MINUTES

# SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

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| **DATE:** | Tuesday, February 18, 2014 |
| **TIME:** | 1:30 P.M. |
| **PLACE:** | Room WW54 |
| **MEMBERS PRESENT:** | Chairman Tippets, 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 Tippets** called the meeting to order at 1:32 p.m. He welcomed all and went over the agenda. He mentioned we had a full agenda and that future agendas would also be full.

**Chairman Tippets** mentioned that Senator Davis was going to ask for unanimous consent that **S 1252** dealing with worker's compensation, be sent to the 14th Order of Business for consideration of amendments. He said that anyone who wanted to look at the proposed amendments was welcome to see Senator Davis.

**INTRODUCTION OF PAGE:** **Chairman Tippets** introduced Lindsay Bolinder, new Page for the Committee. **Ms. Bolinder** said she is a senior at Centennial High School and that she is the eldest of three children. She had been a competitive dancer for 15 years and decided to try cross country this year. She is a member of the National Honor Society, volunteers at St. Alphonsus Hospital and mentioned she loves to be outdoors. She thanked the Committee and said it was a privilege and an honor to have been selected. **Chairman Tippets** thanked Ms. Bolinder.

**APPROVAL OF MINUTES:** **Senator Cameron** moved to approve the Minutes of January 30, 2014. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**Chairman Tippets** explained this Committee no longer has the authority to send an RS to print and would be asking for unanimous consent on four RSs on the agenda.

**RS 22865** **Relating to Health Care** was presented by Senator Thayn. He said this RS had been revised approximately three weeks ago. He explained the proposed legislation creates 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 and Affordable Care Act (PPACA), or as "concierge" medical services. A discussion ensued between **Senator Thayn** and **Senator Cameron** relating to medical retainer agreements and the definition of a medical advisor. **Senator Cameron** said he thought this RS would provide additional regulations, and he asked how this language would provide stability. **Senator Cameron** asked Senator Thayn if, under current law, providers expressed they were unhappy with their status. **Senator Thayn** said "no," but there have been problems in other states, and he was trying to head off problems before they started.

**MOTION:** **Vice Chairman Patrick** asked for unanimous consent to send **RS 22865** to a privileged committee for printing. **Senator Cameron** objected.

**RS 22852** **Funding of State Employee Health Savings Accounts** was presented by Senator Thayn. **Senator Thayn** said that this legislation directs the Department of Administration (DOA) to fund state employee health savings accounts for those employees who choose a high-deductible health policy. He referred to line 25 of the concurrent resolution and indicated the DOA commissioned the Milliman Industry Mortality Study and Analysis (MIMSA) that showed up to $2,510 could be placed in each state employee's health savings account (HSA) without a significant change in the cost of the state employee health plan. He said the state employee health plan is one of the largest health care plans, and the funding of HSAs would have the tendency to stabilize medical costs by creating a cash market benefitting the Idaho economy. He said the traditional and Preferred Provider Organization (PPO) state plans will still be grandfathered under the Affordable Care Act (ACA), while a new high deductible plan will not be grandfathered.

**Senator Schmidt** asked Senator Thayn to explain the phrase on line 34 regarding some state plans that would be grandfathered and the new high deductible plan that would not be grandfathered. He also asked for a copy of the MIMSA study that was commissioned by the DOA. **Senator Thayn** indicated he could get a copy. **Senator Lakey** asked Senator Thayn to expound on the fiscal note which says there will be no fiscal impact. **Senator Thayn** explained that if an employee subscribes to a higher deductible, the policy cost would be reduced. He stated this proposed legislation gives state employees another option.

**Senator Cameron** wanted to know if it was Senator Thayn's impression that there was a higher deductible plan available for state employees that meets the ACA requirements. **Senator Cameron** also questioned lines 40 and 41 of the resolution which said the DOA was to fund state employee HSAs for those employees who choose a high deductible policy. He said it seems like the DOA is directed to pay or to fund those savings accounts at whatever level they would deem appropriate. He commented that the resolution did not say the State puts in the difference in savings from the high deductible plan through a regular plan and that leaves it open-ended. **Senator Thayn** said the language in the resolution was what the DOA preferred because it gave them some flexibility in adjusting the figures in the budget. **Senator Cameron** commented that Senator Thayn's statement that the difference is what would be paid in the HSA is not stated in this resolution and there is no provision in law, so the DOA could pay less or they could pay more. **Senator Thayn** replied this was a resolution and there are broad parameters and does not direct the DOA to do something specific.

**Senator Cameron** disclosed for the record, that he has an insurance license and he has sold a number of HSAs. He said there are some employers who will pay more for a high deductible HSA plan just because they believe it will save more money in the long run in deferred costs. **Senator Cameron** referred to Senator Thayn's statement to the Committee which was if an agreement is reached and this RS were to pass, the DOA would deposit the difference between the high deductible plan and the regular deductible plan into an HSA. Therefore, there would be no fiscal impact.

**Senator Cameron** declared a possible conflict of interest for the record, stating that although he does not have a pecuniary gain, he is an insurance agent and one could interpret his opinion to be conflicted.

**Senator Thayn** said that recognizing that medical costs are too high, an HSA is one way to bring down the costs. He said he may not have explained the proposed resolution as well as he could have and not as well as Director Luna. He was trying to explain the resolution to the best of his understanding. He said the MIMSA study showed we could have a high deductible policy without it costing the State any more to fund an HSA.

**Senator Cameron** said his concern was with Senator Thayn's response to Senator Lakey. **Senator Cameron** said "if your plan is to allow the DOA full ability, there should be a more accurate fiscal impact statement. If your plan is to have it restricted, then it should be listed in the resolution. It seems that Senator Thayn's comment contradicts the fiscal impact statement." **Senator Thayn** said there is no fiscal impact; the budget would not be increased for state employee insurance costs; and it would be no more than it is right now. The dollar amount will be the same and the amount of money spent on health insurance for state employees would not be reduced. The whole point was to make the budget neutral.

**Chairman Tippets** mentioned the concurrent resolution could go straight to the floor or back to the Committee.

**MOTION:** **RS 22852** failed for lack of a motion.

**RS 22891** **Relating to a Proclamation Rejecting a Rule** was presented by Vice Chairman Patrick. **Vice Chairman Patrick** explained this was a proclamation to reject a rule that was covered previously by the Committee which had to do with extra education credits required for licensure.

**Senator Goedde** asked for unanimous consent to send **RS 22891** to a privileged committee for printing. There were no objections.

**RS 22905** **Relating to Exemption from Coverage from Worker's Compensation Law** was presented by Senator Johnson. **Senator Johnson** said this legislation was clean-up language and clarified some of the statutes referring to worker's compensation. He said the owner of a sole proprietorship and his family members working in his business are exempt from worker's compensation under Idaho Code § 72-212. This legislation clarifies that a single member limited liability company (LLC) that is being taxed as a sole proprietorship is also treated as a sole proprietorship for purposes of the worker's compensation exemption. The legislation will have no effect on the State General Fund, but could result in up to $8,000 in lost revenues to the Industrial Commission (Commission) annually, if all single member LLCs were otherwise not recognized as sole proprietorships.

**Senator Goedde** questioned the fiscal statement and the possibility of up to an $8,000 loss to the Commission annually, if all single member LLC's were otherwise not recognized as sole proprietorships. He commented there must be a substantial impact on the State Insurance Fund (Fund) if $8,000 of the premium tax goes to the Commission. **Senator Johnson** said he and Senator Hill met with the Commission and went over this and asked what kind of fiscal impact this would have on the Commission. The Commission tried to do an estimate on how many LLCs are currently paying into the system and what the impact would be to their fund if they were not paying into the Fund. This is the amount the Commission gave to them. **Senator Goedde** said it is the estimated impact on the amount of premium tax paid to the Commission. He asked what the impact would be to the Fund. **Senator Johnson** said he could not answer that, but that he would go back to the Commission to get some more information for the fiscal note.

**Senator Lakey** wanted to know if the legislation was talking about the employment of family members in an LLC. **Senator Johnson** said "yes."

**MOTION:** **Senator Cameron** asked for unanimous consent to send **RS 22905** to a privileged committee for printing. There were no objections.

**GUBERNATORIAL APPOINTMENT:** The appointment of William Deal of Nampa, Idaho, to the Public Employee Retirement System of Idaho Board (PERSI), to serve a term commencing July 1, 2013 and expiring July 1, 2018 was presented by Bill Deal. **Director Deal** spoke about his background. He is a University of Idaho graduate and spent three years in the Army infantry. He was in the insurance business for 42 years. He was a member of the Idaho House of Representatives and became Chairman of the State Affairs Committee. During that time he was also on the Endowment Fund Investment Board. He left the House in 2007, and the Governor appointed him to the Department of Insurance (DOI). He was also appointed to the PERSI Board (Board) as a trustee. He said that one of the important issues to the Board is the operational plan, which is simple, but transparent. Return on their investments has been approximately 10 percent. The investment policy is very focused and the money is invested globally, with both fixed and international funds. He appreciates the monthly meetings, which are an opportunity for investment managers to tell the Board what is happening in the marketplace.

**Senator Lakey** commented he appreciated having Mr. Deal as a friend and a representative for Nampa.

**MOTION:** **Senator Lakey** moved to send the gubernatorial appointment of William Deal to the PERSI Board to the floor with recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the appointment on the floor of the Senate.

**PRESENTATION:** **Presentation - Department of Commerce** was presented by Jeff Sayer, Director, Department of Commerce (Department). This presentation was continued from the meeting of February 13, 2014. **Director Sayer** provided a 2014 legislative update for the Mexico and the Taiwan Chambers of Commerce divisions for the State of Idaho. He highlighted trade and Project 60. He said it was exciting to see that our economy is projected in 2014 to be $62.4 billion. The economy is expected to be slightly above $60 billion in 2013. International exports decreased this year, which was a concern for the Department. The semi-conductor business is a large part of our export, and those numbers were down. The agricultural and mining sectors are both up and showing some strong growth, which is encouraging. The tourism or 2 percent hotel tax was up substantially, which is used to market the State of Idaho. Those figures were up 8 percent over last year, which is a leading economic indicator of what is happening in our state.

**Director Sayer** then provided an update regarding the Idaho Global Entrepreneurial Mission (IGEM) program. He referred to the IGEM Annual Report. He indicated there was a list of the grants that were issued. There are three funding components. One is that $2 million went to the Center for Advanced Energy Studies (CAES) as permanent, ongoing funding; another $2 million is ongoing funding to the State Board of Education (Board); and the Department received $1 million of ongoing funding that was used to help issue grants in conjunction with the Board grants.

**Director Sayer** said they highlighted a number of technologies that the Department invested in over the last year. In the initial stages, the Department spent a considerable amount of time looking at best practices and other state models. The State of Utah helped the Department since they have had a similar program for several years. The Department learned one significant lesson. They found they needed more industry-funded research. **Director Sayer** referred to page 2 of the Annual Report and indicated the emphasis will be on the goals of building capacity and industry relationships. He said the Department at the IGEM level, will be spending an inordinate amount of time making sure they are strengthening industry relationships, attracting more industries, and continuing to help the universities build their research capacities. He mentioned the original intent of IGEM was to take our technologies into the marketplace where they can create jobs and new companies.

Next, **Director Sayer** talked about the Opportunity Fund. He referred to the Opportunity Fund Update slide. He said the fund was established last year and it was the first step into a performance-based incentive tool. He said the State does not hand out the reward until a company has actually delivered the results and delivered the jobs. He discussed the five projects in the Opportunity Fund. He said there was a tremendous amount of interest in this fund. He pointed out the annual return on investment that comes from these funds.

He said during 2013, the Department discovered it needed to reorganize because many of the things they were doing were based on tradition and historical patterns and assumptions. They realized there were other states that were ahead of Idaho and who had some very progressive ideas. The Department is trying to bring the industry voice to the table to help establish talent pipelines from our community colleges and universities that can meet the needs of the sectors that we want to make successful in the State. Other states have figured out how to have a cluster-based strategy, which essentially means they have identified the industry sectors and figured out how to make that sector successful.

Because the world is changing, the Department decided they needed to make changes, including looking at ways to align teams within two groups. The Department identified the business creation and the business expansion divisions. One group is in charge of creating new revenue for the State through tourism and sales. The other group focuses on helping existing companies and communities to be successful. In essence, the Department streamlined their divisions from seven down to three and eliminated two administrator positions. In the process, two new positions were created. The Department hired new employees from the private sector because they needed new perspectives. The Department wants to catch up to where the world is going and provide a supportive role to communities. The Department also wants to drive their relationships deeper with industry, having them guide the focus and strategy. Partnerships must take place with peers in the field and with the communities and leaders as they step forward. **Director Sayer** said he thought there were unlimited possibilities for this state.

**Senator Goedde** commented that he attended a conference sponsored by Toyota. They have a paid training program that involves eighth graders. If a student does not show up at school, there is a Toyota employee at his door asking why he is not at school. It is a great partnership and a good model. He said there is nothing about Canada or the North American Free Trade Agreement (NAFTA) in this report and we need more focus there. **Director Sayer** said "that one of the challenges we have extended to our team is that we have to evaluate the ruts." His challenge to them is that any organization that has done the same things for 20 years is going to be in a rut. The question is not "if", but "where". **Director Sayer** said that "one of the ruts we have identified is that for many years we have followed an international tourism marketing program that is geared towards Europe and Australia. We have been spending close to 20 percent of our operating budget in the tourism division on what was actually 3 to 5 percent of business. We have to go north to maximize the Canadian relationship."

**Senator Schmidt** commented the IGEM report is wonderful, and that Mr. Sayer is describing how other states have done things. **Senator Schmidt** said the Department is learning from other states, but he will need for his role in oversight, a more clear balance sheet or an indication of investment return, which is what we are looking for in this state. He said he would like to see a different format. **Director Sayer** said there is a very specific outline in the report as to how the monies were spent. One of the underlying messages of the graphic in the front of the report is that there will be a number of years ahead where they will be making the investment. The returns are a few years away.

**S 1312** **Relating to Public Employee Retirement System of Idaho (PERSI)** was presented by Don Drum, PERSI. **Don Drum**said that **S 1312** amends Idaho Code § 59-1306 by including additional references to sections of the Internal Revenue Code (IRC) applicable to the PERSI plan. This section states that the plan is to be administered to comply with the IRC sections. The new references to the IRC already apply to the PERSI plan because it is a tax-qualified retirement plan. The bill clarifies the references already added to the IRC. Making these statutory changes was a condition of the IRS letter that PERSI received. The IRS determination letter stated that the plan, as drafted, met the requirements to be a tax-qualified retirement plan.

The bill adds references to Subsection 36 and Subsection 37 of § 411(e)(2) of the IRC. Subsection 36 provides that a plan is not disqualified if it allows for a distribution to a person age 62 or older who is not separated from employment. He emphasized that Subsection 36 does not require that the plan allow someone to retire while still working, but it says the plan can allow for it. The PERSI plan generally does not allow a person to collect retirement while still working, except for limited circumstances for part-time elected or appointed officials. Subsection 37 requires that the qualified plan treat a participant who dies while performing qualified military service as if he had resumed work and then died. However, **Mr. Drum** said, the PERSI plan already does that in Idaho Code § 59-1302(23) (definition of military service).

**Mr. Drum** said that Section 411(e)(2) provides for vesting of benefits upon a plan termination or upon complete termination of all employer contributions. Section 411(e)(2) was also addressed in rules that PERSI presented to the Committee earlier in this session. Those rules were also amended as part of the determination letter process.

**MOTION:** **Senator Goedde** moved that **S 1312** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry this bill on the floor of the Senate.

**S 1206** **Relating to Real Estate Continuing Education** was presented by Jeanne Jackson-Heim, Real Estate Commission (Commission). **Ms. Jackson-Heim** said **S 1206** is one of the outcomes of a collaborative work group comprised of real estate educators, agency staff, and representatives from the Idaho Association of Realtors. The work group was formed to discuss current issues in real estate education and how to better prepare our licensees to serve the public and their profession.

**Ms. Jackson-Heim** explained the bill has two primary components. The first involves required continuing education in order to renew a real estate license. Real estate licensees are on a two-year license renewal period. Presently, licensees must complete 16 hours of elective continuing education credit plus one required Commission core course every two years in order to renew or reactivate their license. However, the core course is developed by the Commission every year and includes instruction on law changes, a real estate case law update, and a hot topics section on various real estate-related matters. Because the core course is developed annually, but is required only once every other year, many licensees miss important information from the core course they did not take. Licensees need the most up-to-date information so they can better serve consumers, reduce their risk of liability, and improve their professionalism and business success. **S 1206** would change Idaho Code § 54-2023 to require the core course to be taken every year.

**Ms. Jackson-Heim** said there is a corresponding reduction in the elective hours from 16 to 12. The proposed changes allow for licensees to receive the most current required education while keeping the total number of education hours the same. The second substantive change pertains to brand new salesperson licensees in their first renewal or reactivation period. Licensees get a lot of new material thrown at them as they prepare for their real estate license exams, and the material is out of context because they haven't had a chance to apply that knowledge in the field. The work group identified a need to reinforce and expand on the pre-license material so the licensees can receive focused training on how to apply their knowledge to specific areas of real estate practice. This bill will accomplish that goal by requiring new licensees to complete a specified course of study for all their education hours for the first renewal period. Instead of 12 elective hours, there would be 12 hours of post license course work as well as the two annual commission core courses. The post license curriculum would cover such topics as preparing contract forms, agency law, ethics and professionalism, commercial real estate, and pricing and marketing. Again, the total number of required hours of continuing education would remain the same.

**Ms. Jackson-Heim** explained the bill also adds a definition of "post license course" in Idaho Code § 54-2004. There are other education-related changes in the bill. References to challenge exams and correspondence courses for continuing education are eliminated since the Commission no longer uses challenge exams, and likewise correspondence courses have been replaced by online classes. A requirement is added that the director of a certified real estate school must participate in a Commission-approved training session at least once every two years, similar to the present requirement for certified instructors. This will help the real estate schools stay in compliance with the license law requirements and provide better service to the licensees.

Finally, **Ms. Jackson-Heim** said the last change in **S 1206** relates to the expenditure of civil penalty monies collected by the Commission. The license law restricts the use of these funds to educational purposes for people who already hold an Idaho real estate license. A slight modification to the language is proposed which would allow the Commission to expand use of these monies to also include pre-license education for people who are not yet licensed.

**Senator Schmidt** asked why words on lines 19 through 25 on page 5 were being eliminated. **Ms. Jackson-Heim** explained there was another part of the law that defined correspondence hours and that correspondence courses have been replaced with online courses. She said the Commission wanted to correct obsolete language.

**Vice Chairman Patrick** wanted Ms. Jackson-Heim to explain why a course must contain no more than 12 hours of instruction as outlined on page 3, lines 46 through 49 of the bill. He wondered what was wrong with more education. **Ms. Jackson-Heim** responded by saying the Commission wanted to make sure they were not increasing the amount of continuing education for licensees. She referred to page 2, line 25 which defines the Commission core course and that the course must contain no more than four hours of classroom instruction. This helps the Commission stay within the allowable number of elective hours plus the two Commission core courses, so the requirement would not be more than 16 hours.

**MOTION:** **Senator Lakey** moved that **S 1206** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry this bill on the floor of the Senate.

**John Eaton**, Idaho Association of Realtors (Association) and the Government Affairs Director, said the Association supports this legislation, that it was a collaborative effort and he appreciated all of the good work the Commission did. It has been very good for his Association to go through this process.

**S 1269** **Relating to Run-Off Insurers** was presented by Woody Richards, Idaho Insurance Guaranty Association (Association). **Mr. Richards** said this legislation would provide an option to the Department of Insurance (DOI) to utilize the Association for claims handling services for run-off insurers who sell property and casualty insurance. This legislation also defines "run-off insurer". **Mr. Richards** gave some background information about the Association and said it is made up of all of the authorized property and casualty insurers. The primary function of the Association is to investigate and pay claims in Idaho within certain statutory limits when a property or casualty insurance company becomes bankrupt. The money to pay for these claims comes from assessments of the Association members and from assets of the bankrupt insurance company. Payment of these claims is supervised by the DOI and the court. Any determination for bankruptcy of an insurer must be made by the DOI and a state district court. As an alternative to bankruptcy, the DOI may also decide to try to rehabilitate an insurance company or supervise the continuing business of the company. As part of those decisions, the DOI may decide that some form of run-off is appropriate. **Mr. Richards** explained that run-off means that a company may be told it cannot write any new insurance business, but that it should continue to pay claims.

**Mr. Richards** indicated the amendment on page 3 of **S 1269** seeks to address situations where the DOI decides that a run-off is appropriate. For example, sometimes when an insurance company is experiencing severe financial difficulties, its employees leave to seek employment elsewhere. In such a situation, the DOI may decide to authorize the run-off company to enter into a contract with the Association to continue to adjust and pay claims. This legislation would give the DOI the option to authorize use of the Association expertise and manpower to help when there is a run-off. Importantly, the amendment does not require that the Association be used. If the Association is sued, then its expenses would be reimbursed from insurance company funds. No funds of the Association would be used by the Association when acting as a third party administrator in a run-off. In addition, the Association and its employees and agents would be immune from liability just as they are when it handles insurance company liquidations.

In addition, **Mr. Richards** said, on page 3, lines 30 through 43, the term "run-off" is defined. Importantly, this language does not require the DOI to put an insurer in run-off mode. That is already addressed elsewhere by Idaho law. The legislation has been discussed with the DOI and there appears to be no opposition.

**Senator Schmidt** referred to page 3, line 36, where it says "has indicated that it will cease writing new insurance policies" and asked who would receive that communication. He asked Mr. Richards to explain the process. **Mr. Richards** explained that when the indicators are that a company is in financial trouble, the company comes in and talks to the DOI director. A plan could be worked out where the company could still continue to operate, or the DOI director may decide after talking with them that they need to liquidate. The company is probably going to make an offer during the course of those conversations to cease doing business if it is in serious financial difficulty, so it is not incurring greater problems or additional obligations. Instead, it is hoped, the company is paying claims while it gets the rest of its house in order.

**MOTION:** **Senator Martin** moved that **S 1269** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engleking** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry this bill on the floor of the Senate.

**ADJOURNED:** There being no further business, **Chairman Tippets** adjourned the meeting at 2:45 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary