

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 04, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of January 28, 2016. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE The appointment of Janice Fulkerson of Meridian, Idaho, to the Your Health Idaho (YHI) Insurance Exchange Board (Board), to serve a term commencing August 27, 2015, and expiring April 10, 2017.

Janice Fulkerson briefly described her background. She said it was an honor to be given the opportunity to serve on the YHI Board. She said she has worked in the health care industry for the past 20 years and continues today as she works with payers and providers across Idaho. She remarked that keeping the individual in the forefront has been very important to her. Her focus has been on the individual seeking services in the health care system. She commented that as health care continues to become increasingly complex, ensuring consumer representation is also increasingly important.

In 2009, **Ms. Fulkerson** began serving on the State of Idaho's Individual High Risk Reinsurance Pool Board as the consumer representative. She emphasized that the position and her work experience align very well with the YHI Board position. Currently she is serving on the Marketplace Committee for YHI.

Vice Chairman Martin asked her what she thought her greatest accomplishments were as a YHI Board member. **Ms. Fulkerson** remarked that after attending two meetings she was up-to-date about current issues.

Senator Schmidt asked Ms. Fulkerson what category she filled on the YHI Board? **Ms. Fulkerson** said she was filling the Consumer Representative role.

MOTION: **Senator Ward-Engelking** moved to send the Gubernatorial appointment of Janice Fulkerson as a member of the YHI Insurance Exchange Board, to the floor with the recommendation that she be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the appointment on the floor.

**GUBERNATORIAL
APPOINTMENT &
VOTE**

The appointment of Senator Todd Lakey of Nampa, Idaho, to the State Insurance Fund Board, to serve a term commencing April 13, 2015, and expiring December 1, 2016.

Senator Lakey briefly described his background. **Senator Lakey** said he is a new appointee to the State Insurance Fund Board and the Senate representative. He mentioned he holds a Bachelor of Science degree in International Business with a minor in Spanish from Brigham Young University, Provo, Utah. He received his law degree from Lewis and Clark Northwestern. He was a Canyon County Commissioner from 1994 to 2000, serving two terms. He is now in private law practice.

MOTION:

Senator Martin moved to send the Gubernatorial appointment of Senator Todd Lakey as a member of the State Insurance Fund Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the appointment on the floor.

S 1219

Public Works Contracts. **Wayne Hammon**, Chief Executive Officer, Idaho Associated General Contractors (AGC), remarked this legislation adds guidelines to the construction managers and general contractors (CM/GC) law approved by the Legislature during the 2014 session. This proposed legislation will amend Idaho Code § 54-4511 to provide for compensation of construction managers and general contractors; to provide that certain costs may be incorporated into a contract; to provide that certain bids shall be handled in a particular manner; to clarify how construction managers and general contractors may bid; so certain terms shall be included in certain contracts; and to remove a provision relating to compensation. Since the law was enacted, AGC has identified areas where additional clarification may be needed. This bill accomplishes the following: 1. mandates the solicitation of bids from multiple contractors; 2. limits CM/GC self-performance; 3. requires written agreements for all fees and compensation; 4. makes all bids public record; 5. clarifies that the bidding can be done in phases. There is no fiscal impact.

Mr. Hammon gave a brief history of the AGC. He stated the newest form of public works contracting is through CM/GC bidding. Although new to public works, this is a standard form of contracting used all across Idaho and the rest of the nation to tackle large, complex projects. The AGC closely monitored how the CM/GC bidding process was used across the entire State. Should issues arise, the AGC would address those issues.

Mr. Hammon reported that in the 19 months that the CM/CG bidding has been available to public entities in Idaho, there have been approximately 20 or 25 projects contracted using this method. This represents approximately 10 percent of the total number of public works contracts awarded during this time period. Even though the AGC is not aware of any problems with any of the projects, 19 months of experience has brought a few areas of concern that should be addressed. This bill is an attempt to be proactive about the few areas of concern.

Mr. Hammon explained there were five significant changes to the current statute. First, he said that although the current law already requires all work to be competitively bid, it does not define what competitively bid means. This bill makes it clear that the CM/GC must solicit at least three bids. Second, while most of the 20 CM/GC contracts written over the past 19 months have included a limitation on the amount of work the CM/GC can self-perform, the current law

is vague on this issue. This bill clears up the issue and incorporates current practice into the statute. Third, many assumed that all parts of the agreement between the public entity and contractor would be in writing, but others have pointed out concerns with how the CM/GC is compensated. This bill spells out the requirement for all such agreements to be part of the written contract. Fourth, the bill clarifies that bids are public records. Fifth, the bill clarifies that bidding can be done in phases when it is more advantageous for the public entity to do so.

In conclusion, **Mr. Hammon** stated the CM/GC statute is working and these changes add clarification and guidelines in places where the law is vague without harming the overall process. He mentioned there were representatives of public entities and contractors who have used the CM/GC bidding process during the last 19 months.

TESTIMONY:

Rob Bousfield, City Engineer, City of Boise, testified in support of this bill. He said the City of Boise is using this method of bidding. He said there are other projects in the design phase using this contract method. He believes this process is valuable for more complex projects.

Senator Schmidt questioned line 24 (8), page 2, "when bidding for all phases of the project has been completed, a guaranteed maximum price for the entire project may be negotiated by the public entity" and wanted to know if that was after the bid had been awarded. **Mr. Hammon** answered that the final price is negotiated.

Senator Lakey remarked he appreciated the public entities and the agency being involved. He praised the AGC for being committed to making a couple of changes if there were questions.

MOTION:

Senator Lakey moved to send **S 1219** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

RS 24121

Idaho Pharmacy Act. **Senator Jim Guthrie** reported this act amends the Idaho Pharmacy Act with additional requirements before a vendor is issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy; the act also adds the definition of DME supplier and adds the requirement that the facility must be accredited in the State or within 150 miles of the Idaho border. It also adds that the supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact.

Senator Guthrie said this legislation will put the DME under the Board of Pharmacy. He briefly highlighted the changes.

MOTION:

Senator Martin moved to print **RS 24121**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

Relating to Insurance Premium Tax Funding for the Idaho Individual High Risk Reinsurance Pool (IIHRRP). **Hyatt Erstad**, IIHRRP Board Chairman, reported this bill corrects an inadvertent error in S 1014, which eliminated a long-time funding source to the IIHRRP established in Idaho Code § 55, Title 41. Since 2000, Idaho Code § 41-406(d) has provided that one fourth of the insurance premium tax, to the extent it exceeded \$45 million, was appropriated to the IIHRRP. Section 2 of the bill eliminated the funding, effective October 1, 2015, despite the fact that the bill's focus, as reflected in its title and statement of purpose, was on three unrelated health and welfare programs: Children's Health Insurance Program (CHIP) Plan B, Children's Access Card and the Small Business Health Insurance Pilot Program. The high-risk pool funding mechanism was not mentioned in the title or the statement of purpose.

This bill reinstates the high-risk pool's historical funding source and formula as it was before S 1014 passed. This bill has a retroactive effective date of October 1, 2015, correcting the error as if it had not occurred.

There is no fiscal impact to the General Fund. However, a technical fiscal note would also explain that, absent an amendment, S 1014 will result in a loss of revenue to the high-risk pool in the amount of \$5.7 million and a corresponding gain in revenue to the General Fund in the amount of \$5.7 million. A further technical interpretation of the fiscal impact to this bill's correction could show that, without the allocation of the \$5.7 million to the high risk pool, health care costs would be shifted to Medicaid, the Medically Indigent Fund, the property tax payers and ultimately to the consumer. Since inception, the IIHRRP has paid out \$100 million in claims and has served 10,656 Idahoans with severe, high-risk health conditions.

MOTION:

Senator Guthrie moved to print **RS 24219**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

S 1221

Insurance Producer Licensing. **Dean Cameron**, Director, Department of Insurance (DOI), indicated the proposed legislation accomplishes three things relating to producer/agent/surplus lines and broker licensing in Idaho: 1. Idaho Code § 41-1016(2) currently provides summary order authority to suspend or revoke the Idaho nonresident license where the resident license has been suspended or revoked in the licensee's home state. The proposed legislation amends Idaho Code § 41-1016(2), adding additional circumstances of terminating a nonresident Idaho license where the resident license in another state has been voluntarily surrendered or lapsed. This amendment streamlines the process for terminating the license of a nonresident producer who no longer meets a prerequisite for holding such license. 2. Amends Idaho Code § 41-1026(3) to provide that a former licensee whose license has been revoked may not reapply for a license until not less than one year and up to five years have passed rather than the current one-year waiting period. 3. Amends Idaho Code § 41-1026 to provide a new subsection 4 whereby a person whose application for a producer license has been denied must wait one year before reapplying. Currently, there is no specific time period in which a person must wait before reapplying for a producer license. Individuals who reapply quickly following a denial or revocation waste their time and that of the DOI in processing and denying the application.

There is no fiscal impact.

Director Cameron highlighted examples where five-year revocations would be appropriate. Some of those examples included issuing multiple fake policies, racketeering and money laundering, guilty plea to felony securities

fraud, falsification of liability insurance and filing fraudulent claims.

A lengthy discussion occurred between **Senator Rice** and **Director Cameron** regarding conflicting language in the bill relating to suspension of a license for 12 months and revocation of a license for five years. **Director Cameron** explained the DOI was suggesting a one- to five-year suspension for more egregious issues. Many states allow the Director to have broader discretion of more than a five-year period. Some states require that if a licensee has more than one violation, they are prohibited from ever holding a license.

TESTIMONY:

Lisa Tordjman, DOI, Producer Licensing, said many states have up to five years for revocation. Some are more serious violations or egregious. Some will allow for rehabilitation. The DOI wants to create a longer period of time for revocation.

Senator Rice remarked he was looking at Idaho Code, Title 41, and it seemed to him that Idaho Code § 1016 is revoking someone's license and Idaho Code § 1026 is the procedure to get a license reinstated. He asked Director Cameron if he would be more comfortable if this RS was sent to the amending order so it did not appear to have a conflict. **Director Cameron** agreed this legislation was not as clear as it needed to be and added the DOI would check with the Attorney General's office to find out if there was a conflict.

Senator Lakey asked if there was some flexibility in the one- to five-year suspension period or was that a set time. **Director Cameron** remarked that if the order declares a license is revoked for four years, then that stands. **Ms. Tordjman** commented the DOI would determine how many years the license would be revoked, based on an evaluation of the violation.

Senator Lakey asked Director Cameron how the existing language has been applied. He referred to the bill, line 22, page 3, and commented that after a license has been revoked, there is a presumption to bar the issuance of a new license. He said the punishment could be longer than the revocation. **Director Cameron** declared the person has to show they have been rehabilitated; they do not get their license back automatically. **Senator Lakey** wanted to know if there was an administrative review when someone reapplies for reinstatement and what happens if the DOI disagrees. **Director Cameron** stated that after a year, the licensee can approach the DOI. There are forms they have to complete and documents they have to provide. The DOI reviews the case and if deemed adequate, the licensee would be reinstated. However, they could be denied. The individual has the right to appeal or ask for a hearing. If the appeal fails, the individual has the right to appeal to Director Cameron. If there is still disagreement, the case can again be appealed.

Senator Schmidt referred to page 3 of the bill, Idaho Code § 41-1026(4), "the director shall not issue a license under Title 41, Idaho Code, to any person whose application for a license was previously denied until after the expiration of one year from the date of such license denial" and wanted to know what would happen if the director accidentally issued the license; was that in violation of the law? He thought this part could be changed. **Director Cameron** replied that Idaho Code says that all of the powers and responsibilities rest on the director, and the director issues or denies licenses. He said the bureau chief or supervisor signs for him. He remarked the licensing system is very comprehensive. He was not concerned since he thought the DOI would catch those types of things.

Senator Guthrie remarked that suspension and revocation are separate and

complete sanctions. When there is a violation, there is no requirement to necessarily revoke a license. However, on page 3 there is language referring to revoking or refusing a license; he said he was not so sure it is not as risky. Suspension is one year and revocation can be between one and five years.

Senator Rice asked if there was a list of violations that someone has engaged in prior to seeking a license, would that disqualify him or her from getting a license? For example, if someone has engaged in racketeering or money laundering, would that be a five-year revocation with a mandatory clause that the revocation could not be any longer than is deemed appropriate for the maximum suspension or would there have to be a requirement that the applicant prove rehabilitation? **Director Cameron** remarked the revocation would be from one to five years. The licensee would not automatically be reinstated. They would have to prove rehabilitation. To his knowledge, there was no list of offenders. He did say that in federal code if a licensee has committed a felony, there would be a special detailed application that would have to be used. On the regular application there is a question about ever being convicted of a felony or a misdemeanor. **Director Cameron** reported there were only four or six of those this year.

Senator Rice referred to Senator Schmidt's remarks and said it seemed to him that a revocation could not go beyond five years, even if the license had been revoked for serious moral turpitude. He said he did not see anything about rehabilitation or revoking a license beyond five years. **Director Cameron** said that was correct. He said there was another section of code that did not require the Director to issue a license to anybody within any period of time. If the DOI did not feel the applicant or licensee was of appropriate character, either at the initial application or after they have lost their license and want to reapply, the DOI has strong legal footing to continue to deny someone a license. He remarked he would be happy to clarify the language. This bill is limiting the issuance of a revocation longer than five years, but it does not mean the person would automatically get their license back after five years.

TESTIMONY:

Colby Cameron, Lobbyist, representing the Idaho Association of Health Underwriters, spoke in support of this bill.

Director Cameron thanked the Committee for asking questions and said he would do what the Committee desired.

MOTION:

Senator Rice moved to hold **S 1221** at the call of the Chair. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL:

Chairman Patrick passed the gavel to Vice Chairman Martin to hear the rules.

**DOCKET NO.
59-0201-1501**

Public Employee Retirement System of Idaho (PERSI) - Rules for the Judges' Retirement Fund. **Don Drum**, Executive Director, PERSI, said these rules apply to the Judges' Retirement Fund (JRF). The changes are proposed in anticipation of seeking for the JRF a determination letter of qualified status from the Internal Revenue Service (IRS). The changes are also designed to amend the rules in certain areas so that the language tracks the language in the rules for the PERSI Base Plan. That tracking will make for easier and more consistent administration and may also lessen the need for future revisions.

There are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact. Negotiated rulemaking was not conducted because it is not feasible as it would be inconsistent with the PERSI Board's exclusive fiduciary responsibility for plan operations and because several of the changes are required by federal law for qualified plan status.

Director Drum gave a brief background and history of the JRF. Basically, being enrolled in a qualified plan is what allows members to not pay taxes on contributions and gains on their money in the JRF. **Director Drum** defined the exclusive benefit rule that states clearly that the PERSI Board holds the moneys in the JRF for the exclusive benefit of the members and beneficiaries. He pointed out the plan is subject to federal laws affecting persons who serve in the military and is designed to ensure members are not negatively impacted in their retirement benefits by serving in the armed forces. Some rule changes were made to bring the rules into compliance with the management of the PERSI plan. These changes were made in consultation with PERSI's federal tax counsel. He said he appreciated the help he received from Judge Woods and the courts.

MOTION: **Senator Schmidt** moved to approve **Docket No. 59-0201-1501**. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel back to Chairman Patrick.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:38 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary