

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 10, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee and Ward-Engelking

ABSENT/ EXCUSED: Senator Schmidt

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.

H 14: **Labor and Materials Liens on Motor Vehicles - Idaho Transportation.** This bill will be sent back to the floor for consideration by the Transportation Committee.

MOTION: **Senator Martin** asked for unanimous consent to send **H 14** back to the floor of the Senate for consideration by the Senate Transportation Committee. There were no objections. **Senator Lakey** disclosed for the record that Victor Gallegos is one of his law partners and has done some work with the Idaho auto dealers.

RS 23315C3: **Relating to Direct Medicare Act. Representative Luker** said this bill creates a simple format for Direct Medical Care agreements as a method for providing cost effective and personalized routine health care services on a contract, non-insurance basis. The bill provides basic definitions and contract requirements, describes applicable scope of practice, and exempts such agreements from regulation by the Department of Insurance (DOI). Services provided under such agreements can be recognized as "Direct Primary Care" under Section § 1301(3) of the Patient Protection and Affordable Care Act (PPACA) and constitute an allowable component of a qualified health care plan under the PPACA.

Representative Luker said it is the policy of the State of Idaho to promote personal responsibility for health care and the cost-effective delivery of medical services by encouraging innovative use of direct patient-provider practices for primary and specialty medical care. Direct patient-provider practices utilize a model of periodic fees for provider access and medical management over time, rather than simply a fee for visit or procedure service model. Some patients and medical providers may wish to establish direct relationships with one another as an alternative to traditional fee-for-service care financed through health insurance. The purpose of this act is to confirm that direct patient-provider arrangements that satisfy the provisions of this chapter do not constitute insurance. He summarized the definitions and outlined direct care provisions. **Representative Luker** said a medical provider cannot bill an insurer for the services provided under a direct care agreement; however, a patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This limitation does not prohibit a direct medical care provider from billing insurance for services not provided under a direct care agreement. He pointed out that direct care agreements are not subject to regulation as insurance under Idaho Code, Title 41.

Representative Luker said a direct care agreement must have the following disclaimer: "This agreement does not provide comprehensive health insurance

coverage. It provides only the services described herein. It is recommended that insurance be obtained to cover medical services not provided for under this direct care agreement." He said a direct care agreement may not be sold or transferred by either party without the written consent of the other party to the agreement. A direct care agreement may not be sold to a group, employer or group of subscribers because it is an individual agreement between a medical provider and a patient. These limitations do not prohibit the presentation of marketing materials to groups of potential patients or their representatives.

Senator Lakey wanted to know if the definition of health care services was broad enough to include medical, dental and chiropractic. **Representative Luker** and **Senator Lakey** discussed the scope of services, the terms of agreement and the termination clause. **Vice Chairman Patrick** commented a patient could go to the doctor and negotiate the price with no money changing hands. **Representative Luker** replied there would be a monthly or periodic payment. **Senator Martin** and **Representative Luker** discussed direct medical care agreements currently in use. **Senator Lee** and **Representative Luker** talked about current insurance policies available in the State of Washington that provide these services.

MOTION: **Senator Patrick** moved to send **RS 23315C3** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

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

RS 23431C2: **Relating to Land Surveying.** **Michael Kane**, Attorney, representing the Board of Professional Engineers and Land Surveyors (Board), explained this amendment changes the definition of land surveying in Idaho Code to better align with actual practice, improves consistency with surrounding states, and reduces barriers for young professionals to enter the land surveying profession.

He said the current definition describes land surveying as including only boundary surveying and certifying elevations (for Federal Emergency Management Agency (FEMA) (flood insurance purposes). The Board has worked with the Idaho Society of Professional Land Surveyors and other stakeholders to update the definition in law for the following reasons:

1. Land surveyors are called upon by Idaho statute to safeguard the life, health, and property of the general public. Under the current law, land surveyors are only licensed to work on property boundaries, yet are asked by their clients to sign and seal work that they perform which is not authorized by code. The updated law will include all the services land surveyors routinely provide to their clients and the public.
2. The current law is a barrier to entry for new professionals. Very few young surveyors are entering the workforce and becoming licensed professional land surveyors since they can only credit boundary surveying experience toward the four-year experience requirement. The current law has the effect of extending the experience requirement timeframe for licensure for most survey interns from the minimum four years to eight or more years as boundary surveying comprises only about of one third of the work for most survey businesses.
3. The states surrounding Idaho have recognized the need to protect their public by revising the definition of land surveying to better reflect what surveyors are called upon to do in their states and to recognize the experience and judgment of a licensed professional land surveyor. The new definition will enhance mobility of licensure with other states.

4. Land surveyors must pass two examinations to become licensed. These are national examinations that test for technical competence. The professional land surveyor examination contains questions that are included in the updated definition of land surveying. Test questions relating to the current definition of land surveying in Idaho (boundary surveying) are only 38 percent of the total test. Land surveyors must be competent in the full suite of land surveying services included in the new law in order to pass the professional examination.

Senator Heider asked for an explanation of licensing and permits as they applied to a homeowner. **Mr. Kane** referred to "authoritative" and said it means land surveying must be certified by a professional land surveyor in accordance with established principles of professional land surveying when used to describe products, processes, applications or data resulting from the practice of professional land surveying. However, homeowners are exempt.

Senator Lakey referred to "professional land surveying" and "practice of professional land surveying" and wanted to know if any member of the public would be exempted from having a license. He commented he would want to make sure local government would require a permit. **Mr. Kane** said the Board does not require nor issue a permit and that permits are issued by the cities.

Senator Heider said that in the past, certifying elevations has not been the prerogative of a surveyor, but under this legislation, would a land surveyor have to certify an elevation. **Mr. Kane** said for the past two years, certifying has been done.

MOTION:

Senator Martin moved to send **RS 23431C2** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Heider moved to approve the Minutes of January 29, 2015. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippets.

RS 23360C1:

Relating to Cosmetology. **Kris Ellis**, representing the Idaho Cosmetology School Association and the Northwest College Federation, said the purpose of this legislation is to reduce the number of hours required to be a cosmetologist while still allowing schools to teach additional hours as a business decision if they so choose.

Ms. Ellis said this was a simple change that lowers the hours required to be a cosmetologist from 2,000 to 1,600 hours while continuing to allow schools to teach the 2,000 hours. Thirty-eight states require 1,600 hours or less. Many of these states require the same exam or even a more comprehensive exam than Idaho. The reduction to 1,600 hours will mean students will complete their training approximately 4 months earlier, saving on student loans and allowing them to get into the workforce sooner. **Ms. Ellis** reported it was important to note that the schools' accrediting body requires that they maintain a 70 percent placement rate. The schools cannot simply teach more students, they must ensure that those students have jobs as well. This change will benefit not only the students but the State of Idaho.

Senator Cameron had a discussion with **Ms. Ellis** about the history of the change in required hours. **Ms. Ellis** said these changes were submitted to the Board of Cosmetology (Board) in 2012. The Board expressed a desire to keep the 2,000 hour requirement in place. Currently, the Board has decided to take up this issue. **Ms. Ellis** said the cosmetology schools could see how the reduction in hours would help a student obtain a job more quickly. She said the 2,000 hour requirement has been in place since the 1940's. She said many students have said the 1,600 hour

requirement would help them enter into the workforce in a timely manner. She did not feel those students who had taken the 2,000 hour required class would see the reduction in required hours as a diminishment of their license.

Chairman Tippetts disclosed for the record he has a son who is associated with the same firm as Ms. Ellis.

MOTION: **Senator Heider** moved to send **RS 23360C1** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenter for the rules review.

DOCKET NO. 38-0501-1401: **Rules of the Division of Purchasing.** This rule was presented by **Sarah Hilderbrand**, State Purchasing Manager, Division of Purchasing (Division). She said this proposed rules revision clarifies the processes of state agency purchasing and the new rules address processes for high dollar service contracts and for contract administration and management. She gave an overview of the Division and went over the rule changes.

She said the proposed rules have two predominant areas of fiscal impact. First, proposed required training will require an expansion of the training program at the Division of Purchasing with a total budget impact estimated at less than \$245,800 annually. The current fee structure applied to executive contracts is sufficient to fund the expenditure increase. Second, the proposed rules requiring an oversight board, management by a professionally certified project manager, and third party validation for service contracts in excess of \$5 million will have a fiscal impact at the agency level. The fiscal impact to individual agencies will vary widely depending on the oversight procedures currently in place and the number of contracts that fall into the high value definition.

Negotiated rulemaking was conducted. The Division received a significant amount of agency input. The Division also met with several agencies to discuss the proposed changes and the potential impact on the agency. While agencies had few comments on the majority of the proposed changes, the primary concern expressed was related to the cost and time involved with increased monitoring and creation of an additional layer of oversight. Through these meetings an exemption process was drafted to exempt certain service contracts from some aspects of oversight and to recognize an agency's internal core competencies currently in place for the subject matter of the contract. The proposed exemption process was a product of the negotiated rulemaking process. It was an attempt to recognize an agency's documented expertise in these areas.

Senator Cameron said he had a number of questions. He wanted to know if the deletion of the definition of "agency" was replaced somewhere else in the rule. **State Purchasing Manager Hilderbrand** stated the definition was in Idaho Code. **Senator Cameron** and **State Purchasing Manager Hilderbrand** discussed the exemption of elected officials from using the Division under the high value contract rules. **Senator Cameron** said there was a request in the Division's budget for \$245,000, which was the increased cost to the Department of Administration (DOA), for the new definitions of the high value contract. He wanted to know what the fiscal impact would be to State government and agencies. **State Purchasing Manager Hilderbrand** said the amount represents two training officers as well as a training management system, in addition to the rule changes. The Division wants to expand the training program to include updating manuals, templates, forms, and statewide outreach. She said the fiscal impact on other state agencies would be difficult to say, as it depends on the complexity of the contracts. She also said there were some agencies who were out-of-compliance with the rules. She said with the

revision of the rules, agencies will take the cost of a project into consideration when they submit budgets.

Senator Cameron expressed a concern about the purchasing system. He was also concerned about the high dollar value contract provision and the shift of responsibility from the DOA to the agencies in monitoring and the potential costs. He said the Department of Health and Welfare (DHW) will cost over \$1 million a year, Idaho Transportation Department (ITD) will cost over \$500,000 a year. He said that even though the Division tried to follow the Office of Performance Evaluations (OPE) report, Strengthening Contract Management in Idaho, there were distinct differences for that report. One requirement in the OPE report required the DOA to monitor the contracts, but the Division has decided that should be done at the local agency level. He asked State Purchasing Manager Hilderbrand to speak to how the decision protects taxpayers and why the State should be obliged to incur additional expense. He viewed oversight as the responsibility of the DOA and not of the agency itself. **State Purchasing Manager Hilderbrand** referred to the volume of contracts in the amount of \$1.6 billion as the value of current contracts that would meet this rule. The rule would not be applied retroactively to the contracts as many already have monitoring in place. She said looking forward, the Division has estimated from four to six new contracts per year that would fall within the high dollar contract definition. Several of the contracts may fall within the exemptions as most of the contracts belong to DHW. The Division is looking for new services and Information Technology (IT) projects, which are the highest risk. If there is a \$15 million contract and there is not proper monitoring, validation and verification in place and the contract fails, the cost is unknown. Consequently, the failed contract would have to be rebid. She said the change in the rule was an attempt by the Division to put monitoring in place. The Division would be apprised of the health of the contractual agreement.

Senator Cameron said it would seem that an imbedded monitor can be caught up in the excitement of a new contract and the duties of the contract within the agency. He wanted to know if the State would be safer having a separate entity in the DOA which would monitor the contract to make sure it was compliant with all of the provisions of the law and not necessarily vested in the success of the contract. **State Purchasing Manager Hilderbrand** said it was the intent of the Division to have an independent evaluation verification with a third party. The Division wanted the monitor to be an objective, qualified person. **Senator Cameron** said he was not in favor of some of the portions of the rule. Having elected officials being exempt from the process is also problematic. The OPE report recommended including elected officials under the same provisions of purchasing. The Division has decided to exclude elected officials and he wanted to know how that was in the best interest of the taxpayer. **Ms. Hildebrand** said the response from OPE was that the Division did not have the authority to impose rules on elected officials.

Senator Ward-Engelking referred to the last sentence in Section 033. of the rule, which reads, "all acquisitions of telecommunication and information technology property will conform to the guidelines and policies established or adopted by the governing or policy board or council created by statute or directive for the purpose of information technology oversight or review." She said the sentence seemed to give all of the power to the administrator or to the Board, which sounded like vendors could do whatever they wanted. **State Purchasing Manager Hilderbrand** said this refers to the IT standards for technology for consistency in economy of scale as well as for communication between agencies. She said it was not highly restrictive.

Vice Chairman Patrick expressed a concern with the same section.

Chairman Tippetts stated that in addition, the Division has clarified and modernized

the existing rules to reflect the process currently used by the State. He said it sounded as though the process was being changed along with the rules to be in conformity with the new process. **State Purchasing Manager Hilderbrand** said the statement refers to the removal of "telegraph" and adding "electronic signatures" and the formal invitation to bid, requests for proposals and the informal process. **Chairman Tippetts** asked State Purchasing Manager Hilderbrand to explain what was changing for some agencies in the way of responsibility that they have not had in the past. **State Purchasing Manager Hilderbrand** explained that Section 041. applied to solicitation procedures and Section 125. applied to contracts in place. Both contain similar requirements of hiring a third party subject matter expert to do an independent validation and verification. This person would be involved in the solicitation process, but also during the administration of the contract. The third party would work with the agency and the Division to assemble the solicitation documents. The solicitation document becomes the contract. The Division wants to put emphasis on the planning stage because the terms, conditions and requirements need to be placed into the solicitation document, as the contract is very difficult to amend at the end of the process.

Chairman Tippetts referred to the anticipated cost to DHW of \$1 million and wanted to know if the DHW expressed a concern about the additional cost. **State Purchasing Manager Hilderbrand** said DHW did express concern because they have the majority of the high value contracts. She said that was why the Division put in an exemption based on the comments from DHW. She said the Division did not anticipate the cost to be \$1 million.

Senator Ward-Engelking wanted to know if there was code that added to Section 33., because this section appeared to be very broad for the vendors. **State Purchasing Manager Hilderbrand** said the code was already in place, and this section in the rules would reference code.

Senator Lakey wanted to know where the definitions that were removed were. **State Purchasing Manager Hilderbrand** said they were all in Title 67. **Senator Lakey** asked about the small purchase categories and the \$10,000 exemption, the \$100,000 purchase that would have to be bid and how the amounts in between were covered. **State Purchasing Manager Hilderbrand** said that an agency can procure up to \$10,000, unless there is already a contract. Amounts between \$10,000 and \$100,000 are handled by an informal request for a quote. This is not a sealed bid.

Vice Chairman Patrick announced that this rule and the other three rules would be scheduled for another meeting due to lack of time.

ADJOURNED: There being no further business, **Vice Chairman Patrick** adjourned the meeting at 3:00 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary