

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 11, 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. and welcomed all. He mentioned the agenda would be rearranged to accommodate House members who were due on the floor shortly.

MOTION: **Senator Cameron** moved to approve the Minutes of February 20, 2014. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

H 397 **Relating to Supplemental Retirement System** was presented by Representative Steven Harris. **Representative Harris** said this bill repeals the obsolete Supplemental Retirement System (System) defined in Chapter 15, Title 59, Idaho Code which was established in 1975. He referred to the statute and explained there were provisions set forth for a System for widows of Governors, Senators or Congressmen, provided the spouse of the widow completed at least four years in one or more of those offices. **Representative Harris** outlined the System and the limits for those who were receiving a retirement allowance. In 1978, the Legislature passed a law to close any future enrollment. The program was closed in 1992 and any remaining funds were returned to the General Fund. There is no fiscal impact.

Senator Schmidt wanted to know if there was a balance in the supplemental retirement fund. **Representative Harris** indicated there was a balance of approximately \$170,000, which was transferred to the General Fund. He mentioned the entire fund was originally funded at \$250,000.

MOTION: **Senator Lakey** moved that **H 397** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

H 475 **Relating to Health Insurance Exchange** was presented by Representative Luker. **Representative Luker** indicated this bill requires that the Idaho Health Insurance Exchange (Exchange) marketplace allow for anonymous shopping and not require identifying information until the customer is ready to submit an application for purchase. It also provides that the site contain a warning regarding potential repayment of premium reductions if income information changes. There is no fiscal impact to the General Fund. There could be some programming cost to the Exchange which should be covered under construction grant funds.

A discussion ensued with **Representative Luker** and **Senators Thayn** and **Cameron** regarding logging on to the Exchange website and the improvements that have been made. **Senator Cameron** disclosed for the record under the rules of the Senate, that he has participated in and enrolled individuals in the Exchange through the use of the federal portal. He praised the Director of the Exchange for being responsive to the needs of the people. He commented that under the current federal system, the individual is asked to affirm that if they use the subsidy they may have to pay some of it back. He wanted to know whether Representative Luker was aware of the subsidy payback or whether he anticipated that the State would have a similar type of process reaffirming the process due to a change in circumstances for an individual, such as a divorce, the addition of a family member or an increase or decrease in income. **Representative Luker** explained that as things have progressed concepts have been put into place. Redundancy in the area of warning about the subsidy payback is an important piece. He commented that the bill is drafted with flexibility so that the Exchange could do whatever is necessary.

Senator Schmidt asked Representative Luker to comment on whether he sees the Legislature supplanting the role of the Exchange Board (Board) in terms of making recommendations. **Representative Luker** responded that it is the obligation of the Legislature to set parameters for the Exchange and that is why the additions to the bill are not detailed, but are there to set the basic policy. **Senator Schmidt** commented that the Board could set parameters without this legislation. **Representative Luker** indicated that was correct, but this bill is an expression of legislative policy. **Senator Schmidt** expressed his concern about the Legislature's role of micromanaging in this process. **Representative Luker** commented that he did not think the Legislature was micromanaging, but setting important public policy to protect the consumer.

Senator Goedde asked if the proposed legislation was supported by the Board. **Representative Luker** indicated that he had worked with the Board on the language for the proposed legislation and that they were supportive.

MOTION:

Senator Martin moved that **H 475** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor of the Senate.

H 421

Relating to Engineers and Surveyors was presented by Jeremy Chou, American Council of Engineering Companies of Idaho (ACEC) for Representative Clark Kauffman. **Mr. Chou** said this legislation codifies the existing engineering practice when design coordination requires the application of engineering principals and data and that this practice constitutes professional engineering. He gave a brief background and explained that in April of 2013, the Idaho Transportation Department (Department) released a Request for Proposal (RFP) to replace the existing bridge over the Boise River on Broadway Avenue. He went on to say that the work required the design coordination of a structural engineer for the bridge; a traffic engineer; and a geotechnical engineer for the roadwork, but the RFP allowed non-licensed engineers the opportunity to be the project manager. All of these interrelated activities required an engineer to integrate the plans and study for successful implementation. He explained that this was a concern for the ACEC, which is why this legislation was brought forth. **Mr. Chou** commented that this legislation codifies existing practice that design coordination is included in the definition of "professional engineering" under statute.

Mr. Chou indicated that members of the Board of Engineering and Land Surveyors are supportive and that all parties worked together to make suggestions and to discuss the language of this bill. There is no opposition to the bill and there is no fiscal impact.

MOTION: **Senator Goedde** moved that **H 421** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

H 358 **Relating to Risk-Based Capital for Insurers** was presented by Tom Donovan, Deputy Director, Department of Insurance (Department), on behalf of Director Bill Deal (Director). **Mr. Donovan** explained that this proposed legislation seeks to amend Idaho Code Title 41, Chapter 54, which deals with Risk Based Capital (RBC) for insurance companies who hold a certificate of authority. He said that the certificate is issued by the Director to authorize companies to transact insurance within the State of Idaho. RBC is a regulatory tool to assist in the prevention of insolvencies and to help keep companies from getting in a dangerous financial condition. He reported that RBC provides a capital adequacy standard related to the degree of risk taken by a company. The RBC level is measured against a hypothetical level. Insurance companies are already required to file RBC Reports with their annual financial statement filings. If a company approaches a condition where there is concern based on its RBC level, there are incremental steps to address that, starting with the company submitting an RBC Plan to the Department on how it will improve its condition.

Mr. Donovan stated that Chapter 54 is based on a National Association of Insurance Commissioners (NAIC) model law, and amendments reflected in this legislation are based on updates to the Insurer RBC model law 312 and a separate RBC model law 315 for health organizations. He explained that these are entities required to be licensed by the Department, but the term is not so broad as to encompass health providers, such as hospitals or physicians.

He disclosed that his bill would do three main things. First, two other types of entities would be required to file an RBC report as a part of the annual financial statement filing they already make with the Department. The new entities are fraternal benefit societies and health organizations, the latter of which are defined as a "hospital service or professional service corporation" in Idaho.

Mr. Donovan stated that the framework for RBC reporting and monitoring lies with the insurance regulator in a company's state of domicile. There are no fraternal benefit societies domiciled in Idaho, and the states where fraternal organizations doing business in Idaho are domiciled already require RBC reporting. He said, practically speaking, because of this focus and primary financial regulation by the insurance regulator in the state of domicile, there are only two companies licensed under the Insurance Code who will fall under the new requirement to file RBC reports, and they are licensed as professional service corporations. One of those companies already voluntarily complies with RBC reporting.

He emphasized that the NAIC model law concerning RBC for health organizations long predates the Affordable Care Act (ACA). The model was first adopted in 1998 and last amended in 2009, and the Department's proposal to make this legislative change is in no way a response or reaction to the ACA.

Mr. Donovan commented that in addition to making good sense from the standpoint of financial solvency regulation, this legislation also contains an accreditation standard starting in January 2015 (which is the effective date of the bill), namely, the application of RBC requirements to "health organizations" or "hospital service and professional service corporations" licensed by the Department. It is important for the Department to maintain its accredited status with the NAIC. The accreditation program promotes regulatory efficiency. In particular, while all insurance regulators have the authority to examine all licensed companies doing business in their states, the laws provide that a regulator may accept the examination of a company

by a domiciliary regulator so long as that other insurance regulator is accredited. Therefore, while the Department remains accredited, an Idaho company licensed in multiple states will not be subject to multiple examinations, thereby saving Idaho companies time and money.

Second, **Mr. Donovan** pointed out that on page 4, line 11, the language moves the RBC triggering event for a Company Action Level Event (that first level where the Department can require a company to provide an RBC Plan) from 250 percent to 300 percent of the baseline RBC level where there is a negative trend (essentially declining financial experience) for life companies and health companies. He stated that this advances the early warning nature of the RBC system to require an RBC plan a little earlier to help avoid further decline. This would also bring the test for life and health companies in line with those currently in place for property and casualty companies.

Third, **Mr. Donovan** emphasized that the bill adds language on page 7 to clarify the confidential nature of RBC reports and related documents, such as RBC plans that a company would submit to the Department. The current law already provides that all RBC reports and related information that insurance companies file are not open to public disclosure and they are not even subject to subpoena. The new language would clarify that the RBC Reports and related information are not discoverable and not admissible in a private civil action, although the Department is authorized to use the information in any regulatory or legal action. Additionally, the Department would be authorized to share and receive confidential RBC information with other regulators and the NAIC. The NAIC often facilitates the sharing of information among states.

The Department knows of no opposition to this bill and there is no fiscal impact. **Mr. Donovan** disclosed he was authorized by Woody Richards to state that American Family, the Farm Bureau, and Allstate support the bill.

Senator Goedde and **Mr. Donovan** discussed the definition of the Fraternal Benefit Society and "managed care" contained in the insurance code and statute.

MOTION:

Senator Goedde moved that **H 358** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 408

Relating to Purchasing Division, was presented by Bill Burns, Administrator, Department of Administration (Department), Division of Purchasing (Division). **Administrator Burns** said that in 2013, the Idaho Legislature directed the Division to improve the development, management and reporting of contracts using best practices and to implement a training program for agency staff engaged in the procurement and contract management process. As part of implementing these directives, questions have arisen about the authority of the Division to implement these best practices for agencies and agency staff involved in the procurement process through rule. Rules will be issued through the regular administrative rules process, including a review by the Idaho Legislature, and will only apply to those agencies subject to the processes of the Division by Idaho Code § 67-5716(14). There is no fiscal impact.

Administrator Burns detailed the proposed legislation changes and said the words "of the office of the division" have been stricken so that the paragraph reads that "the administrator is authorized and empowered to formulate rules in the conduct of purchasing, subject to the approval of the director of the department of administration". **Administrator Burns** commented the Department believes this is consistent with legislative intent for the Division and consistent with past rule setting. As noted in the bill's Statement of Purpose, in 2013, the Idaho Legislature directed the Division to improve the development, management and reporting of contracts using best practices and broaden training programs for agency staff. The improvement plan was released to the House State Affairs Committee in January of this year. **Administrator Burns** noted that in addition, the Department received specific legislative intent language regarding the contracting process and its framework during Joint Finance-Appropriations Committee meetings. As part of implementing these directives, questions arose regarding the authority of the Division to implement these changes through rule for agencies involved in the procurement process. He emphasized that this legislation clarifies and eliminates ambiguity in law that the Division may establish rules in the conduct of purchasing and the contract administration and management process overseen by the Division. This change does not in any way change the way rules are currently promulgated in the conduct of purchasing and will apply only to those agencies subject to the processes of the Division per Idaho Code § 67-5716(14).

Senator Schmidt remarked he was trying to understand why some state departments use purchasing help from the Department and some do not. He pointed out page 2, line 11, and said he thought that what the legislation was saying was that rules can be made for purchasing for all departments. In response to the question, **Administrator Burns** said the legislation does not change purview over current agencies. He explained that the Division has no purview over the Governor's office and legislative agencies. **Senator Schmidt** wanted to know if the rules would still apply if an agency chose not to use the Division. **Administrator Burns** explained that if an agency was under the current purview, they would have to conduct purchasing under the current rules. The proposed legislation does not change the agencies within their purview.

Vice Chairman Patrick and **Administrator Burns** had a conversation about current purview by the Division over universities and colleges and the option for universities to withdraw from using the purchasing service. They discussed the idea that the universities still have to buy from state open contracts, even if they opt out.

Senator Cameron queried if the intention was that the rulemaking would be negotiated through the rulemaking process, what would be included. **Administrator Burns** explained that rulemaking would take place and gave an example of a threshold of \$5 million that would constitute a high value contract. This would be a service contract, and in that case, a new rule would be established, working with the agency to establish a Memorandum of Understanding (MOU) between the Division and the agency in terms of the contract administration, roles and responsibilities. The Division would still administer and do periodic reviews of the compliance and the validity of the contract over time. This would include best practice checklists, available through published Division manuals, and contract status reviews through better performance data. The Division's responsibility would be to provide advice as to how to proceed and enforce available remedies.

Senator Cameron asked Administrator Burns if he anticipated having rules that addressed the parameters and best practices for early renewal or the extension of a contract. **Administrator Burns** indicated that was not in the plan, but he was aware of a concern about renewals, even though they were not common. He commented that if there was a benefit to the State in terms of continuity of

service or there was cost containment, the Division would proceed with an early renewal. **Senator Cameron** suggested that it would be a good idea to include a best practices standard to address when an early renewal or extension takes place, in order to protect the Department.

Senator Cameron and **Administrator Burns** discussed best practices for an Request for Proposal (RFP) versus a Request for Information (RFI) as a valuable tool for the purchasing process. **Administrator Burns** explained that training has to be constant and there are manuals available to cover the contract life cycle. **Senator Cameron** commented that the Committee had not had the opportunity, as part of the rules, to review the best practices and manuals. He cited an example of an RFP where four contractors bid, but the weight of the cost of the contract was a minor consideration in the determination of the award of the contract. The cost of the contract is more paramount than some of the other decisions, and he wanted to know whether that was something considered as a provision in the rulemaking process. **Administrator Burns** commented that anything is open to be discussed and considered. He understood Senator Cameron's point about the weight of the cost being much lower than the weight of the technical factors around the quality of the service being provided.

Senator Lakey asked Administrator Burns if he anticipated the rules surrounding the best practices to take more of a "you shall" or "you should" approach.

Administrator Burns replied that to provide consistency throughout the whole process, it would be a "you shall" approach. **Senator Lakey** referred to the certification of staff and asked if there would be a process and what would it entail. **Administrator Burns** said his responsibilities indicate he can delegate purchasing authority to individuals that have the capability and understanding of the purchasing law and as currently written, those include certification, which have not been enforced yet, but would be a part of the rulemaking process.

MOTION:

Senator Cameron moved that **H 408** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

H 498

Relating to Film and TV Production Rebate Fund; Sunset Date - was presented by **Jeff Sayer**, Director, Department of Commerce (Department), for Representative Frank Henderson. **Director Sayer** said this legislation continues a program to grow the media production industry in Idaho. The Department will utilize the program as an economic stimulus to develop a media industry workforce by providing a post production rebate on specific Idaho expenditures on qualified media production projects. Currently, most states, including western states of Utah, Washington, Oregon, Wyoming and Montana, as well as 19 provinces and countries around the world are benefitting from similar film incentive programs that attract media production expenditures. Idaho is seeking to compete and build an industry in a global market. This legislation will sunset in 2020. **Director Sayer** gave a brief history of the Rebate Fund (Fund) and indicated that since the creation of the program, Idaho's economy was severely impacted by the downturn and was never able to be funded and fully utilized.

Director Sayer remarked that in 2014, with the improvement in Idaho's economy, it seems only prudent to retain this economic development program. By extending the sunset date, the private and government sector partnership will seek the desired path to reaching the goal of a \$100 million contribution to Idaho's economy.

This program would provide a 20 percent rebate on specific Idaho expenditures if at least \$200,000 is spent in Idaho and when the production hires Idaho crew members. In any production qualifying under the program, 35 percent of the total crew must be Idahoans. The maximum rebate per production is \$500,000. Depending on the size of the budget for the productions utilizing the rebate, \$10 to \$12 could be spent in Idaho for every \$1 rebated from the program. The film and television industry economic multiplier is considered to be between 1.5 and 2.8 in states with a mature industry. Currently, there is no money in the Fund and the account is dormant. **Director Sayer** said that Commerce will analyze the program and will not put any money into the account until there is a report.

Senator Schmidt commented that since the law has been on the books, he thought the analysis would have already been done. **Director Sayer** replied he has not had time to look at the program in depth and that he wanted more time to provide a final recommendation.

TESTIMONY:

Wayne Hoffman, President, Idaho Freedom Foundation, testified in opposition to this bill. He said that studies have proven that these types of programs don't work. He felt this was anti-free market and does not create jobs. He commented there have been studies done at the Mackinaw Center showing a multitude of problems related to cost concerns and other issues. States are trying to revamp those incentives. He commented this was corporate welfare and a great expense to taxpayers.

Senator Goedde reminded Mr. Hoffman that no money has been spent to date. **Mr. Hoffman** commented that was true, but urged the Committee to let the Fund sunset.

Director Sayer remarked that the incentive really does create jobs for the short term at over \$100 an hour. He said that the Department will study those states who have been successful with the film and television production incentives.

Senator Lakey asked if the code has some built-in items that have been discussed more frequently, such as reimbursement and job creation. **Director Sayer** commented that the fiscal notes give an overview that is built into statute. The Department may want to overlay some post-performance onto an earlier statute.

Senator Cameron remarked that the program has been in existence for the past five years, but that it had not been utilized. **Director Sayer** answered that no funds have gone into the account and there has been no backing for this incentive. He pointed out the list of movies and television productions is a synopsis of all of the projects that have been presented. **Senator Cameron** asked Director Sayer if the Department has requested funding. **Director Sayer** answered that the Department is asking that the sunset clause be extended to allow the Department an opportunity to finish their analysis in order to make a recommendation. He said he was anticipating the report would include both a request for funding and a series of changes that would be added to the statute that would strengthen the design of the incentive to make sure all current thinking was addressed.

MOTION: **Senator Goedde** moved that **H 498** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Keough will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:35 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary