

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 16, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senator Anthon

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 1:45 p.m.

MINUTES APPROVAL: **Senator Ward-Engelking** moved to approve the Minutes of February 2, 2017. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

HONORING OF PAGE: **Chairman Patrick** honored Page Rayanna McLean. He asked her to tell the Committee what she had learned. **Ms. McLean** said she remembered what Senator Davis told the pages, which was no university can teach you what you will learn here. She said she learned from the Senators about the type of characteristics she would like to emulate. She thanked Senator Guthrie for being her sponsor. She stated she was going on a mission when she turned 19 and hoped to attend Utah Valley College in Orem, Utah. She mentioned she may become a paralegal. She also said she was grateful for the Committee.

INTRODUCTION OF NEW PAGE: **Chairman Patrick** introduced the new page, Ethan Oleson, and asked him to tell the Committee a little about himself. **Mr. Oleson** told the Committee he was a Senior at Eagle High School and hoped to learn about the process. He said he was excited to be here.

S 1049 **Relating to Portable Electronic Insurance Statute. Lance Giles**, representing Asurion Portable Electronic Insurance Company, said the proposed legislation amends the Idaho Portable Electronic Insurance statute, which was enacted in 2012. All states now have identical or similar statutes in place. **Mr. Giles** stated the relevant portion of the existing statute to be amended provides that a person who purchases a portable electronic insurance policy consents to receiving notices and correspondence electronically if the person provides an electronic e-mail address at the time of sale and simultaneously receives notice of such consent from the insurance company. He said the proposed legislation provides that notice of consent by the consumer shall be made, either by mail or electronic means, within 30 days of the transaction rather than simultaneously. **Mr. Giles** explained that customer and vendor experience throughout the country from 2012 to date shows that providing simultaneous notice is generally not possible given the nature of the transaction. Accordingly, the result of enacting this legislation will allow easier access to electronic communication between a consumer and a portable electronics insurer.

Mr. Giles stated there would be no fiscal impact because the proposed legislation would not require any new regulatory responsibilities or actions by the Department of Insurance.

MOTION: **Senator Guthrie** moved that **S 1049** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1055 **Relating to Recruitment and Retention Bonuses.** **Susan Buxton**, Administrator, Division of Human Resources (DHR), said the purpose of this legislation 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 bill, 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 bill provides the agency director and DHR the authority and flexibility to recoup bonuses.

DISCUSSION: **Senator Ward-Engelking** asked if the recruitment and retention bonuses were outside of a merit raise. She asked if the bonus had to be paid back if the individual left prior to completing one year. **Ms. Buxton** said these bonuses were outside of a merit raise and the money did not have to be paid back.

MOTION: **Senator Lakey** moved that **S 1055** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

S 1074 **Relating to Procurement by Political Subdivisions.** **Senator Den Hartog** said this bill modifies and updates the procurement statutes related to political subdivisions. Modifications include changes to dollar threshold amounts for both informal and formal bid processes, a change in the delegation of procurement authority for County Commissioners, and exemption and bonding changes related to some types of public works projects.

Senator Den Hartog explained there is no impact to the General Fund. It is anticipated that the changes will not have a direct financial impact on political subdivisions, but will provide for a more streamlined and efficient procurement process. **Senator Den Hartog** requested this bill be sent to the 14th Order for a minor change. **Senator Den Hartog** asked Keith Watts and Bob Perkins to present more information about the bill to the Committee.

Keith Watts, past president of the Idaho Public Purchasing Association (IPPA) and the current Purchasing Manager for the City of Meridian, gave a brief overview. He said political subdivisions in Idaho have experienced some challenges with the current procurement statutes. In an effort to resolve these challenges, several cities, counties, taxing districts, and membership organizations have provided input for these changes. The State Interim Procurement Committee heard these proposed changes during testimony over the summer and fall and has provided additional input and guidance. **Mr. Watts** remarked that this bill seeks to provide delegated authority to counties, modernize current dollar thresholds and exclusions, and add a much needed Request for Proposal (RFP) process for political subdivisions.

Mr. Watts reported the focus of the bill was on three procurement areas: 1.) the delegation of authority, which allows the county commissioners to delegate procurement authority should they so desire; and cities and taxing districts have authority to delegate; 2.) modifications to political subdivision service and property procurement statutes with a dollar threshold exclusion of \$50,000 establishes an informal bid ranges from \$50,000 to \$100,000, and a formal bid ranges from \$100,000 and above, and the inclusion of a designee to open, award, or reject bids; and 3.) modifications to the public works exemptions raises the dollar threshold to \$50,000 for public works projects and establishes a \$50,000 bright line standard for exclusion, bidding, and bonding. **Mr. Watts** explained the bill changes the ranges for an informal bid from \$50,000 to \$200,000; a formal bid is considered \$200,000 and above; and, the inclusion of a designee to open, award, or reject bids was added.

Mr. Watts summarized the changes in the bill. He stated that currently the law does not allow county commissioners to delegate procurement authority. This change would allow county commissioners to delegate purchasing authority through a motion or a resolution. **Mr. Watts** said political subdivisions exclusions raises the dollar threshold to \$50,000 to coincide with the public works exemption threshold. The bill clarifies that bonds are due at the time of contract execution.

Mr. Watts said the exclusions were added for purchases of goods and services less than \$50,000; procurement of used personal property; and, procurement of goods for direct resale. He explained the changes applied when a political subdivision sells directly to the public, such as golf balls and clubs, at a city golf course.

Bob Perkins, past president of IPPA and Procurement Manager for Ada County, continued the presentation and said the focus was on three areas, with one of those areas delegating authority for counties. County commissioners currently do not have the ability to delegate purchasing authority to anyone in the county. A purchasing manager has no purchasing ability. Delegation of authority is needed for staff members and officials.

Mr. Perkins said the procurement of travel and training is impractical to the bid process as there are specific requirements, arrangements, logistics, and expertise required. The State of Idaho can procure directly from Idaho Correctional Industries without going through a competitive process. Political subdivisions can benefit from the same exemption. Procurement of the repair for heavy equipment, software maintenance, support, and licenses of an existing system or platform bid in compliance with State law, procurement of public utilities, food for jails and detention facilities, and used equipment at an auction, if authorized by the governing board, are all on the political subdivision exclusion list.

Mr. Perkins outlined the changes for procurement of public works construction, noting Section 1 was deleted due to raising the exemption threshold in Idaho

Code § 54-1903 to \$50,000, the informal bid threshold of \$50,000 to \$200,000, the formal bid threshold of \$200,000 and above, and the inclusion of a designee to open, award, and reject bids. In Idaho Code § 67-2806 the changes to political subdivision services or personal changes were raised. The informal bid threshold was increased from \$50,000 to \$100,000, and the formal bid threshold was raised to \$100,000 and above, and the inclusion of a designee to open, award, and reject bids was added.

Mr. Perkins reported on Idaho Code § 54-1926 relating to performance and payment bonds required of contractors for public buildings and public works of the State, political subdivisions and other public instrumentalities. Before any contract equal to or greater than \$50,000 for the construction, alteration, or repair of any public building or public work or improvement of the State of Idaho, or any county, city, town, municipal corporation, township, school district public educational institution, or other political subdivision, public authority, or public instrumentality, or of any officer, board, commission, institution, or agency is executed, the person to whom such contract was awarded will furnish a performance and payment bond. Bonding should be done at contract signing. **Mr. Perkins** explained the contractor would receive an award letter and take the letter to the surety company. Without the award letter it is very difficult for contractors to be bonded.

Mr. Perkins explained that in Idaho Code § 67-2803, the procurement requirements established would not be applicable to the acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that have been competitively bid by the State, one of the political subdivisions, or an agency of the federal government; or contracts or purchase expenditures that are less than \$50,000, provided these contracts or purchases be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board. He outlined the remainder of the exclusions in Section 4.

DISCUSSION: **Senator Martin** asked about reverse auctions in the bill. **Mr. Perkins** said that reverse auctions were not being pursued.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to continue the meeting.

DISCUSSION: **Vice Chairman Guthrie** asked about the bid threshold of \$50,000 and wanted to know if any bidding requirements and laws were being violated. **Mr. Perkins** said the proposed \$50,000 to \$200,000 was part of the informal bid process and \$200,000 or above would be part of the formal bid process. Goods and services from \$50,000 to \$100,000 would be considered an informal bid process. The thresholds all increase according to the new baseline of \$50,000.

Senator Martin referred to the purchase of used equipment at an auction. He asked if there were safeguards in place. **Mr. Perkins** said in order to save money, political subdivisions wanted to have the ability to attend auctions to purchase equipment.

Mr. Watts commented that when a political subdivision contemplated an expenditure to procure public works construction valued at or in excess of \$50,000, but not to exceed \$200,000, the procurement procedures of Idaho Code § 67-2805, Subsection 5 will apply. The designee could open or reject bids. In Idaho Code § 67-2806 relating to subdivision purchases of personal property, the baseline has moved from \$25,000 to \$50,000 and the new threshold would be \$50,000 to \$100,000 which is the same three-bid requirement for informal bids and formal bids. **Mr. Watts** cited there was a new Section added to Idaho Code § 67-2806A, RFP. This section establishes the RFP process for political subdivisions. The State of

Idaho has this solicitation method to use in procurements. Political subdivisions would benefit greatly from having the same.

MOTION: **Senator Martin** moved that **S 1074** be referred to the 14th Order for amendment. **Senator Ward-Engelking** seconded the motion. **Senator Martin** commended Senator Den Hartog, Mr. Watts, and Mr. Perkins for all of the work they put into this bill. The motion carried by **voice vote**.

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

S 1075 **Relating to Insurance Dividends and Other Distributions.** **John Mackey**, United Heritage Financial Group, said this legislation is intended to clarify the term "realized capital gains" as used in the calculation under Idaho Code § 41-3812(1)(b) in determining whether a dividend or distribution is extraordinary or non-extraordinary. The required notice and approval requirements of the Director of the Department of Insurance (DOI) depending on that determination vary. While the current statute is silent as to how capital losses are factored into the calculation, the language in Idaho Code § 41-3812(1)(b) has been interpreted by the DOI to mean net realized capital gains or losses. Insurance companies strategically manage their investment portfolios on a net basis as a sound business practice. This legislation will clarify the language to ensure that the calculation appropriately takes into account realized capital gains or losses and uses the net amount in the calculation to determine whether a dividend or distribution is extraordinary or non-extraordinary. **Mr. Mackey** said there was no opposition to this proposed legislation and the DOI supported the amendments.

Mr. Mackey explained there is no fiscal impact to the General Fund or any other State fund or expenditure. This legislation merely clarifies the calculation of a formula which has no fiscal impact.

Mr. Mackey explained a determination is based on a lesser of two measures, one of which is 10 percent of surplus. There is no issue with the surplus measure. The other is net gain from operations which is the net gain from operations or net income measures that require clarification. Insurance companies strategically manage their investment portfolios on a net basis as a sound business practice.

Mr. Mackey stated that while the current statute is silent as to how capital losses are factored into the calculation, the language in Idaho Code § 41-3812(1)(b) has been interpreted by the DOI to mean net realized capital gains or losses. The statute does not specifically include the term "net" and does not reference losses. **Mr. Mackey** noted this housekeeping measure involves adding the words "net" and "or losses."

MOTION: **Senator Lakey** moved that **S 1075** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:22 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary