination of the tel-a-claim telephone reporting system for unemployment insurance benefit claimants and the determination that 12 weeks was a reasonable period of time for claimants on temporary layoff to be considered job-attached and exempt from conducting weekly job searches.

Mr. Fick said tel-a-claim was eliminated on July 21, 2013 because it could not be modified to handle the new reporting requirements for benefit claimants. Those requirements included identifying what business was contacted each week during the claimant's required job search. Weekly job search reports are required in order for a claimant to remain eligible for benefits. This change has intensified the Department's attempts to ensure that claimants actually conduct their weekly work searches and it has had an impact. He reported that from November 20, 2012 to January 3, 2013, the Department denied 100 weekly claims for failure to conduct a work search. In the same period in 2013 to 2014 the Department denied 2,600 weekly claims for failure to conduct a work search. Under tel-a-claim claimants only had to say "yes" they looked for work or "no" they did not. Now they have to identify who they contacted for work. The Department spot-checks about 100 of these claims each week. Exemptions from online filing have been granted to some claimants, primarily those who are disabled.

Mr. Fick said the designation of claimants as "job attached" has been, by policy, limited to 12 weeks in the past. This merely is stated policy in the rule. This is part of the Department's attempt to get people back to work faster, easing the pressure on the Unemployment Insurance Trust Fund, which keeps employer taxes in check. Of the surrounding states, Montana does not have a limit on "job attached" status, but is considering limiting it to half the claimant's benefit weeks. Utah has a limit of 10 weeks, Nevada 6, Washington 8, Oregon 4 and Wyoming 12.

Chairman Tippetts asked if there were any complaints received by the Department about the elimination of the phone reporting. **Mr. Fick** replied that the Department has tried to make accommodations whenever they have had complaints.

Senator Lakey asked if accommodations would be made for those who could not get online due to the very specific timelines. **Mr. Fick** said they did make those kinds of accommodations.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0130-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0135-1301 **Relating to Unemployment Insurance Tax** was presented by **Bob Fick**, Department of Labor (Department), Communication and Legislative Affairs. He indicated this rule also had two components which required all employers to file their quarterly reports online and clarified the requirements for classifying a worker as an independent contractor rather than an employee.

Mr. Fick said the Department currently has a secure electronic system for employers to file reports and contact the Department on a range of issues. About 6,000 of the 47,000 employers currently file their quarterly reports on workers, wages paid and taxes owed online. This would require the rest of employers to do the same unless they obtained a waiver that the Department would consider on a case-by-case basis. This would reduce processing time and essentially eliminate errors and help the Department enforce the law on employer contributions.

He explained that the clarification of independent contractor determination requirements reduced the factors from 16 to 7 in response to directives from the United States Department of Labor, based on the United States Supreme Court's decisions on the issue. In addition to the criteria being considered, the rule provides examples to help guide employers in determining whether their relationship is with an independent contractor who is not covered by unemployment insurance or an employee who is covered. **Mr. Fick** said this goes hand-in-hand with the focus the federal and state departments have had for several years on reducing the misclassification of workers and independent contractors. It does not change in any way the Department's enforcement efforts, which have been focused on independent contractor misclassification for several years.

Senator Schmidt and **Vice Chairman Patrick** had a conversation with **Mr. Fick** and **Michael Johnson**, Bureau Tax Chief, Department of Labor (DOL), concerning the performance of independent contractors versus employees and how many people would be affected, if any; the simplification of the rule; bringing Idaho into conformance with other governing bodies; and actual contractual agreements whether oral or in writing.

Senator Guthrie stated that if there was going to be a savings or an impact on the budget, that should be reflected in the fiscal note. He wanted to know why the fiscal note indicated there was no fiscal impact or savings. **Senator Guthrie** and **Mr. Johnson** discussed the opportunity to save money; the reduction of errors, the saving of additional man hours; reduction of mailing costs due to everyone filing online; and the idea of not being able to accurately forecast the amount of money that would be saved.

Chairman Tippetts agreed with Senator Guthrie's concern about "no fiscal impact" and said he wanted to get an estimate from the DOL regarding possible savings. **Chairman Tippetts** said he knew the fiscal impact was hard to determine, but he preferred, whenever possible, to have an estimate of that information. He said it would help the Committee to determine whether or not the agency would have enough savings that could impact, for example, employees or employers. If we have suggested savings he said, then the agency could indicate what was going to be done if there was a significant reduction in work.

Mr. Fick said he would get an estimate and get the information to the Committee within the next day or two.

Senator Martin asked about page 89(d)(1), relating to reimbursement for work-related supplies. He said there had always been pressure over the years to eliminate independent contractors, but he thought the language was of concern to him. **Mr. Fick** replied that he understood and that these were guidelines that were provided to help employers determine whether or not the person that was working for them was a contractor. This is a way to help employers determine whether there is a worker investment or if there is an employer investment.

MOTION:

Senator Schmidt moved to adopt **Docket No. 09-0135-1301**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**. **Senator Martin** voted **nay**.

Senator Schmidt commented that the actual fiscal note was accurate by showing there was no effect on the General Fund. **Chairman Tippetts** said he wanted to applaud the DOL for providing guidance for employers to determine whether or not someone was an independent contractor, which had always been a gray area.

**DOCKET NO.
10-0101-1301**

Relating to the Idaho Board of Licensure of Professional Land Surveyors, Rules of Procedure was presented by **Keith Simila**, Executive Director. He indicated he was new to the position and replaced David Curtis, who was in the position for 26 years.

He said the rule began on page 92 of the Pending Rule Book. He said this rule had been adopted by the Board of Licensure of Professional Land Surveyors (Board) and that it has the support of professional engineering and surveying societies and associations in Idaho.

He explained that the need for the rule came about because the National Council of Examiners for Engineering and Surveying (NCEES) has adopted national education standards for surveyors to be eligible as surveyor interns. This rule modifies the college courses required to be eligible for the Fundamentals of Surveying Examination. In general, the education required better aligns with the surveying curriculum at Idaho State University (ISU). The ISU Geomatics program is Board-approved and is the standard to which other survey degree programs are compared.

Chairman Tippetts voiced a concern about the changes. He referred to the bottom of page 96 in the rule book. He was concerned about the requirement of 16 college semester credits in general education. He expressed concern about an applicant who has a four year Bachelor's degree that is in a related science and who has more credits than they need that are directly related to the profession of surveying, but who does not have enough credits in the area of philosophy, religion or history. He stated that if someone was surveying property, the owner would not care if the surveyor had credit in philosophy, but would be more concerned about whether that person could do the job. **Mr. Simila** said the Board has a philosophical belief that land surveying is a profession. Potential land surveying candidates have to qualify to take the exam. **Chairman Tippetts** said he would not like to see someone denied approval to take the exam because he or she didn't have the additional credits in the humanities. **Mr. Simila** indicated the rule mostly applied to those who don't graduate from college in the United States. Most degrees in the United States require general education classes, but those classes are not required in foreign countries.

Senator Ward-Engelking asked if there was an exception in place where someone could be eligible to take the exams, but with the condition that they would have

to take the general education classes. **Mr. Simila** said the individual would have to meet certain requirements and that one would be the general education requirement. The Board would not assign an individual to take the test until he or she met the educational requirements. The Board has the opportunity, if someone comes from out-of-state, to waive some of the requirements. The Board applies the rules that were in place at the time the applicant received his or her license from out-of-state.

Senator Goedde asked about the total required credits and what was the minimum to qualify to take the test. **Mr. Simila** said a Bachelor of Science degree was required. He said 30 credits were required for the survey courses and a new set number of humanities courses. **Senator Goedde** commented that the perception was that surveyors were trying to make the qualifications more stringent, increase their income and make their jobs scarce.

Mr. Simila said applicants must have a technical understanding of the subject and the exams were very specific. **Senator Martin, Chairman Tippetts, Vice Chairman Patrick** and **Mr. Simila** had a conversation about the pool of applicants, retirements, raising the level of interest in order to broaden the pool of applicants, curriculum requirements, and the idea that the rule is more restrictive, not less restrictive.

MOTION: **Senator Guthrie** moved to reject **Docket No.10-0101-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 10-0102-1301 **Rules of Professional Responsibility** was presented by **Keith Simila**, Executive Director, Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors (Board). He referred to page 103 and said this rule had been adopted by the Board and has the support of professional engineering and surveying societies and associations in Idaho.

He indicated that the need for the rule came about because of a lack of clarity regarding conflict of interest. There is a need to better define the types of engineering and land surveying positions in a business entity that are subject to these provisions. The previous rule used the term "principle" of a company. Rather than define "principle", the Board chose to list the types of positions in a company subject to the rule.

In addition, **Mr. Simila** said that the current rules prohibit a licensee from participating in decisions with respect to professional services by their firms. Rather than identify all such possible occurrences, the Board proposed a rule which requires all licensees to adhere to the Ethics in Government Act, Idaho Code § 59-701. A violation of that law is considered a violation of the Rules of Professional Responsibility.

MOTION: **Senator Goedde** moved to adopt **Docket No. 10-0102-1301**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
10-0104-1301**

Rules of Continuing Professional Development, was presented by **Keith Simila**, Executive Director, Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors (Board). He said the rule began on page 107 of the Pending Rule Book. He said this rule has been adopted by the Board and has the support of professional engineering and surveying societies and associations in Idaho.

He explained the rule was needed because the original rule for continuing professional development adopted in 2009 inadvertently placed the attendance record requirements in the wrong section. This rule amendment removes the record keeping requirement from 008.01 Log and places it in 008.02 Attendance Verification, where it belongs.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 10-0104-1301**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:** Vice Chairman Patrick passed the gavel back to Chairman Tippetts

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:50 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary