

MINUTES
SENATE EDUCATION COMMITTEE

DATE: Wednesday, March 05, 2014
TIME: 3:00 P.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman Goedde, Vice Chairman Mortimer, Senators Pearce, Fulcher, Nonini, Thayn, Patrick, Buckner-Webb 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 Goedde** called the Senate Education Committee (Committee) to order at 3:14 p.m., and a silent roll was taken.

H 557 **Representative Reed DeMourdan**t, Chairman, House Education Committee, explained that during the Great Recession, the Legislature had provided flexibility on a previous requirement that school districts hire 100 percent of the instructional staff positions funded by the State or lose funding for those positions that were not hired. Instead, districts were allowed to decrease staff by 9.5 percent and retain 100 percent of funding. While this provided budget flexibility, it also increased class sizes. That flexibility carried a sunset clause of June 30, 2014. Without legislation, the loss of that flexibility will be dramatic to some districts, especially rural districts.

H 557 offers a phase-out of flexibility while also addressing large class sizes. Beginning in fiscal year (FY) 2016, this legislation begins a nine-year targeted reduction of flexibility by one percent for each year in which a school district's average class size is at least one student above the statewide average class size. For school districts with large class sizes, general flexibility would reduce from 9.5 percent in FY 2015 to 8.5 percent in FY 2016, and by further 1 percent increments in the future under the same criteria. The goal of this legislation is to encourage large districts to begin hiring teachers in order to reduce class size while keeping flexibility for those smaller districts who need it.

Chairman DeMourdant stated that **H 557** also provides predictability which is critical when budgets are tight. **H 557** provides a long glide path.

Senator Patrick said that growth in his district had increased, and some schools are extremely overloaded. He asked how this bill would address that situation.

Chairman DeMourdant replied that it would, just as it had in Meridian. Funding is now available for the teachers and classrooms that they need.

Senator Thayn noted that the flexibility could theoretically go to zero. **Chairman DeMourdan**t agreed. If a district began by using the entire 9.5 percent in staff reduction and still maintained above average class size, then 10 years from now, their flexibility would have been gradually reduced to zero. **Chairman DeMourdan**t said that most districts are not using the full 9.5 percent. **Chairman DeMourdan**t added that the State's present funding model assumes a certain type of classroom, which is not the classroom of the future. In the meantime, it is imperative to address the short term need, which is class size.

Senator Nonini asked if this bill had a sunset clause. **Chairman DeMourant** deferred to **Jason Hancock**, Deputy Chief of Staff, State Department of Education, who said that the State now has in place legislation granting the 9.5 percent flexibility, with a sunset date of June 30, 2014 imposed by 2013 legislation. **H 557** repeals the sunset clause and replaces it with a gradual elimination of the flexibility percentage.

Senator Ward-Engelking noted that if class size is used as a trigger, then accurate data becomes important. **Chairman DeMourant** agreed. Several Committee members asked about the percentage used by their respective districts. Chairman DeMourant provided a list, which is attached.

TESTIMONY: **Rob Winslow**, Executive Director, Idaho Association of School Administrators (IASA), stated that the IASA strongly supports **H 557** because it allows for planning. Districts hope that money continues to be restored, and for now, the districts need this bill in order to retain flexibility.

MOTION: **Senator Thayne** made a motion to send **H 557** to the floor with a **do pass** recommendation. **Vice Chairman Mortimer** seconded the motion. The motion carried by **voice vote**. Chairman Goedde will carry the bill on the floor.

RS 23087 **Vice Chairman Mortimer** reminded the Committee about its work on the new assessment, the Smarter Balanced Assessment Consortium (SBAC). One concern expressed had been whether or not Idaho could review questions and eliminate those it felt were inappropriate. In researching this concern, he had learned that other states had established assessment review committees for this purpose. This bill would provide for the organization of an assessment review committee consisting of parents, teachers and administrators representing public and charter schools in all six regions of the State. No compensation would be paid to committee members, but certain travel expenses would be covered.

UNANIMOUS CONSENT: Without objection, **Chairman Goedde** stated that **RS 23087** would be sent to a privileged committee for printing.

PASSED THE GAVEL: Chairman Goedde passed the gavel to Vice Chairman Mortimer.

S 1372 **Chairman Goedde** reminded the Committee that two bills have been presented dealing with data security. Given the time frame of the legislative session, the stakeholders met and agreed that **S 1372** would be presented to the Committee with the understanding that the Committee would send it to the Amending Order so that some of the suggestions from the alternate bill might be incorporated. In addition, Chairman Goedde said that a State Board of Education (State Board) memorandum had indicated that the alternate bill might pose conflicts with Idaho's longitudinal data system.

S 1372 is based on similar legislation brought in Oklahoma which eight other states also have modeled. **S 1372** has been vetted by the State Board, State Department of Education (State Department), Idaho Digital Learning Academy, Data Quality Campaign, Software & Information Industry Association, and two private companies, Microsoft and Apple.

1. Section 1 states that this act shall be known as the Student Data Accessibility, Transparency and Accountability Act of 2014 (Act)
2. Section 2 states that the intent of this bill is to safeguard student information and to honor, respect and protect student privacy.
3. Section 3 provides definitions, and charges the State Board with oversight, as is the current practice, since a data management group is already in place. Section 3 requires that the State Board or State Department ensure that private vendors comply with the privacy provisions of this Act, except in certain situations. These situations include, among others, when: a student transfers out-of-state, a vendor contract with the State Board requires the information, a student transfers to another district, and a student is classified as migrant for reporting purposes as required by federal law. In addition, Section 3 requires that a detailed data security plan be developed, and that the State Board and State Department comply with the Federal Family Educational Rights and Privacy Act (FERPA) and other privacy laws. Section 3 requires that contracts governing databases, online services, assessments or instruction support that include student data must contain express provisions for privacy, restrictions on secondary uses, a time frame for destruction, and penalties for noncompliance. The State Board must notify the Governor and the Legislature annually of any new student data proposed for inclusion, changes to existing data collections or to federal reporting requirements. They also must report any exceptions granted by them, results of privacy compliance and security audits, and data collected specific to a grant program. School districts must provide parents with copies of their minor child's education records upon request. The State Board must develop a model policy for school districts and charter schools that will govern data collection, access and security, consistent with the Act, and each district must adopt and implement the model policy. The State Department will provide outreach and training.
4. Section 4 provides that this Act shall be in full force and effect upon passage and approval.

Chairman Goedde stated that he encouraged the Committee to send **S 1372** to the Amending Order and asked them to post items which they felt were important.

Vice Chairman Mortimer noted that most of the bill is very restrictive except in Section 3 when data is a necessary part of a contract governing databases, online services, assessments, special education or instructional supports with a vendor. He asked for clarification. **Chairman Goedde** deferred to **Tom Luna**, Superintendent of Public Instruction, who said that the language was directed to efforts at the state level when working with vendors for online services and, more recently, for assessments. **Superintendent Luna** said that over the past 10 to 12 years, Idaho has contracted with vendors to administer assessments and collect data. That information is contracted out of state because Idaho does not have an in-state vendor for this work. This bill makes clear that vendors can use data in very specific ways, and if that data falls outside of those written parameters for promotion, for example, the vendor must obtain parental consent. The language is specific so that the Department can continue its efforts with assessments. **Vice Chairman Mortimer** asked if the information shared with the vendor contained a name or an identifier. **Superintendent Luna** replied that information shared with a vendor contains only a unique student identifier, and the data is returned to the State in the same form. **Vice Chairman Mortimer** again questioned why that section was not more specific. **Superintendent Luna** replied that specificity exists in other parts of the bill, in definitions and elsewhere. Throughout the bill, the language addresses the form in which information is shared with a vendor, what the vendor can do with it, and how it returns back to the State. Vendors are specifically prohibited from

using data for secondary use without parental consent. Appropriate uses are well specified throughout the bill, and are limited to academic performance data.

Senator Pearce stated that he was bothered by the word migrant and the implication of a label. **Superintendent Luna** replied that this term is specific to how states report a certain group of children on a national basis. A certain number of children reside in Idaho for a certain number of months, they reside in California for a certain number of months, in Arizona, etc., and it is an annual migration. A national databank houses these students' information so that when a child spends three months in another state, that state has access to the student information. The term migrant is not intended to be derogatory, nor describe students who tend to move several times a year, but rather it describes students for whom moving is part of their family life and culture – their families migrate from state to state based on the seasons. It is the term used in federal reporting. **Senator Pearce** expressed concern that groups of children may also be subject to labels in the future.

Senator Fulcher said that use of a unique identifier suggests that the state is not trying to label, track or tie records to a person. However, the bill details migrant students whose data follows state to state. Senator Fulcher asked why that was important, what interest it served. **Superintendent Luna** said that students who live in a migrant culture need their information to be available to schools in multiple states each year. Additionally, the federal government requires that states share the information. Another subsection allows information to be shared out of state if a student voluntarily participates in an out of state program for which that data transfer is a condition or requirement of participation; it is a voluntary decision of parent and student.

Senator Fulcher continued to question the language. **Chairman Goedde** stated that section 3(c) contains seven exceptions. He verified that the federal government requires migrant data to be submitted. In Idaho, some districts have difficulty obtaining information from another district. The impact is much greater for a student who travels from state to state. Without a central database to serve these students, a student coming into a school with no history is at considerable disadvantage; the teacher has no idea what they know, what they do not know, and whether or not an individual education plan is needed. **Chairman Goedde** stated that a federal migrant database was created for the sake of the student, not for the desire of the federal government to compile more information. **Senator Fulcher** asked what the penalty would be if the federal reporting requirement was not met. **Chairman Goedde** replied that when Utah chose not to comply with No Child Left Behind, the federal government threatened to take away all federal funding, and discussions occurred about closing Hill Air Force Base. **Superintendent Luna** stated that Idaho receives money annually from the federal government for migrant students. At minimum, those funds might be at risk. Normally a corrective plan is put in place with a time for compliance. He added that migrant reporting is the only case in which Idaho sends individual student data outside the State.

Senator Thayn referred to language stating, "unless otherwise approved by the State Board of Education...", and asked why that language was chosen. **Chairman Goedde** stated that he was in possession of the State Board's data security plan, which is well thought out, and data security is already under the auspices of the State Board.

Superintendent Luna stated his support for the bill in its entirety, saying that as he travelled the State throughout the summer, it was clear that Idahoans' concern with the new educational standards focused on data security. **Superintendent Luna** said that he sent a letter to Chairman Goedde and Chairman DeMourdan calling for the need to create legislation dealing with data security. To do nothing would be failing to address the concerns of the people of Idaho. In his opinion, legislation must be passed this year. The Legislature must remain continually vigilant, and **S 1372** requires annual review.

Chairman Goedde stated that he had received information that the loss of federal funds for migrant students would total \$3.5 million. He again addressed the Committee, stating that the bill was well vetted and suggested that it go to the 14th Order for amendment.

Senator Fulcher said that he was reminded of the strings attached when the federal government is involved. He stated that he did not like the bill, did not like what it did, and his only question was if it was worse to do nothing. He stated his appreciation for those who had worked hard to make the bill as successful as possible. **Senator Thayne** also acknowledged that much work had gone into the bill, and agreed that it should move forward.

MOTION: **Senator Thayne** made a motion to send **S 1372** to the 14th Order for amendment. **Senator Pearce** seconded the motion. The motion carried by **voice vote**. Chairman Goedde will carry the bill on the floor.

PASSED THE GAVEL: Vice Chairman Mortimer passed the gavel back to Chairman Goedde.

ADJOURNED: Having no further business before the Committee, **Chairman Goedde** adjourned the meeting at 4:20 p.m.

Senator Goedde
Chair

Elaine Leedy
Secretary