

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, February 07, 2017

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Anthon, Ward-Engelking, and Burgoyne

**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 meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

**GUBERNATORIAL APPOINTMENT AND HEARING:** The appointment of Charlene Ann Maher, Eagle, Idaho, to the Idaho Health Insurance Exchange Board, term commencing March 28, 2016 and expiring April 10, 2017. **Ms. Maher** said that she serves as the Chief Executive Officer (CEO) of Blue Cross of Idaho. She gave a brief background about Blue Cross. Blue Cross has been in Idaho for over 70 years. Today Blue Cross provides health insurance coverage to over 500,000 Idahoans and employs 1,000 team members at the headquarters in Meridian, Idaho. **Ms. Maher** reported the mission every day is to serve the State of Idaho by providing access to high-quality healthcare while providing financial peace of mind.

**Ms. Maher** stated that she was a nurse and decided to change careers. She said she and her family moved to California, which was where she accepted her first position in the health insurance industry and it was a good fit. **Ms. Maher** reported she has been in the health insurance industry for over 25 years and has had the opportunity to work in all areas of the business. She has also had the opportunity to work in the industry on the west coast, the Midwest, and the east coast. **Ms. Maher** said the ability to effectively communicate and problem-solve with State government in Idaho has been better than anywhere she has been.

**Ms. Maher** said that personally, her priority is her role as mom and grandma. She said her children live all over the world and it is fun to watch them tackle their careers and kids. **Ms. Maher** stated she was honored to receive the appointment to serve by the Governor and grateful for the opportunity to help the State oversee the Your Health Idaho (YHI) Exchange run by Idahoans for Idahoans.

**DISCUSSION:**

**Senator Lakey** asked Ms. Maher why she changed her career from nursing to health insurance. **Ms. Maher** said she hurt her back and could no longer lift patients. **Senator Souza** remarked that with changes proposed at the federal level, what did Ms. Maher see will happen with health insurance. **Ms. Maher** explained her role today is to execute the laws. She remarked that Your Health Idaho (YHI) is the best state-run exchange and the YHI Board does not know how the law will evolve. **Ms. Maher** explained the YHI Board would execute the next phase, whatever that may be.

**Senator Burgoyne** asked Ms. Maher what her vision is for the YHI Board. **Ms. Maher** stated that health insurance is always best when the power and flexibility is at the state level. When the federal government gets involved, there are conflicts. Her focus will be on fixing the challenges. She said she wanted to see Idaho take control of insurance plans for its citizens.

**GUBERNATORIAL APPOINTMENT:**

**Senator Lakey** moved to send the gubernatorial appointment of Charlene Ann Maher to the Idaho Health Insurance Exchange Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**

Senator Patrick passed the gavel to Vice Chairman Guthrie.

**DOCKET NO. 15-0401-1601**

**Rules of the Division of Human Resources and Idaho Personnel Commission.** **Kim Toryanski**, Deputy Administrator, Division of Human Resources (DHR), said the proposed text regarding DHR Rule 15.04.01, Subsection 086.05, stated that an application for promotion by an employee on entrance probation may not be filed. The pending rule is being revised to state that the application may be filed, and specifies that the employee is ineligible to be certified to a departmental or statewide hiring list until permanent status is attained.

**Ms. Toryanski** said that negotiated rulemaking was not feasible to conduct due to discussions on a separate matter with state agencies, DHR professionals, and interested parties during the month of August, 2016. The matter related to proposed legislative changes DHR is making to adapt to changes in federal wage, overtime law, and regulation. DHR received three verbal comments. One state agency testified at the hearing. The second paragraph under Descriptive Summary outlines that Rule 86.05 was changed after the comment period.

**Ms. Toryanski** said the State uses a process to point-factor jobs called the Hay Evaluation Method, which gives a point value to job classifications based on a calculation of know-how, problem-solving, and accountability. DHR oversees and approves the point-factoring of classified jobs when new job classes are created or revised. **Ms. Toryanski** stated DHR was asking to remove the information about Informal Agreements as described since it is not part of the process and has not been for quite some time. The State has used an online application system called the Applicant Tracking System (ATS) for a number of years and DHR has not seen any hesitation from applicants to apply online. **Ms. Toryanski** pointed out that since the mail-in, personal delivery, email, and fax have not been utilized, DHR felt it was time to remove those from the Rule. Applicants use their own computers, or can access the ATS system at libraries and Department of Labor offices around the State. Persons with disabilities would be eligible for a reasonable accommodation.

**Ms. Toryanski** reported that employees on entry probation have been able to apply for department or state promotions and be placed on the hiring list.

Employees could not be hired until they completed probation. The DHR application system does allow employees on entry probation to apply for promotions, but their name is not put on promotional hiring lists until they have completed probation and obtained permanent status.

The initial proposal said employees could not apply. Prior to the online applicant process, exams were conducted around the State for various positions. Since exams have been taken online using the ATS system, DHR proposes deleting Rule 89.

**Ms. Toryanski** referred to Limited Service Appointments and said when employees are hired into limited service positions, DHR requires agencies have a written agreement with the employee. Agencies keep this signed agreement in the employee personnel file at the agency. While DHR ensures agencies note completion of the Agreement in the online hiring action that DHR approves, the DHR Administrator does not need to have a copy sent to DHR.

**Ms. Toryanski** said the statute states employees attain permanent status when 1,040 or 2,080 probationary hours are completed. The agency has 30 days after completion of hours to submit a list of probationary employees.

**Ms. Toryanski** explained that a "does not achieve" evaluation must be entered in the system at the time DHR is approving a fail to complete probation action in the payroll system. DHR's current process is not to allow an agency up to 30 days after the probationary period to submit the did not approve evaluation. The DHR process allows for timely processing of the employee's final paycheck.

**Ms. Toryanski** stated that problem-solving meetings are with department representatives in the employee's chain of command. DHR is adding this to the Rule to mirror the statute. DHR is asking to add language that allows the employee and agency to agree in writing to extend problem-solving timeframes, but not to exceed 30 days between each step. The intent of the problem-solving process is to solve problems promptly and at the lowest level in the chain of command. DHR is adding to statute in Idaho Code § 67-5315(4), which includes the chain of command. The information is divided into two sections. When an employee transfers between agencies, the sending agency sends the hiring agency all performance evaluation documents. The Rule states those documents must be "copied." DHR would like to update the language to "provided" since the sending agency may scan and email the documents. When an employee is on Workers' Compensation, that pays 67 percent of wages. The employee may use paid leave (sick, vacation or comp time) for the other 33 percent to receive a whole paycheck. Currently the Rule only states sick leave; however, there are time codes allowing employees to use comp time and vacation while on workers' compensation and/or the Family and Medical Leave Act (FMLA). DHR wants to add that to the Rule.

**Ms. Toryanski** explained that references to earned administrative leave should be deleted. The old Earned Administrative Leave (EAL) time code, is no longer used.

**Ms. Toryanski** said the DHR is asking for approval to update the language as the State no longer uses the Medical, Dental, or Optical Appointments (MDA) leave code which allowed employees up to two hours for miscellaneous

doctor appointments, including the Employee Assistance Program (EAP). MDA was removed in 2009, because there was no statutory authority for the rule and there were inconsistencies in the application for employees, and it was determined medical appointments were covered under sick leave. Additionally, the employee can use comp time or vacation, as approved, for medical or for EAP appointments.

**DISCUSSION:**

**Senator Martin** referred to a seasonal employee and asked for a the definition. He asked if the rule would give an individual the power to declare any day as a holiday. **Ms. Toryanski** replied the definition of a seasonal employee would vary depending on the agency and the type of employee. She said the language in the rule reflected federal law.

**Senator Lakey** asked if the term "holiday" was enumerated in federal law. **Ms. Toryanski** explained that the references were to holidays that were recognized by state or federal law. **Senator Lakey** asked if seasonal employees were hired for a limited period of time. **Ms. Toryanski** said that was correct. **Senator Lakey** remarked that federal identified holidays tended to be one-day holidays, but was the Christmas season defined. **Ms. Toryanski** replied that the DHR has not gone so far as to define that season, however the intent was to recognize the Christmas season. She gave an example of the liquor division that has to hire additional sales clerks for the holiday season, or a "seasonal" employee.

**Senator Anthon** asked if there was anything in the regulations that defines the amount of time a seasonal employee can be hired. **Ms. Toryanski** said that time is designated at 1,385 hours.

**MOTION:**

**Senator Martin** moved to approve **Docket No. 15-0401-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

**RS 24886**

**Relating to Recruitment and Retention Bonuses.** **Susan Buxton**, Administrator, Department of Human Resources (DHR), said the purpose of this Routing Slip (RS) was to clarify ambiguity in Idaho Code § 67-5309D(3) for the implementation, authorization, and enforcement of the issuance of recruitment and retention bonuses. During February 2016, due to ambiguity in the code authorizing recruitment and retention bonuses, the use of recruitment and retention bonuses was suspended. There were questions regarding the implementation and authorization of those bonuses.

**Ms. Buxton** said the pending legislation would allow recruitment and retention bonuses to continue to be utilized within existing agency budgets. Enforcement collection of recruitment and retention bonuses will be conducted by the agencies and the DHR using current resources.

**Ms. Buxton** explained this amendment has been requested in order to reduce ambiguity and improve utilization of bonuses as a tool for agencies to recruit and retain state employees. This section allows, after at least six months of achieving performance standards, a department director to award a bonus. The new language in the RS, subsection 3, lines 37-41, addresses the means to enforce the terms of the award of the bonus in the event the employee leaves state service prior to the completion of the recruitment or retention timeframe. The department director and the DHR may seek repayment of the bonus from accrued vacation funds or utilize other lawful remedies. This RS

provides the agency director and DHR the authority and flexibility to recoup bonuses.

**DISCUSSION:** **Senator Thayne** asked what the legal remedies would be. **Ms. Buxton** said the legal remedies would be a contract identifying the term before recruitment. Options would be for weeks or months and if there was accrued vacation the amount would be taken out of vacation funds. Small claims court is another option for obtaining a judgement against that person. Most people return the money. **Senator Souza** remarked this is a common practice and said she was surprised this has not been a part of statute until now. **Ms. Buxton** clarified that this statute has been in Idaho Code, but the practice had been suspended until there was a review.

**MOTION:** **Senator Thayne** moved to print **RS 24886**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**RS 25113** **Relating to Bail.** **Jesse Taylor**, representing Sun Security Insurance Company, said this Routing Slip (RS) amends the Idaho Bail Act to include notification to the surety insurance company on file by the clerk of the court of a forfeiture by mailing a notice within five business days of the order. He noted there is no fiscal impact to the General Fund because notification will be done by mail at a minimal cost and covered by the clerk of the court's operating budget.

**MOTION:** **Senator Lakey** moved to print **RS 25113**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**RS 25128** **Relating to Employee Compensation.** **Vice Chairman Guthrie** said the intent of this legislation is to remove language that could be construed as proprietary and specific to one particular vendor. The proposed legislation will also require any salary and benefit study to show as part of market comparisons data specific to Idaho public and private sector employers. **Vice Chairman Guthrie** noted that these surveys are already being done on an annual basis and Idaho data is already being collected. The cost to reflect this data separately in a report will be minimal at most.

**DISCUSSION:** **Senator Martin** asked if this proposed legislation came from the information received from the Change in Employee Compensation Committee (CECC). **Vice Chairman Guthrie** explained that the proposed legislation stemmed from the CECC that he has participated in for the last few years. He stated he wanted to have a baseline established with Idaho information for comparison. There has been some concern about having a named group in legislation. A definition of the Hay point method and what is depicted in the criteria is spelled out.

**Senator Ward-Engelking** said when the bill comes before the Committee, she asked Vice Chairman Guthrie to talk more about the proposed legislation being Idaho-specific and also asked that in addition other states be included.

**MOTION:** **Senator Souza** moved to print **RS 25128**. **Senator Thayn** seconded the motion.

**Senator Burgoyne** asked if Vice Chairman Guthrie was relating the annual survey to the labor market or was he asking for a job-by-job, gross or aggregate comparisons. **Vice Chairman Guthrie** said it was his understanding that most of the data was already being collected. He stated he wanted to have data specific to Idaho. He remarked competition goes beyond the State of Idaho. **Senator Burgoyne** said he thought that Vice Chairman Guthrie was looking for aggregate data.

The motion carried by **voice vote**.

**RS 25032**

**Telehealth Access Act.** **Senator Keough** said the purpose of this legislation is to bolster the success of Idaho's Telehealth Access Act which can be found in Idaho Code §§ 54-5701 through 54-5713. This legislation, if enacted, would allow for costs of telehealth services to be covered in the same manner and to the same extent as if the services were delivered in person. **Senator Keough** stated that it is the purpose of this legislation to aid in implementation of Idaho's Telehealth Access Act by: improving timely access to consultations without long travel and loss of work time; decreasing health care fragmentation which improves patient experience; reducing cost for patients and payors through better management of chronic disease and better access; increasing patient access to providers that might be otherwise unavailable due to distance; and improving health quality, equity, and affordability for all Idahoans.

**Senator Keough** noted there is no fiscal impact to the State General Fund. There is no fiscal impact on local government funds. She said there will likely be a fiscal impact to health carriers and other entities as outlined in the bill. That fiscal impact will vary depending upon policies and utilization. Conversely, the fiscal impact may be less, as covering the cost of telehealth services may result in catching illness in a preventative manner because access to health care is more easily available. The fiscal impact for citizens utilizing telehealth services may be positive, as costs of travel and time may go down as access to medical care can occur via telehealth systems. The fiscal impact for health care providers may be positive as they may be reimbursed for the cost of their service at the same level as an in-office visit.

**DISCUSSION:** **Senator Souza** commented this was a concern of hers and was glad this has been moved forward. She asked if the charge would be the same as if the patient traveled to the doctor or would it be set by each doctor. **Senator Keough** said she did not have an answer yet. There is a cost involving multiple layers of bookkeeping. **Senator Souza** said that if this Routing Slip was printed, she would ask for medical professionals to be available to answer questions.

**Senator Burgoyne** referred "to the same extent" on line 12, and wanted to know if the cost would be less or a quantitative value. He asked for more information when the bill is heard. **Senator Keough** said she would try to bring clarity when the bill is heard.

**MOTION:** **Senator Martin** moved to print **RS 25032**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**S 1003**

**Nurses - Amends Existing Law to Revise Provisions Regarding Nurse Emeritus Licenses and Renewal and Reinstatement of Nurse's Licenses.** **Susan Evans**, Executive Director, Board of Nursing (BON), said an "emeritus license" is issued to a nurse whose license is in good standing who chooses to retire from active practice but who wishes to continue to use the protected title of Registered Nurse, Licensed Practical Nurse or Advanced Practice Registered Nurse. **Ms. Evans** explained that an emeritus license, once issued, is identified as "inactive" and does not authorize the holder to engage in nursing practice until such time that the license is reinstated to active status. **Ms. Evans** explained **S 1003** amends Idaho Code § 54-1410, by eliminating the necessity for a retired nurse to biennially renew an emeritus status license. This proposed legislation provides a benefit to nurses who have retired from practice by eliminating the renewal application process and related fees. **Ms. Evans** said **S 1003** will have an estimated negative annual fiscal impact of less than \$5,000 on the BON's dedicated fund. The BON current fund balance supports this revenue loss without the need to raise license fees. There is no impact on the State's General Fund.

**DISCUSSION:**

**Senator Souza** commented she appreciated the emeritus status. She praised the bill saying the bill has all upside and no downside for the nursing profession. She asked if there had been any negative feedback. **Ms. Evans** said there were no comments received.

**MOTION:**

**Senator Guthrie** moved that **S 1003** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**S 1007**

**Engineers and Surveyors.** **Michael Kane**, representing the Board of Licensure of Professional Engineers and Professional Land Surveyors (IPELS), said the amendment authorizes the IPELS Board to require mediation of disputes between licensed land surveyors. The purpose is to reduce the prospect of litigation between property owners related to boundary disputes based on differing placement of corners by land surveyors. **Mr. Kane** noted this legislation will have no fiscal impact on the General Fund or the IPELS Board dedicated fund. There is no fiscal impact because the IPELS Board has no direct involvement in the mediation between land surveyors except to require them to engage a mediator to resolve their disputes. The Act does not create any new State program and does not compel any State action.

**DISCUSSION:**

**Senator Martin** referred to the word "may" on line 6 referring to the IPELS Board and said he assumed the IPELS Board has the option of requiring surveyors to go to mediation. He referred to the word "require" and said he thought that referred to the parties and that the IPELS Board has the power to require the surveyors to mediate. He wanted to know what the mediation process was and whether it was binding or non-binding. **Mr. Kane** said mediation would be used only in appropriate cases and was not binding on anyone. He said the purpose of mediation was to try to avoid court.

**Senator Lakey** if an agreement is not reached through mediation, would the problem be referred back to the IPELS Board for a decision. **Mr. Kane** remarked the IPELS Board would have to decide what to do.

**Senator Guthrie** wanted to know what the limit of costs were and what was the split for mediation. **Mr. Kane** explained that it is up to the parties, but most of the time the costs are split in half. Sometimes one party agrees to pay more. He commented that if the parties disagree on that, then they will not agree on a final result. **Mr. Kane** stated that mediation usually takes a day, but compared to litigation, it is a much cheaper way of avoiding costs.

**Senator Burgoyne** remarked that it appeared there was a licensing board that has licensing powers and if a decision was made, discipline could take place. If two land surveyors breach, is this mediation designed to make the problem go away. He asked if the IPELS Board had a duty to respond to allegations. **Mr. Kane** explained that in the Rules of Professional Responsibility there is a clause that says that if a discrepancy is found, surveyors are supposed to talk about it, but very often that does not happen. **Mr. Kane** said that once people are communicating, they come to an agreement and revise their work if necessary and problems get solved. Sometimes there may be a disciplinary issue which could end up being a reprimand.

**Senator Burgoyne** said it was his understanding that land surveyors have legal duties and surveys they issue have legal consequences. If a land surveyor agrees to undo a survey, do other legal problems arise from a legal difference from the first survey. **Mr. Kane** explained there is another rule in place that if a mistake is made, the surveyor has a duty to make a correction. The survey must be corrected and amended at the county courthouse.

**Senator Burgoyne** remarked that he thought mediation was good, but the public should not be put in the middle.

**Senator Anthon** remarked he was a fan of mediation. He referred to paragraph 6 where the IPELS Board recommends arbitration and asked why not have mediation for professional engineers. **Mr. Kane** remarked that arbitration can be very expensive. Engineers do not have these types of problems and their decisions do not affect property owners.

**Senator Lakey** commented that what the IPELS Board was dealing with was a complaint with licensure or disciplinary performance. **Mr. Kane** said yes.

**Senator Lakey** gave an example of two surveyors who disagreed over a technical matter or a matter of art and one surveyor was doing their best, but both argue they are correct, the court of law is the arbiter. **Mr. Kane** said that was correct and the public had to be protected.

**Chairman Patrick** announced that the last item on the agenda, **S 1008** would be held for a week due to lack of time. He said testimony for **S 1007** would be limited for to two minutes.

#### TESTIMONY:

**Wesley Hoyt**, attorney for Dorothy Walker and property owner representing himself, said his property is near where the lines are being moved. He said the change could affect everyone. He remarked there were problems and he was involved in three different lawsuits. **Mr. Hoyt** remarked that property owners concerns do not seem to be recognized until a lawsuit occurs. Mediation does not involve the landowner and that concerns of the landowner should be paramount.

**Senator Martin** remarked this bill deals with land surveyors but not landowners. He said land surveyors are required to talk to landowners. This bill could be amended to require land surveyors to mediate with advice and consent of the land owners.

**Senator Thayn** asked what impact this bill would have on current litigation. **Mr. Hoyt** commented that this bill has an indirect effect and additional pressure may be added, but there may be a benefit too. **Mr. Hoyt** referred to another attorney, Mark Lunders, who was available by phone.

**Mr. Kane** said the reason landowners are not involved is because the

IPELS Board has no authority over landowners, but landowners could attend mediation.

**Vice Chairman Guthrie** asked that if surveyors agree during mediation, would that be binding and does permission have to be granted by property owners. **Mr. Kane** said only if surveyors agreed and they would have to fix the problem by filing a correction in the county in question. The landowner could still contest the issue in court. The purpose of mediation is to protect people from going through litigation.

**MOTION:**

**Senator Martin** moved that **S 1007** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

**Senator Burgoyne** remarked the IPELS Board has rulemaking authority and this change is important because it protects the public.

**Senator Lakey** said he was in support of the bill because mediation is discretionary and not binding. The IPELS Board is not making the decision as to where the boundary lines are on a piece of property.

**Vice Chairman Guthrie** said this bill puts private property and private land owners in the arena. Mediation will be costly. Surveyors do not have to mediate. He said he was not in support of this bill.

The motion carried by **voice vote**, with **Vice Chairman Guthrie** and **Senator Thayne** requesting that they be recorded as voting nay.

**ADJOURNED:**

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:04 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary