

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 16, 2017

TIME: 1:00 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 Senate Commerce and Human Resources Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of March 9, 2017. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Dr. J. Kirk Sullivan of Meridian, Idaho, to the Public Employee Retirement System of Idaho (PERSI) Board, term commencing July 1, 2016 and expiring July 1, 2021. **Dr. Sullivan** said he has had 15 years experience on the Board of Trustees for PERSI. He thanked the Committee for the opportunity to serve on the PERSI Board.

MOTION: **Senator Martin** moved to send the gubernatorial appointment of Dr. J. Kirk Sullivan to the PERSI Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

HONORING OF PAGE: **Honoring of Page Ethan Oleson.** **Chairman Patrick** honored Page Ethan Oleson. **Mr. Oleson** said he has learned so much and he has had experiences that will last a lifetime. He said he was planning on attending Brigham Young University, Provo, Utah, and then on to graduate school for a Master's degree in business. **Chairman Patrick** thanked Mr. Oleson, and said he was an exceptional page and the Committee wished him the best.

H 166 **Relating to State Procurement.** **Senator Martin** said this legislation, recommended by the State Procurement Laws Interim Committee, repeals the existing statute on unlawful State contracts and replaces it with a new statute that would be more equitable to the contracting parties. For example, the new statute would allow a contractor to be compensated for goods delivered or services provided before the contract was found to be unlawful, which the current statute does not permit. **Senator Martin** stated here is no anticipated fiscal impact specifically associated with this legislation, which is primarily intended to clarify State policy in regards to certain contracts. **Senator Martin** yielded his time to Elizabeth Bowen, Legislative Service Office, who drafted the bill.

Ms. Bowen explained the new statute repeals Idaho Code § 67-9213 and that Idaho Code, Chapter 92, Title 67 would have a new section, to be known and designated as Idaho Code § 67-9213. **Ms. Bowen** said the current statute does not treat situations when a contract is declared illegal. In the new section if the bidder awarded the contract acted fraudulently or in bad faith, the contract

may be declared void by the Division of Purchasing (DOP) Director and allows contracts to be ratified for up to six months if there is an urgent public need for the goods and services provided under the contract. If a contract is terminated, appropriate compensation would be paid to the contractor, unless the contractor acted fraudulently or in bad faith, in which case the contract could be voided. Under no circumstances would a person, including a person challenging a solicitation or an award of a contract or a bidder awarded a contract found in violation of the law, be entitled to consequential damages in relation to a solicitation or an award of contract, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Ms. Bowen explained that if it is determined in administrative or judicial review authorized by this new chapter that an award or proposed award of a contract is in violation of the law, and an employee or officer of the State acted fraudulently or in bad faith, the employee or officer shall be subject to the provisions of Idaho Code § 67-9233 and Chapters 4 and 5, Title 74 as applicable. Nothing provided in this new section will limit the application of the provisions of Idaho Code, Title 18, or the prosecution of any person under these provisions.

DISCUSSION:

Senator Anthon questioned whether the contract would be voidable. **Ms. Bowen** said the DOP Director is not obligated under statute to void a contract. **Senator Anthon** asked if there was anything different in the law between "void" or "voidable." **Ms. Bowen** explained that there is not a difference in remedies and that contract law would not apply.

Senator Burgoyne directed a question to Senator Martin. He referred to the bidder who was awarded the contract who did not act fraudulently or in bad faith and an employee or officer of the State acted fraudulently and was wondering why the word "unlawful" was not included. He asked why there was not a requirement for reformation of contract. He said it was odd to him that fraudulent and bad faith contracts were mentioned. **Senator Martin** explained that Idaho Code says that if a contract is void, all money has to be returned to the State. He deferred to Ms. Bowen. **Ms. Bowen** said the contract may be ratified and affirmed by the DOP Director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition of the property satisfies the standards established by the rules of the DOP for an emergency procurement. She stated the reasoning is that these types of situations would be rare. **Ms. Bowen** commented that contract ratification is limited to no more than six months and the Interim Committee was comfortable with this idea as the language addresses the problem and there would not be time to rewrite the contract.

Senator Burgoyne asked about "shall be prosecuted at law for the recovery of such moneys" and would there be liability in a civil suit. **Ms. Bowen** said yes.

MOTION:

Senator Guthrie moved that **H 166** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Burgoyne expressed his concerns with several parts of the bill referring to if the contractor was innocent that using the words "ratification of contract" was correct. He was not comfortable with the concept that the contract may be terminated by the DOP Director, and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before termination, plus a reasonable profit. He questioned what is a "reasonable profit." He said that in his opinion the reasonable profit should not be refunded.

The motion carried by **voice vote**. **Senators Burgoyne** and **Thayn** requested to be recorded as voting nay.

H 137 AA

Relating to Electricians. **Representative Nate** said that currently Idaho Code § 54-1016 provides for property owners to do their own electrical work in their primary residence or associated outbuildings of the property without requiring the property owner to be licensed for electrical work. The current statute does not provide for property owners to do their own electrical work "on" their residence or outbuildings, however. This bill will fix the technicality and also permit homeowners to do electrical work in or on their residence, outbuildings and the land as well (for example, install a light for a flagpole or walkway).

Representative Nate stated there is no fiscal impact to the State General Fund because this is a regulatory change and requires no additional oversight by any State agency.

Representative Nate went over the amendment. He said that on page 1 of the printed bill, lines 26 through 30 were deleted. He said "(a) Any property owner performing noncommercial electrical work in the owner's primary or secondary residence, or associated outbuildings or land associated with the entire property on which those buildings sit, except that homeowner installations of renewable power generation connected to the community power grid shall be subject to a pre-plan review in accordance with local jurisdictions' policies and procedures prior to the purchase of a permit was inserted."

TESTIMONY:

Bob Scott, Chairman, Idaho State Electrical Board (Board), testified in opposition to this bill. He said the main problem with this bill is that the Board was not consulted. **Senator Souza** said it was her understanding that this bill was not meant to be a change in statute, but a clarification. **Mr. Scott** said he would agree, but he did not agree with the areas in the bill that allows a non-licensed homeowner to perform work on their residence.

Senator Martin gave an example of a homeowner who wanted to change an electrical outlet and asked if that type of work was permitted under the present code. **Mr. Scott** said a permit would be required, along with an inspection, but the homeowner could do their own work. **Senator Martin** asked if a homeowner could presently add a circuit for a hot tub. **Mr. Scott** remarked that it was his understanding that would not be allowed under the present code. **Senator Martin** asked if the proposed language in the bill would allow a homeowner to add a circuit for a hot tub. **Mr. Scott** replied that it appears that a homeowner would be allowed to add a circuit, but most are not qualified to do so. **Senator Souza** asked if a homeowner wired their own hot tub, would there be an inspection. **Mr. Scott** remarked that an inspector cannot catch everything. **Senator Souza** said she thought inspectors were experts. **Mr. Scott** reiterated that no expert could catch everything.

Senator Burgoyne asked if the proposed language would have been put before the Board, would it have been different. **Mr. Scott** said he could not speak for all of the Board, but there would have been public input. He said he wanted to clarify that agricultural work is considered commercial work.

Benjamin Baker, representing himself, said that he is a nuclear physicist. Last summer he was putting solar panels on his house and so was a neighbor. The neighbor was told he had to have a contractor install the panels, but he did not. He remarked the current statute says "in" primary residence which meant only within the building. This bill will allow a homeowner to perform their own work whether it is inside or outside of the house.

MOTION: **Senator Anthon** moved that **H 137aa** be sent to the floor of the Senate with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**. **Senator Martin** requested to be recorded as voting nay.

HCR 13 **Relating to Group Insurance.** **Senator Lakey** said this resolution authorizes the Legislative Council to reappoint the Interim Committee on Employee Health Benefits (ICEHB), to continue to complete a study of the State's employee group insurance plan structure, and to make recommendations for changes. He said that Representative Wood was also on the ICEHB.

Senator Lakey stated the cost of the meetings, including per diem and travel, are not expected to exceed a total of \$10,000. The cost to retain the services of a health care plan consultant or analyst, with prior approval from the Speaker and the Pro Tem, is estimated not to exceed \$125,000. These costs will be paid by the Senate and the House of Representatives by a General Fund transfer to the Legislative Account. To the extent possible, existing data, analysis, and resources will be utilized to complete the study; however, there may be additional expenses incurred by the Department of Administration for actuarial analysis related to the State employee group insurance component of the study.

DISCUSSION: **Senator Thayn** commented the resolution suggests whether the ICEHB should investigate whether the State should self-insure. He said he would like to have three consultants with different opinions for a robust conversation. He remarked there was nothing in the resolution about a transparency tool which should be discussed, as he thought the focus was on insurance and not on a reduction in costs for State employees. **Senator Lakey** commented the ICEHB was considering various options to find out if there was something that could be improved. The ICEHB could consider multiple consultant services by requesting proposals, evaluating, and determining who would be hired.

Senator Souza asked what the ICEHB covered last time. It is incumbent to address issues due to changes in the Affordable Care Act (ACA). This is a great opportunity to find options for State employees as a whole. She asked if the ICEHB evaluated innovative, unusual type, free-market possibilities when they looked at options.

Senator Lakey said there is a plan to give the State the option of self-funding insurance and the ICEHB is open to other options.

Vice Chairman Guthrie remarked that prior approval must come from the Speaker and Pro Tem and since the cost is limited, he would like to get a clear picture of their roles. **Senator Lakey** said the thought process was hiring one consultant, but if more than one was needed and the amount was under budget, the ICEHB could determine who was best qualified. His intent was to visit with the Speaker and the Pro Tem about this issue.

MOTION: **Senator Martin** moved that **HCR 13** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

HJM 7

Joint Memorial Relating to the Affordable Care Act (ACA). **Representative Loertscher**, said this Joint Memorial calls for returning to free market availability of health insurance plans in the State of Idaho, regulated by the State-established statutes, regulations, and rules governing such plans. This requested action is a simple return to the process in which health insurance plans in Idaho were developed and offered for sale prior to the enactment of the ACA. The Memorial does not call for a repeal of subsidized health insurance plans currently in effect or available on the Your Health Idaho Exchange. The Memorial simply requests that another non-subsidized option for health insurance coverage be made available to Idaho consumers.

Representative Loertscher stated there is no fiscal impact because this legislation seeks only to return to the free market status of the development and sale of health insurance plans existing prior to the ACA (2010). In a competitive market, without the costs of federal mandates contained in the ACA, these plans could provide savings to consumers on their annual health insurance costs.

DISCUSSION:

Senator Souza asked about the wording for existing subsidized plans under the State Exchange. She said she supports the free market. If we are subsidizing individuals, will the State be able to afford the premiums. **Representative Loertscher** said he thought so since insurance companies and the Department of Insurance (DOI) are working on this issue. There are more people who have non-subsidized insurance than those who have subsidized plans. He said it seems reasonable that the free market is reintroduced. **Senator Souza** asked if this resolution carries a mandatory purchase of some sort of insurance or would a person not have to buy insurance. **Representative Loertscher** said this resolution does not mandate insurance.

Senator Ward-Engelking commented there was no mention of anyone who finally purchased insurance, pre-existing conditions, or that children would be covered until they are 26 years old. She said she felt this resolution was negative. **Representative Loertscher** said this resolution was not negative and encourages health insurance to work in the free market. It does not do away with the State Exchange and does not ban the ACA. There is a market for a certain type of insurance. **Senator Ward-Engelking** stated that if the free market was available that Representative Loertscher would embrace that concept. **Representative Loertscher** said an individual should be able to choose and this Memorial is not more complicated than that.

MOTION:

Senator Martin moved that **HJM 7** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Souza** seconded the motion.

Senator Burgoyne said he agreed with the non-subsidized health insurance plans in accordance with State-established statutes, regulations, and rules governing such plans, but he had issues with the recitals, which he could not ignore.

The motion carried by **voice vote**. **Senators Burgoyne** and **Ward-Engelking** requested to be recorded as voting nay.

H 244

Relating to Insurance. Senator Heider (presenting for Representative DeMordaunt) said this legislation would require that an individual life insurance policy would include the option for the policyholder to designate an individual, in addition to themselves, to receive notification by mail 14 days prior to termination. This will be done on an annual basis. **Senator Heider** cited several examples of insurance companies who currently allow a second person to be identified as a designee. He stated several other states require notification be done by first class mail.

Senator Heider stated this legislation will have no impact to the General Fund or any unit of local government because the insurance policy is between the private individual and the insurance company. No additional State oversight is needed.

DISCUSSION:

Senator Anthon asked if a policy was issued or in force on or after January 1, 2018, was the notification monthly or more frequently. **Senator Heider** said the notification does not deal with monthly payment policies, but with annual policies.

TESTIMONY:

Kathy Peterson, representing herself, testified in opposition to the bill. She said she wanted a clause added that notification be sent to the policyholder and the beneficiary on the policy via certified mail with a signed return receipt whenever a policy was in jeopardy of lapsing. She said this would be the final notice available to better help stop involuntary forfeiture of a policy and to help prevent some cases of insurance fraud. She cited several instances when first class mail was used and the policyholder and/or the beneficiary never received the notification. This happened in the case of her mother, whose policy lapsed without the knowledge of the family.

Jeff Nuemeyer, representing United Heritage Insurance Company, spoke in support of this bill. He said it provided a safety net for Idahoans and applies to all policies. He said the American Council of Life Insurers (ACLI) has been involved in the development of this legislation. This is good public policy.

Woody Richards representing the American Family Insurance Company, Allstate Insurance Company, and Farm Bureau Mutual Insurance Company, and speaking with permission from Michael Kane, on behalf of the Property Casualty Insurers Association of America, testified in support of this bill. He said that notices from the insurance companies he represents are mailed by first class mail. Idaho law includes existing laws which only require a first class mailing instead of certified or registered mail. He cited Idaho Code § 60-109A, which allows governmental entities including counties, cities, and school districts to utilize first class mail. He cited Idaho Code § 41-3322, which states that when an insurance company becomes insolvent, notice to potential claimants will be sent by first class mail rather than by certified mail or registered mail. Insurance companies are trying to balance cost and effectiveness of the cost of mail, but still allow people to afford insurance.

DISCUSSION:

Senator Burgoyne said it was common in the field of administrative law that appeals must be sent by first class mail and not certified mail.

Senator Souza asked about the concerns of Ms. Peterson and the reliability of the mail and the other person receiving notice. **Senator Heider** said by mailing a first class letter to the second person will help so an insurance policy did not lapse.

MOTION: **Senator Souza** moved that **H 244** 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**.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:27 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary