

MINUTES
HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 21, 2017

TIME: 1:30 P.M.

PLACE: Room EW05

MEMBERS: Chairman Hartgen, Vice Chairman Anderson, Representatives Harris, Holtzclaw, Horman, Packer, Redman, Kingsley (Lohman), Moon, Syme, Scott, King, Chew (Gill)

**ABSENT/
EXCUSED:** None

GUESTS: Georgia Smith, Elizabeth Knox and Michael Kalm, Department of Labor; Dawn Peck, Idaho State Police; Roger Batt, Idaho Grape and Wine Producers; Jennifer Pike, Department of Administration; Valerie Bollinger and Sarah Hilderbrand, Division of Purchasing; Jeremy Chou, Givens Pursley; Colby Cameron, Sullivan and Reberger/MPAA

Chairman Hartgen called the meeting to order at 1:31 pm.

Chairman Hartgen welcomed substitute **Reps. Gill** and **Lohman**. Chairman Hartgen also introduced the page, **Rebecca Arreola**. She will be working for the Committee during the second half of the session.

MOTION: **Rep. King** made a motion to approve the minutes of the February 13, 2017 meeting. **Motion carried by voice vote.**

H 164: **Georgia Smith**, Deputy Director for Communications and Research, Records Custodian, Department of Labor, presented **H 164**, which creates a new Code section and gives the Department statutory authority to conduct FBI fingerprint-based background checks. The US Department of Labor requires the Idaho Department of Labor to use IRS databases to collect the Treasury Offset Program to collect overpayments due to claimant fraud or misreported earnings. The IRS has restricted data access to those who have had a background check, because as part of their job, they will have access to the social security numbers of Idaho workers and other sensitive information. The Human Resources Department within the Department of Labor will have the authority to conduct the checks. Ms. Smith addressed previously raised questions regarding why the Department needs its own machine to perform the background checks. She stated it will be more secure, will result in a quicker turnaround and will provide cost savings since employees will not need to travel to the Idaho State Police to be checked. The machine is being paid for by a US Department of Labor Integrity Grant, which has already been procured. The Department plans to start the background checks with the 26 existing employees with access to federal tax information, as required by the FBI by September 30, 2017. Other Department employees have already been background checked; they may need to be recertified in the future and as the importance of data security increases, Ms. Smith expects the number of employees who need to be checked to grow.

In response to Committee questions, **Ms. Smith** stated if an employee failed their background check, the Department would, if allowable, look for another position for that person. She explained only employees in the Central Office and Unemployment Claims Center, which are both located in Boise, have access to federal tax data and need to be background checked; employees in other parts of the state would not need to travel to Boise to be checked. If the Department did not have its own machine, Ms. Smith said their estimate of the cost to background check all employees, including new hires over a 10-year span, ranged from \$6,000-67,000. She also explained employees who have been background checked need to be recertified every 3-5 years, including being fingerprinted again because fingerprints can change due to skin damage.

Dawn Peck, Manager of the Idaho State Police Bureau of Criminal Identification, testified **in support** of **H 164** and in response to Committee questions, provided technical expertise about the background check process. She noted ISP encourages agencies to share the full background check record with applicants. She stated ISP has one fingerprint machine, the Department of Health and Welfare has seven or eight machines around the state and the Department of Education also fingerprints employees on paper and ISP converts those into a digital format. She confirmed non-criminal history background checks are only based on fingerprints and do not include any other biometric data.

In response to further Committee questions, **Ms. Smith** explained the legislation does not address the purchase of the fingerprinting machine, it only gives the statutory authority to conduct the checks. The Fiscal Note lists the cost of the machine, but it has already been paid for by a federal Integrity Grant. Without the statutory authority to conduct FBI fingerprint-based background checks, the Department would lose access to federal tax information data without background checks on the pertinent employees.

In response to Committee questions, **Ms. Peck** clarified ISP cannot process any background checks without this statutory authority from the Legislature.

ORIGINAL MOTION:

Rep. Packer expressed her concern the Department be able to access the data they need to fulfill their statutory duties in a responsible manner and made a motion to send **H 164** to the floor with a **DO PASS** recommendation.

Reps. Redman and **Syme** expressed similar feelings and stated they were **in support** of the motion. **Rep. Holtzclaw** expressed his concern about the breadth of the legislation, but stated he too would support the motion.

SUBSTITUTE MOTION:

Rep. Scott made a substitute motion to **HOLD H 164** in committee, in the hope the language could be changed and narrowed.

VOTE ON SUBSTITUTE MOTION:

Chairman Hartgen stated he was in doubt regarding the voice vote on the substitute motion and asked for a roll call vote.

ROLL CALL VOTE:

Substitute motion failed by a vote of 4 AYE and 9 NAY. Voting in favor of the substitute motion: **Reps. Harris, Scott, Kingsley(Lohman) and Moon. Voting in opposition** to the substitute motion: **Vice Chairman Anderson, Reps. Holtzclaw, Horman, Packer, Redman, Syme, King, Chew(Gill) and Chairman Hartgen.**

SUBSTITUTE MOTION:

Rep. Holtzclaw made a substitute motion to send **H 164** to General Orders.

Chairman Hartgen noted this would open the entire bill to modification or change, not only the concerning language in line 20.

Ms. Smith was called upon to answer a question from the committee regarding that language. She explained prospective contractors, subcontractors, interns and volunteers were all included intentionally and each category had been considered carefully. AmeriCorps volunteers, who work at the Idaho Department of Labor, are nationally required to have fingerprint-based background checks. Department interns undergo data security training and background checks because they have access to personally identifiable data (PID). Contractors are often software engineers because it is difficult to hire them full time and they too have access to PID.

**MOTION
WITHDRAWN:**

Rep. Holtzclaw withdrew his substitute motion to send **H 164** to General Orders.

**VOTE ON
ORIGINAL
MOTION:**

Chairman Hartgen called for a vote on the original motion to send **H 164** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Harris, Scott, Kingsley(Lohman) and Moon** requested they be recorded as voting **NAY. Rep. Redman** will sponsor the bill on the floor.

H 167:

Vice Chairman Anderson presented **H 167**, which came from the State Procurement Laws Interim Committee and addresses multiple awards. He introduced **Elizabeth Bowen** to review the legislation in detail.

Elizabeth Bowen, Bill Drafter, Legislative Services Office, stated the changes to the statute were of three types: clarify/simplify language that was confusing or outdated, address concerns brought by the Division of Purchasing and incorporate changes the Committee agreed on. The requirement that property be "the same or similar" was struck out of line 10 at the request of the DOP because there has been confusion about what constitutes similar property. The legislation explicitly states multiple awards contracts may be awarded on a regional basis and the administrator must always submit a written justification for why a multiple award is necessary.

In response to Committee questions, **Ms. Bowen** stated the language "best interest of the state" was added in line 21 at the request of the Interim Committee to make clear that just because a circumstance is not specifically listed in the legislation, does not mean a multiple award cannot be made. She explained the other procurement statutes apply to awarding a single contract, whereas this statute is comparing a situation that would justify a multiple award with normal circumstances, hence some of the language referencing "more effectively" or "some other manner." **Ms. Bowen** stated it was the will of the Interim Committee to make it easier for DOP to procure property and protect the vendor community and the state by more clearly spelling out situations where a multiple award could be made.

Jeremy Chou, Attorney at Givens Pursley and lobbyist for Syringa Networks, testified **in opposition** to **H 167**. He gave an overview of the IEN/Syringa lawsuit and listed three reasons Syringa Networks is opposed to the legislation. First, there are concerns with the language in line 21 stating multiple awards can be made if they "in some other manner serve the best interest of the state." Mr. Chou stated that particular language gives an extraordinary amount of discretion to the state to bypass the standard procurement laws. Secondly, he noted "other factors" in line 15 as being too broad. Thirdly, he expressed his opposition to the removal of the "same or similar" language which removes the premise of competition that underlies the bidding process for procurement.

In response to Committee questions, **Mr. Chou** stated he had been working with the Department of Administration on mutually acceptable language and they had come to an agreement. He was told by the DOA that either the language in the legislation or the language that had been worked on was acceptable.

Sarah Hilderbrand, Administrator of the Division of Purchasing, testified in support of **H 167**. She noted when she looks to the Multiple Awards statute, she is looking for a law that makes sense, is fair to the vendor community, is practical and is easy for vendors or the public to read and understand. She emphasized the Division's issue with "similar" and stated it is unclear what that language means and that makes it difficult to apply the statute. It is the DOP's responsibility to clearly identify what criteria vendors will be evaluated on, whether by line item, by regional location, or by another factor. The Multiple Awards statute tells the state not to accept more bidders than it needs and Ms. Hilderbrand stated it is her responsibility to examine the justification for why more than one bidder is required to provide certain goods or services. She noted there are only a handful of multiple awards requests a year out of thousands of contracts awarded.

In response to Committee questions, **Ms. Hilderbrand** expressed her opinion that the requirements for "same or similar" property are in other areas of Code and IDAPA and are covered in detail by the specifications, the standards or requirements for property to be procured, as explicitly stated in the solicitation document. The DOP is required to list the specifications and property is considered "same or similar" based on what has been written into the solicitation. She stated both the bill language and the language worked on with **Mr. Chou** was satisfactory and it was the Legislature's policy decision about what they would like to see in Code. She also noted protections for vendors relate to how the specifications are written, so they know what is needed and how they will be evaluated. The Division encourages vendor use of the question and answer period and the appeals process. She stated the Division has already written specifications and done evaluations before deciding if a multiple award is warranted.

Elizabeth Bowen was called upon to explain the choice of language. She explained the "best interest of the state" was added because of the Interim Committee's concerns that the bill language, especially in subsection 4, would prevent regional contracts from being awarded when it made the most sense. She stated a bill drafter is always concerned something they wrote will be declared unconstitutional because they could not think of all the circumstances where something might apply, so the language was meant to prevent that misunderstanding.

Vice Chairman Anderson was recognized to close testimony on **H 167**. He emphasized the Interim Committee made their recommendations after hearing testimony and noted there are checks on multiple awards in place: the written justification that is required and the Legislature's review of all multiple awards. He said the "same and similar" language was removed so it did not become a point of contention in the future and noted the opinion of the Attorney General's Office that the bill will advance the interests of the state and reduce ambiguity.

MOTION: **Rep. Redman** made a motion to send **H 167** to the floor with a **DO PASS** recommendation.

VOTE ON MOTION: **Chairman Hartgen** stated he was in doubt regarding the voice vote on the motion and asked for a roll call vote.

ROLL CALL VOTE: **Motion failed by a vote of 5 AYE and 7 NAY, 1 Absent/Excused. Voting in favor of the motion: Vice Chairman Anderson, Reps. Redman, Syme, King and Chairman Hartgen. Voting in opposition to the motion: Reps. Harris, Holtzclaw, Horman, Packer, Scott, Kingsley(Lohman) and Moon. Rep. Chew(Gill) was absent/excused.**

H 144: **Chairman Hartgen** returned **H 144** to the committee for consideration, which was held for time certain from the meeting of Wednesday, February 15, 2017.

MOTION: **Rep. Packer** made a motion to **HOLD H 144** in committee at the call of the chair. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:42 pm.

Representative Hartgen
Chair

Erica McGinnis
Secretary