

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 26, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, 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 1:31 p.m. and welcomed all.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Ken Edmunds, Twin Falls, Idaho, as Director, Department of Labor (Department), to serve a term commencing January 5, 2015 and expiring on January 7, 2019.

Mr. Edmunds thanked the Committee for their time, support and consideration. He said there have been significant changes and impacts to local areas in the employment arena. He noted the unemployment rate has gone from 8.8 percent to a current rate of 3.7 percent. There is a shortage of people in the middle skills area. A high school diploma will no longer get a person into a career. They must have a certificate or technical training in order to succeed. He said he was pleased to have his job. He talked about his experience in education and business, how he has been able to apply that knowledge to his present job, and how he hoped to make a contribution towards the future.

Senator Lee said she was excited about the education link with the workforce. She discussed with **Mr. Edmunds** how he planned to merge education with needs in the workplace. They discussed work-based learning through apprenticeships and a new delivery model involving industry participation.

Vice Chairman Patrick said he agreed with Mr. Edmunds that there is a huge shortage of skilled workers. **Mr. Edmunds** said the Department did a ten-year job projection and approached the State Board of Education to ask if the curriculum was aligned to coincide with job projections. There was no definitive answer, but he said the Department will continue to approach the State Board of Education on this matter. He added that nursing programs are training for the addition of 550 new positions per year for registered nurses plus replacement positions and are in line with the projections. Currently, there is not a demonstrated link between what students are selecting as majors and where the jobs exist.

Senator Heider and **Mr. Edmunds** discussed the improvement in the unemployment rate. **Mr. Edmunds** said replacement jobs tend to be service-based versus production-based. Those jobs pay substantially less. The State is running into a real problem where replacement jobs are not at the levels that are needed. The shortages are in the higher paying jobs. The gap needs to be bridged.

Senator Schmidt commented that professionals should also be a part of the jobs discussion. **Senator Schmidt** and **Mr. Edmunds** discussed the idea that many jobs are technology driven and the greatest growth potential for students is receiving a certificate of technical training.

GUBERNATORIAL APPOINTMENT:

Senator Heider moved to send the gubernatorial appointment of Ken Edmunds as the Director, Department of Labor, to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor.

S 1001:

Continuation of Relating to Workplace Safety. Tom Limbaugh, Commissioner, Industrial Commission (Commission), after having previously described the legislation to the Committee, resumed his testimony from February 24, 2015.

Commissioner Limbaugh said the Commission has not performed any safety inspections since 1948. In 1949 the Department of Labor (DOL) was established by the Legislature. The Commissioner of the DOL was directed to cooperate with the Industrial Accident Board (Board) in assisting the Board by making inspections of equipment machinery practices or conditions relating to safety, along with recommendations. The Board continued to have authority and power concerning safety procedures. The DOL later became the DOL and Industrial Services. Industrial Services is now part of the Division of Building Safety (DBS). For the past 25 years the DBS and the Commission have had a Memorandum of Understanding (MOU) designating DBS as the inspecting entity. The funding source for these inspections has been the Commission.

Commissioner Limbaugh stated DBS currently inspects state-owned and/or maintained buildings, public schools and political subdivisions upon request and administers the Logging Safety Program (LSP). Idaho Code §§ 67-2312 and 67-2313 grants DBS the authority to inspect state public buildings. Idaho Code § 39-8008 grants DBS the authority to inspect public schools. Therefore, DBS does not need authority from the Commission to inspect state-owned and/or maintained buildings or public schools.

Commissioner Limbaugh went on to say that Idaho Code § 67-2601A(3) requires the DBS Administrator to cooperate with the Commission in its administration of Idaho Code §§ 72-720, 72-721, 72-722 and 72-723. These are code sections that authorize the Commission, after gaining knowledge of an unsafe workplace, to inspect, hold a hearing and issue an order to render the working conditions safe. However, these code sections predate the Occupational Safety and Health Administration (OSHA) which has primacy over all private employment.

S 1001 repeals Idaho Code §§ 72-720 through 72-723. This removes any question of what authority the Commission has over private industry workplace safety. Workplace safety is very important and workers' compensation is more than just paying benefits. However, **Commissioner Limbaugh** said the Commission has never had the role of promoting safety through the training of employers or workers. Prior to the existence of OSHA, the Commission was given the authority over employers who had unsafe workplaces or equipment to correct those situations. Insurance companies have safety advisors to educate their policyholders. Many employers have safety programs in place. The only private profession provided with safety training by statute is the LSP. Even with this program, OSHA has primacy. This legislation authorizes DBS to administer the LSP. The logging industry was instrumental in wanting DBS to have the

authority to issue a safety stop work order of a logging company.

Commissioner Limbaugh said, in summary, this legislation clarifies the safety inspections and programs carried out by DBS. DBS already has statutory authority to inspect state-owned and/or maintained buildings and public schools. This transfers the authority to inspect political subdivisions upon request and the administration of the LSP to DBS. It removes any question of what authority the State has over private industry workplace safety. Further, this proposal identifies the continued use of the Commission Administration Fund to fund the DBS's inspections of state-owned and/or maintained buildings, public schools and the LSP.

Senator Heider said he was concerned about logging safety. **Kelly Pearce**, Administrator, DBS, responded saying the DBS has been performing inspections for approximately 25 years. There is no intent to change procedures. He is responsible for running the safety program. The actual workers' compensation loss ratio has declined since work safety training has occurred with on-site emergency procedures. **Senator Martin** asked who the administrator referred to in the bill is when there is an issue for an immediate work stoppage. **Mr. Pearce** said he is the responsible administrator.

Senator Cameron said he had several questions. He wanted to know if it was fair to say the Commission has had the authority, but never carried out the responsibility. He remarked the statute was being amended as to whose role it is to protect public safety, which has been the DBS for building safety and employee safety has been tied to workers' compensation through the Commission. **Commissioner Limbaugh** replied that the Commission has not done inspections since 1948. **Senator Cameron** stated what was really important is that employees are protected and adequate safety inspections are done to make sure the workers' compensation system is protected. He wanted to know about the flow of money. **Commissioner Limbaugh** said there is an MOU, but it does not address payment. However, since 1989, funds have been moved to DBS through a fund shift. **Commissioner Limbaugh** said there is no statutory reference to the method of payment. He said what this bill does is to put into statute that the Commission shall be responsible for these programs through a fund shift.

Senator Cameron wanted to know if Mr. Pearce saw any additional costs or expense to run the program. **Mr. Pearce** stated the cost was what led to this bill. He said the intention was to change the emphasis from safety inspection to safety inspection and safety training. There is no intent to increase the size of the program.

Senator Lakey asked about the terminology "immediate threat." **Mr. Pearce** said this was a carryover from previous legislation. The industry participated in giving input and wanted the authority granted. The authority rested with DBS to ensure logging operations did not get shut down.

TESTIMONY:

Woody Richards, representing the Associated Loggers Exchange (Exchange), an Idaho domestic insurance company, both owned and operated by the loggers, said he participated in the subcommittee that negotiated the legislation in this bill. The authorized inspections by the Commission are funded by the workers' compensation premium tax. The concern of insurers and employers was not to create a larger bureaucracy or extend to areas that previously have not been a matter of concern for the Commission. One of the issues discussed was whether inspections should be extended to political subdivisions. The Exchange was in opposition to extending inspections unless the political subdivisions were specifically charged for whatever cost might be incurred. He reported the Exchange supports the current legislation because it minimizes cost and reduces injuries.

Senator Cameron wanted to know if passage of this legislation would require more inspections of facilities that currently are not being inspected. **Mr. Pearce** stated there was a provision where a safety inspection could be requested from DBS at the hourly rate of \$65. He has never had a city or county or a political subdivision request an inspection.

Senator Martin asked Jerry Deckard, who represented the Associated Logging Contractors (ALC), to define the phrase "logging operations in Idaho." **Mr. Deckard** replied that a logging operation in Idaho would start with marking of the timber sale, cruising of timber sale, sawyers and woods on the timber sale, the decking of logs that have been sawn and forwarded and the loading and hauling of logs to a facility that makes boards out of timber. **Senator Martin** then wanted to know if once a log went to a mill, was that a part of a logging operation or the milling operation. **Mr. Deckard** said the logging operation stops at the gate of the mill. **Senator Schmidt** wanted to know if cutting shake bolts for splitting cedar shingles was a part of the logging operation. **Mr. Deckard** said that was part of the milling operation, but firewood was part of the logging operation. He said he has been working with the DBS and Commission representing the logging interests for the last one-and-a-half years to ensure there are safety program operations in place. He said the ALC endorses the bill.

MOTION:

Senator Martin moved to send **S 1001** to the floor of the Senate with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Vice Chairman Patrick will carry this bill on the floor.

**MINUTES
APPROVAL:**

Senator Cameron moved to approve the Minutes of February 10, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

S 1078:

Relating to Mortgage Guarantee Insurance. **Peter Kolbe**, Vice President and Associate General Counsel, Genworth Mortgage Insurance Corporation, said the proposed legislation repeals Idaho Code § 41-2653(1), which requires that a mortgage guaranty insurer retain no more than 25 percent coverage of the borrower's indebtedness to the insured lender. The 25 percent coverage limitation contained in Idaho Code § 41-2653(1) never achieved its intended purpose to spread risk and draw new capital to the industry. The section is out-of-date. There is no fiscal impact.

Mr. Kolbe said mortgage guaranty insurance insures a lender against loan default by a borrower. Typically, a lender requests mortgage guaranty insurance coverage on 25 percent of the home loan balance. For example, on a \$100,000 home loan the mortgage guaranty insurer will pay the lender the first \$25,000 of loss in the event of a loan default. However, it is also very common for lenders to request 30 percent or 35 percent insurance coverage on individual loans, or 100 percent coverage on pools of loans.

Mr. Kolbe stated Idaho's current law forces a mortgage guaranty insurer to reinsure any risks above 25 percent coverage. There is a separate reinsurer for each 25 percent slice of the coverage. In order to write 100 percent coverage, Idaho's law requires that four insurers each hold 25 percent of the coverage. All this reinsurance is placed with reinsurers affiliated with the primary mortgage guaranty insurer. In Genworth's case, for example, there is one primary insurer that writes 100 percent coverage, then reinsures three blocks of 25 percent coverage with three of its sister reinsurers. All four companies are under the same holding company ownership.

Mr. Kolbe gave a brief history of the legislation and said when the Idaho requirement was enacted, it was assumed that it would result in shifting a portion of the insured risk of borrower loan default to unaffiliated non-mortgage guaranty reinsurers. The act of reinsuring risk to third party, non-mortgage guaranty reinsurers would, in effect, bring additional capital into the mortgage guaranty insurance industry. In addition, risk would be further distributed to reinsurers that were not exclusively focused on real estate-related risks. These hoped-for results never materialized because the market for first-dollar-loss reinsurance of mortgage guaranty insurance risk was, and is, thin to non-existent. Consequently, mortgage guaranty insurers formed affiliated reinsurers under their respective holding company systems in order to write risk in excess of 25 percent coverage. As a result, reinsurance exists in form but lacks the real substance of risk spreading and diversification. Instead, capital and other corporate resources are spread among related entities without contributing either new capital or independent risk assessment. Moreover, this mandatory reinsurance requirement creates no additional claims paying resources which means the capital required to support a given amount of risk is the same whether all risk and capital is contained in one entity or split amongst four entities.

In addition to the absence of any discernible benefit, **Mr. Kolbe** reported the mandatory reinsurance requirement creates significant costs for the companies as they are forced to establish, license and maintain multiple separate legal entities. Separate books and records, periodic reports, and licenses must also be maintained, and other legal and regulatory requirements must be met. Statutory accounting statements, audited financials, and outside actuarial opinions must be prepared for each separate entity. In light of the fact that all of the risk remains within the same holding company structure, these additional costs and administrative burdens are difficult to justify.

Finally, the United States mortgage Insurers (USMI) would like to share with the Committee the status of the efforts to repeal this same law in other states. The mandatory reinsurance provision, originally developed in the National Association of Insurance Commissioners' (NAIC) Mortgage Guaranty Insurance Model Act (Model Act) was only adopted in nine states. Arizona, California, Kansas, Oregon, and Texas have recently done away with the Model Act, and USMI is seeking repeal in Idaho, Ohio, New Jersey and New York. **Mr. Kolbe** noted the NAIC Mortgage Guaranty Insurance Working Group (Working Group) is in the process of rewriting the Model Act, and the Working Group members have explicitly discussed this mandatory reinsurance provision and affirmatively removed it from the latest version of the draft revised Model Act.

Vice Chairman Patrick and **Mr. Kolbe** had a discussion about raising the limit in coverage from 25 percent, which makes more money available to homeowners. A lender who needs more capital relief will also benefit, while certain other lenders may retain the loans and not sell them, allowing a freer flow. **Mr. Kolbe** cited several examples. **Senator Schmidt** commented he appreciated the explanation. He wanted to know why the insurer was being removed (by the crossed out lines), which would allow the company to opt out of not paying. **Mr. Kolbe** said the crossed out lines could be left in.

Tom Donovan, Acting Director of the Department of Insurance (Department), said there has been no opposition to this bill.

Senator Cameron asked what was at risk. **Director Donovan** said the Department does not disagree with the bill. He referred to line 21 of the bill where "the insurer shall not at any time have outstanding aggregate risk liability, net of applicable reinsurance, under mortgage guaranty insurance in the amount in excess of 25 times its policyholders' surplus" and then to line 24, "the director may waive the requirement of this section upon written request of the insurer" and said the Department has done this within the last five years.

MOTION:

Vice Chairman Patrick moved to send **S 1078** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Vice Chairman Patrick will carry the bill on the floor of the Senate.

S 1047:

Relating to State Purchasing Law. **Sarah Hilderbrand**, State Purchasing Manager, Division of Purchasing (Division), reported for Bill Burns, Administrator, Division, and said the proposed legislation alphabetizes definitions in the purchasing statute. The proposal is in response to agency input received from the Office of Performance Evaluations (OPE) report, "Strengthening Contract Management in Idaho" and during negotiated rulemaking. In 2013, HCR 18 was passed to state the Division would develop a plan to respond to the OPE report with components of that plan identified. In 2014, the Division issued the response plan to the Joint Legislative Operations Committee.

As a response to the recommendations of the OPE report and input from users, there was a recommendation that the Division work with the office of the Attorney General to review sections of the Idaho Administrative Code related to the procurement process.

MOTION:

Senator Schmidt moved to send **S 1047** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Cameron commented he has struggled with the alphabetizing of definitions in this bill but supports the need to revamp the state purchasing rules and contracting system.

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

Chairman Tippetts changed the sequence of bills on the agenda in order to accommodate those wishing to testify for **S 1063**. He moved **S 1046** to the end of the agenda.

S 1063:

Relating to Land Surveying. **Keith Simila**, Executive Director, Board of Professional Engineers and Land Surveyors (Board), explained that Michael Kane, Attorney, representing the Board, was unable to be at the meeting to testify. He said 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 flood insurance purposes. The Board has worked with the Idaho Society of Professional Land Surveyors and other stakeholders to update the definition in law. He cited the following:

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 Martin asked for an explanation of "the space above, on or below the earth," as outlined on page 2 of the bill. **Director Simila** explained the wording was taken from model law, and this was surveying associated with mining. He gave an example of a rooftop with an elevation component, which would have to be surveyed.

TESTIMONY: **Glenn Bennett**, representing Idaho Professional Engineers and Land Surveyors (IPELS), and a member of the Board, stated an abrogation has to be prepared for certain structures around airports because buildings of certain heights cannot be built. That is when surveying has to be done for "the space above the earth."

Bill Farnsworth, Geographic Information Officer, Department of Administration, representing the Geographic Information System (GIS) community, testified in favor of this bill. He explained that GIS is the computer side of mapping. The bill defines surveyor job descriptions. The GIS and surveying communities have been brought together by this process and this cooperative effort. The passage of this bill will alleviate confusion.

MOTION: **Senator Martin** moved to send **S 1063** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

S 1046: **Relating to Engineers and Land Surveyors.** **Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said this legislation has the support of the Idaho Society of Professional Land Surveyors, the American Council of Engineering Companies, and the Idaho Society of Professional Engineers. The bill addresses Board composition, the completion of minimum requirements as a condition of license renewal, improved incentives to renew licenses on time, and a fine in lieu of discipline provision.

Director Simila said Idaho Code currently requires the Board to be comprised of four engineers and one land surveyor. In times past, one member has had both an engineering and land surveying license. The Board has the benefit of two licensed land surveyors and uses both to refer complex land survey related issues to them. The Board sees great value in retaining two surveyors as members in perpetuity, as having two opinions on the same issue provides for better insight into the questions and concerns related to the land surveying profession. Due to age demographics (average age of dual licensed candidates is 68 years), the number of future candidates with dual licenses has greatly diminished. As a result, the Board desires to codify a minimum of two land surveyors for Board membership. There is also a desire on the part of the Board to have an odd number of Board members so tie votes don't occur. In addition, there are some disciplines of engineering and geographic areas that are not well represented on the Board. For these reasons, the Board also seeks to add one more engineer to the Board.

Director Simila pointed out there is one provision of Idaho Code that states once a licensee pays the renewal fee, the license is renewed. Other sections of Idaho Code and Rules authorize the Board to refuse to renew a license for disciplinary reasons or lack of compliance with Continuing Professional Development (CPD). The law change fixes this inconsistency by making it clear that license renewal is conditional upon completing requirements of the laws and rules of the Board. More than 10 percent of licensees renew late. When this happens, late notices are sent out and licensees are reviewed or audited for compliance with CPD. In many cases, the audits produce disciplinary actions that require staff and attorney time and money. These costs are not currently borne by those who renew late but by all licensees. The change proposes an increase in the late fees to provide improved incentive to renew on time. The Board recently implemented an online renewal feature through Access Idaho. Renewing a license on time is made easier by this feature.

A new provision is added that gives licensees an option to pay a fine in lieu of discipline for first time violations of CPD. CPD has been a requirement of

law since 2006. There are some who still are unaware and find themselves in violation. **Director Simila** said this provision gives first time violators an option to avoid discipline, which many prefer. It is modeled after a provision of law used by the Veterinary Board for the same purpose.

MOTION:

Senator Lee moved to send **S 1046** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:46 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary