

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, March 13, 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.
- MOTION:** **Senator Lakey** moved to approve the Minutes of February 25, 2014. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- HJM 6** **A Joint Memorial Relating to the Patient Protection and Affordable Care Act (PPACA)** was presented by Representative Thomas Dayley. **Representative Dayley** reported that the PPACA which was passed by Congress in 2010, imposes a variety of taxes on the healthcare industry. These taxes include a 2.3 percent medical device tax imposed on a manufacturer, producer or importer, based on the product sales price. An estimate of the tax burden over the next 10 years is approximately \$29 billion. In addition to being a potential deterrent of product innovation, these costs will ultimately be passed on to Idaho consumers. This legislation urges the Secretary of the United States Department of Health and Human Services to suspend the imposition of all PPACA taxes and to conduct a national review, which will provide a clear understanding of the impact.
- There is no anticipated direct impact to the General Fund from any of the PPACA taxes. However, based on a March 2012 report, Idaho has approximately 2,000 employees directly employed by the advanced medical technology industry. The potential impact of the 2.3 percent medical device tax could be the loss of nearly 100 jobs and \$11.5 million of economic output. There would also be a substantial impact to Idahoans from all of the PPACA taxes.
- Representative Dayley** asked for the support of the Committee because it was important for the Idaho Legislature to make some statement to Congress.
- Senator Guthrie** voiced a concern about the loss of jobs, the tax on equipment and the PPACA. In response, **Representative Dayley** indicated the tax was strictly on the device.
- MOTION:** **Senator Guthrie** moved that **HJM 6** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

Relating to Sick Leave was presented by Luci Willits, Chief of Staff, Department of Education (Department). **Ms. Willits** said this bill would allow state department education employees who transfer to a school district or charter school to transfer up to 90 days of sick time and to allow district employees who transfer to a state education agency to have access to increased sick time for the purposes of retirement. There is no material impact on the Sick Leave Fund. **Ms. Willits** gave some background information and examples of when this may occur.

Ms. Willits detailed that currently, if a school district employee comes to work for the Department they may bring up to 90 days of their sick leave. However, if they leave the Department, they are not able to transfer it back to a school district. This creates a one-way street and can hurt an employee. This same thing does not occur if an employee chooses to move from school district to district. It truly is only an issue at the state level. She emphasized that consistency is important. She explained that employees who are hired by the Department from a school district cannot transfer their sick leave back to the district when they return under the Public Employee Retirement System of Idaho (PERSI). Likewise, those who are hired by a district from the Department cannot transfer their sick leave into the district under PERSI. Because of this, teachers are hesitant about applying for a job at the Department and those at the Department are hesitant about applying for a job at the district. **Ms. Willits** referred to page 1, Section 33, lines 24 through 27, "Any employee employed by a school district who was employed by a state educational agency during the current or prior school year shall be credited any unused sick leave accumulated during state employment up to a maximum of 90 days" and pointed out this allows a no harm clause.

Ms. Willits referred to page 3, lines 19 through 24, "For any employees of a state educational agency with unused sick leave that includes sick leave credited pursuant to Idaho Code § 33-1217, the credited state service requirements of subsection (2) (b) (i) through (iv) of this section shall not apply, but the maximum unused sick leave which may be considered shall be 600 hundred hours" and explained there was an individual the Department wanted to hire, but because of current legislation regarding the transfer of sick leave, that individual decided not to take the position.

Ms. Willits explained the second change in the proposed legislation allows individuals who come from a school district to work at the State to be able to use their sick leave for retirement purposes. Currently, a person would have to work for at least five years at the state level before being able to access their sick leave for the purposes of retirement. This is especially problematic as the term of an elected state superintendent is only four years.

She informed the Committee that the Department largely recruits its employees from Idaho school districts. Two obscure provisions in state law hinder recruitment for outstanding candidates to work for the State. The Department encourages individuals to gain valuable experience working at the state level and to take that experience back to districts. If individuals lose their sick time, they are not willing to come to work for the Department. The second provision disincentivizes anyone who is close to retirement from working at the Department, as it will cost them thousands of dollars in sick leave.

Ms. Willits commented that the House Committee heard testimony from two individuals who put a human face to this issue. She said that Liz Compton, an educator with 34 years of experience, testified before the House Committee how this provision hurt her. She worked for the Department and then went back to work for a school district where she lost all of her accumulated sick leave. **Ms. Willits** quoted from Ms. Compton's letter, "Since leaving the Department, I have shared

my personal experience with many of my colleagues who might ever consider full time employment at the Department. As a result of current code, state educational agencies are losing quality applicants and a wealth of experience, and districts are losing the benefit of professionals who have worked at a state level." **Ms. Willits** summarized a letter from Patricia O'Dell, regarding the transfer of sick leave. Ms. O'Dell was in favor of the proposed legislation.

Ms. Willits told the Committee that without this change, any educator who goes to work for the Department will lose their accumulated sick leave when returning to the district and they will have to start over. In addition, it would be very difficult to recruit a person who was close to retirement because they would have to work for the Department for at least five years in order to be eligible to use sick time for the purposes of retirement.

The Department worked with PERSI to craft the legislation. Director Don Drum testified at the House Committee and said there would be no material impact to the PERSI Sick Leave Fund. **Ms. Willits** remarked that the bill passed the House committee with no objection.

Senator Martin indicated he was concerned about the fiscal impact, and asked Ms. Willits to explain. **Ms. Willits** pointed out the impact was minimal upon PERSI, since out of the 140 employees for the Department, only half were educators. PERSI financial advisors were consulted and they indicated they were not worried.

Senator Lakey asked if Ms. Willits had received any input from the local districts regarding the fiscal impact of this bill. **Ms. Willits** answered that the Department worked with all of the stakeholders, and there would not be a financial burden.

MOTION:

Senator Goedde moved that **H 452** 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 this bill on the floor of the Senate.

H 512

Relating to Court Determination Indigency - Health Exchange was presented by Representative Christy Perry. **Representative Perry** indicated the purpose of this legislation is to certify a subsidy received for health care coverage through the Idaho Health Insurance Exchange (Exchange) does not qualify as a factor for indigency determination in regards to the Public Defender System. There is no known fiscal impact to the State General Fund or other dedicated funds.

She outlined **H 512**, which she explained is a replacement of **H 432**. She explained the intent of this bill arises out of conversations within the Public Defender Interim Committee. The concern was that the current statutes regarding the services of a public defender beginning on line 15 of the bill, say that the court shall presume that the following persons are indigent unless such a determination is contrary to the interests of justice. This means that if an individual meets these certain criteria, they are automatically considered indigent and can receive the services of a public defender. She pointed out that line 21 clarifies that it is those individuals who receive or whose dependents receive, public assistance in the form of food assistance, health coverage and cash assistance. It is possible that the argument could be made that receipt of a subsidy from the Exchange could be considered public assistance in the form of health coverage. The intent of this legislation is to clarify that participation in the Exchange, which is an avenue for a health insurance subsidy, will not cause an automatic presumption of indigency.

Representative Perry indicated that the verbiage was changed regarding concerns raised by the American Civil Liberties Union (ACLU) and it was determined that their concerns were valid and should be addressed. This is due to the fact that there is some overlap. Currently, on line 19, a person who does not exceed 187 percent of the federal poverty level will qualify for a public defender. A person who is at 187 percent of the poverty level and under will also qualify for a subsidy on the Exchange. The intent is not to disqualify this person from qualifying for a public defender, but rather to disqualify those who receive a subsidy who are above the poverty level. Those individuals who make \$94,200 (for a family of four) and who are up to 400 percent above the federal poverty level, would not normally qualify under the current statutory criteria.

MOTION:

Senator Guthrie moved that **H 512** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Senator Schmidt questioned 21(b) "Persons who receive, or whose dependents receive, public assistance pursuant to title 56, Idaho Code, in the form of food assistance, health coverage, cash assistance or child care assistance" and asked if the Health Insurance Exchange was included. **Representative Perry** answered that this statement deals with public assistance and welfare, but she could not tell definitively.

The motion carried by **voice vote**. Senator Guthrie will carry this bill on the floor of the Senate.

H 545

Relating to Building Codes was presented by Representative Jason Monks. **Representative Monks** reported that this legislation would adopt the current version of both the Idaho Residential Building Code (IRBC) and the Idaho Energy Conservation Code (IECC) and identify those codes as the IRBC and the IECCI. He remarked the simple part of this bill is the name change. It is important because it allows the State more flexibility in its adoption of new building and energy codes as they become available. He pointed out that this is dealing with the RBC and not the Commercial Building Code. This legislation allows the State to look at new international codes and determine which parts and portion they want to adopt. Any future additions or amendments to the code would be made through the State Building Code Board negotiated rulemaking process, which requires written notice and a public hearing. There is no impact to the General Fund.

Representative Monks pointed out that this legislation has the support of the Builders and Contractor's Association, the Idaho Association of Building Officials, Idaho Association of Realtors, and the Association of Idaho Cities. He disclosed there was some opposition from the Idaho Architects Board which had a problem with the process as opposed to what the legislation actually enacts. He talked about the remedy for the rulemaking process on page 3, Subsection 5, that "express written notice of the public hearings will be given" and it lists all of the organizations that must be notified, including the architects. He mentioned there was also a concern that Idaho would become different from the other states because we have our own Idaho code as opposed to adopting the International Building Code. He mentioned there is no universally accepted version of the codes. He pointed out that the State sets a baseline, but cities have the ability to adopt other codes of their choosing. Because there is a "hodgepodge" of codes within the State as well as outside the State, this was not a change that was going to cause any undue burden.

Vice Chairman Patrick asked if there were any additional costs for changing manuals. **Representative Monks** replied that an additional cost is not anticipated, only the cost for reprinting the code. Some inappropriate areas of code have been exempted through the rulemaking process. Codes that are being developed are specific to Idaho. He commented there would be a significant cost savings if Idaho chooses not to update code in three years when the International Code comes out. **Vice Chairman Patrick** and **Representative Monks** discussed having inserts available reflecting the changes instead of code books in order to save money.

Senator Lakey commented he liked the approach and asked if Idaho was going to maintain a set of books and where could they be purchased. **Representative Monks** said he could not answer that question and deferred to the experts.

TESTIMONY:

Leon Duce, representing the Association of Idaho cities, testified in support of the bill.

Tyler Mallard, representing the Idaho Building Contractors' Association, indicated the codes would be available through the International Code Council (ICC). He testified in support of the bill.

Steve Martinez, Idaho Building Contractors' Association (Association), indicated the ICC prints four different codes, namely, the International Residential Code (IRC), the International Electrical Code (IEC), the IECC, and the International Existing Building Code (IEBC) or remodeling code. He emphasized this bill is only talking about the IRC and the IECC. The Association has a goal of making the book less expensive by taking out the parts that are not used because they are covered somewhere else. The State already runs under its own plumbing, electrical, fuel, gas and mechanical codes. He pointed out that the last code change was approximately 300 pages long since the rules were rewritten.

Dan Hunter, building official for Canyon County, a member of the State Building Code Board, President of the Idaho Building Officials, indicated the Building Code Board (Board) saw this legislation prior to the hearing before the House Committee. The Board would have liked for the legislation to go through the negotiated rulemaking process, even though there is no requirement to do so. The Board supported the name change of the codes. He clarified that cities do not have different codes and that is outlined in statute by the Board. Local jurisdictions have the ability to amend the code and may differ from city to city.

Chairman Tippetts asked if the Board had taken a position on this legislation. **Mr. Hunter** replied that there was no formal position taken, but there was a concern voiced about the process.

MOTION:

Vice Chairman Patrick moved that **H 545** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion.

Senator Martin indicated he was comfortable with calling the code "Idaho Code".

Senator Schmidt disclosed he was against the legislation because he wanted to have the comfort that we are serving Idaho.

The motion carried by **voice vote**. **Senator Schmidt** wanted to be recorded as voting "nay." Senator Guthrie will carry this bill on the floor of the Senate.

Chairman Tippetts commented that this may be our last meeting. He thanked the Committee for being exceptional. They had been very thorough and thoughtful, and he appreciated all of their hard work.

**HONORING OF
PAGE:**

Chairman Tippetts commended page Lindsay Bolinder and said she had done an excellent job and thanked her for her work. He asked her to tell the Committee what she has learned from this experience and what her plans were going forward. **Lindsay Bolinder** remarked that being a page was such a great experience for her and she was sad the session was almost finished. She described how it was different to learn about government in a textbook, but another thing to actually experience the inner workings "hands-on." She mentioned she learned how people worked together professionally and wanted to apply that knowledge to her future. Going forward, she will be going to Utah State and wants to become a pediatric nurse. She thanked the Committee for the experience.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:18 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary