

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, March 06, 2018

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, 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 1:30 p.m.

**RS 26295** **Relating to Cosmetologists and Estheticians. Senator Den Hartog** reported this legislation is a trailer bill to **S 1324**, which combines the Boards of Barber Examiners and Cosmetology and makes other changes that will facilitate efficiencies, create flexibility, and new opportunities for licensees and people entering those professions. **Senator Den Hartog** advised this trailer bill will clarify eyelash extensions are within the scope of practice for cosmetologists and estheticians. She remarked, as the Board of Cosmetology worked on this comprehensive joint legislation, further clarification on this issue became important because the application of eyelash extensions is a public health issue; it was deemed a public health issue as it poses risks of infection and to client safety.

**Senator Den Hartog** noted there is no impact to the General Fund or the Idaho Bureau of Occupational Licenses' (BOL) dedicated fund because the proposed legislation will not alter the number of board meetings held each year or require more services be provided to the Boards of Barber Examiners and Cosmetology.

**UNANIMOUS CONSENT:** **Chairman Patrick** asked for unanimous consent to send **RS 26295** to a privileged committee to print. There were no objections.

**H 548** **Relating to Idaho Life and Health Insurance Guarantee Association (LHIGA).** **Tim Olson**, Pinnacle Business Group, stated this legislation is intended to incorporate into Idaho insurance law newly adopted provisions of the National Association of Insurance Commissioners (NAIC) LHIGA Model Act. The provisions are regarding the assessment formula for costs incurred by the Idaho LHIGA for long-term care insurance policies of insurance company members that become insolvent. **Mr. Olson** pointed out that, if adopted, the new assessment formula will split the cost of long-term care policies as follows: 50 percent to the life and annuity insurance company members and 50 percent to the health insurance company members.

**Mr. Olson** commented, currently, long-term care coverage costs are assessed only for health insurance company members. The life and annuity and health insurance company members have agreed the current assessment formula is flawed, as the assessment is not properly borne by the companies that write long-term care insurance. **Mr. Olson** noted this legislation would give the Idaho LHIGA authority to cancel Affordable Care Act (ACA) health plans issued by bankrupt insurance companies and immediately move policy holders to a new, financially solvent

insurer.

**Mr. Olson** stated there is no fiscal impact to the General Fund or any other State fund or expenditure with the change to the long-term care assessment formula. These provisions would only change the companies that are assessed for the LHIGA's costs for long-term care coverage.

**DISCUSSION:** **Senator Burgoyne** asked for clarification of spreading costs to other carriers. **Dean Cameron**, Director, Idaho Department of Insurance (DOI), reported there was no way of knowing which company would go into bankruptcy. He explained this proposal helps insurance companies and taxpayers. He asserted this legislation will protect consumers and spread costs out to as many carriers as possible. **Senator Burgoyne** commented this was a good bill.

**MOTION:** **Senator Lakey** moved to send **H 548** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Potts** moved to approve the Minutes of February 27, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**H 526** **Relating to Farm Equipment.** **Roger Batt**, Western Equipment Dealers Association, reported the purpose of this legislation is to provide clarification of the original legislative intent of the Idaho Equipment Dealer Protection Act by prohibiting equipment suppliers from substantially changing the equipment dealer's competitive circumstances without good cause. He explained "competitive circumstances" as having an equipment manufacturer who already has a contract with a farm equipment dealer to place another dealership into the existing farm equipment dealer's area of retail. **Mr. Batt** explained the existing dealer is then forced to sell or close their business down.

**Mr. Batt** noted farm equipment manufacturers have far greater bargaining strength compared to Idaho farm equipment dealers. He stated this is due to the fact farm equipment dealers have to sign contracts of adhesion with the equipment manufacturer in order to continue to stay in business. These contracts are non-negotiable, "take it or leave it type of contracts," where the farm equipment dealer assumes all of the risk. **Mr. Batt** cited these types of incidents have already happened in Idaho and many other states. Idaho farm equipment dealers recognize this practice as harmful to existing business owners and not in conformance with the intent of Idaho's Equipment Dealer Protection Act or industry business practices.

**Mr. Batt** commented this legislation also adds clarity to ensure that persons interpreting the statute understand the terms of a dealer agreement may not impact the determination of whether there has been a substantial change in the dealer's competitive circumstances. He noted other states have passed similar laws to protect farm equipment dealers. **Mr. Batt** acknowledged this legislation only applies to new contracts or those where both parties renew on or after July 1, 2018; as such, legislation does not apply to existing contracts.

**Mr. Batt** remarked there is no fiscal impact to the General Fund because this legislation addresses contracts between equipment dealers and equipment suppliers.

**DISCUSSION:** **Senator Potts** asked Mr. Batt to define the term "a substantial change." **Mr. Batt** replied the definition would be up to the court and referred to page 4, lines 36 and 37, which noted the supplier would have to provide written notice of its intention at least one year in advance; and page 5 of the bill, subsection 4, which details an act or omission that has a detrimental effect on a retailer's ability to compete with another retailer that sells the same brand of farm implements.

**MOTION:** **Vice Chairman Guthrie** moved to send **H 526** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**H 400** **Relating to Public Employee Retirement System of Idaho (PERSI) - Revise A Provision.** **Don Drum**, Executive Director, PERSI, remarked computation of Service Retirement Allowance, Idaho Code § 59-1342 and Early Retirement Allowance, Idaho Code § 59-1346, are contained in two separate sections of Idaho Code. The Service Retirement Allowance section contains two provisions that should also be included in the Early Retirement Allowance section. **Mr. Drum** remarked specifically, Idaho Code § 59-1342(6) and 59-1342(8) should be included in the Early Retirement Allowance section.

**Mr. Drum** related Idaho Code § 59-1342(6) provides that a member's initial service retirement benefit shall not be equal to more than the member's accrued benefit, or 100 percent of the member's average compensation for the three consecutive years of employment which produced the greatest aggregate compensation. **Mr. Drum** commented this definition should be replicated in the Early Retirement Allowance, Idaho Code § 59-1346.

**Mr. Drum** cited Idaho Code § 59-1342(8) provides a computation calculation for members who have a significant break in service and end up with two separate periods of employment. Both periods would qualify the member for retirement benefits. **Mr. Drum** explained the language for this calculation should be replicated in the Early Retirement Allowance to maintain consistency in calculations.

**Mr. Drum** stated there would be no fiscal impact with the additional language added to this statute. Retirement allowance computations are currently consistently applied for both Service and Early Retirement Allowance. This update would codify this practice.

**MOTION:** **Senator Martin** moved to send **H 400** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**H 401** **Relating to Public Employee Retirement System of Idaho (PERSI) - Revise Definitions.** **Don Drum**, Executive Director, PERSI, stated Idaho Code § 59-1302 does not include a definition of "ineligible" or "termination from employment." This amendment is to add those two definitions and to amend the definitions of "disability retirement allowance," "early retirement allowance," "inactive member," "retirement," and "separation benefit" to clarify the meaning of those terms.

**Mr. Drum** explained PERSI historically used the term "ineligible" to define members who are not eligible under statute, to participate and/or contribute as an employee of a PERSI employer, not eligible to receive a retirement benefit, or not eligible to receive a separation benefit. The lack of a specific definition of members who are not eligible has allowed some to attempt an interpretation of the code that is not in line with the intent of the statute or with requirements of a qualified plan.

**Mr. Drum** stated, in addressing the definition of "ineligible," the phrase "termination from employment" is also used; this phrase needs to be defined in code to clarify its meaning for purposes of retirement. He mentioned a recent legal process noted Idaho Code § 59-1302 does not define "ineligible" and PERSI should not use a definition which is not defined in code. The court determined, since "ineligible" was not defined in code, PERSI could not consider members of the Judges Retirement Fund (JRF) to be ineligible to receive the PERSI benefit when they reached eligible age, even though they had not terminated from State employment. **Mr. Drum** explained this change would not affect those who have already transitioned to the JRF, but it would close the loophole for the future. Internal Revenue Service

(IRS) rules require a "termination from employment" in order to be eligible to begin drawing plan benefits. **Mr. Drum** pointed out, on page 8 of the bill, the definition of "termination of employment" describes if an employee is a participant in the PERSI plan but is no longer active, no longer contributing, and has not been terminated from the employer.

**Mr. Drum** pointed out the IRS does allow for "double-dipping," but refers to the term as "in-service distribution." He specified the Idaho teacher's union passed a bill that allowed teachers who had reached service age retirement to continue working. The teacher terminates and the school district can make a decision to rehire the teacher. The teacher can begin drawing PERSI benefits and wages allowed by the school district, since this was put into code and in compliance with the IRS. **Mr. Drum** indicated PERSI was an IRS-qualified pension plan. If this bill does not pass, PERSI would be out-of-compliance with IRS requirements.

**Mr. Drum** stated there would be no fiscal impact with the added definitions. Additional detail for these terms would clarify the current practices already employed under this statute.

**DISCUSSION:** **Senator Burgoyne** remarked this bill appears to be a calculation as opposed to the concept of "ineligible." **Mr. Drum** affirmed the PERSI Board is trying to rectify a number of challenges in code, especially the use of the term "ineligible."

**TESTIMONY:** **Judge Barry Wood**, Senior District Judge, Fifth Judicial District, serving as Administrative Director of the Courts, testified in opposition to the bill. He remarked this bill would be an impediment to both recruitment and retention of district and appellate judges, but particularly to district judges. He cited three incidents that occurred in 2017 when recruiting for district judge vacancies.

**Judge Wood** remarked this bill would directly affect two of the three pools of judicial candidates; namely, lawyers in public law practice who are contributing to a PERSI retirement, such as prosecutors, and the magistrate judges. Many attorneys in private practice do not apply because salaries are comparatively low and they do not want to risk a career change by a contested election.

**Judge Wood** remarked this legislation would also negatively impact recruitment of magistrate judges because they will be faced with foregoing or delaying a PERSI retirement, once they become eligible, in order to sit on the district or appellate bench. He asserted this legislation would also negatively affect retention of those who have a vested PERSI benefit and are on the district or appellate bench. The incentive will be to seek retirement from the district or appellate bench at the earliest possible moment, thus depriving Idaho of highly experienced and capable jurists who are foregoing a previously earned benefit.

**DISCUSSION:** **Senator Burgoyne** queried if amendments should be made or if the bill should be held. **Judge Wood** replied he did not want to impair PERSI status with IRS.

**TESTIMONY:** **Magistrate Judge Jayme Sullivan**, president of the Idaho Magistrate Judges Association, testified in opposition and addressed the implications on the future of the judiciary. She remarked this legislation will effectively close the door on recruitment of magistrates to lead the judiciary and serve the State of Idaho at the district and appellate bench, as well as deter the retention of magistrate judges.

**Judge Sullivan** stated magistrates participate in PERSI. District and appellate judges participate in the JRF, which is separate and apart from PERSI. She remarked not every jurist wants to be a district or an appellate judge. Many magistrates do aspire to utilize the skills they have developed as a trial judge in another career on the bench. By defining "ineligible," magistrates would not be able

to draw PERSI retirement earned as a magistrate, while further serving communities and the State as a district or appellate judge and contributing to the JRF.

**Judge Sullivan** commented, in contrast, the same magistrate could draw from PERSI, while working in a private law firm. She remarked pursuing a career outside of the judiciary does not have the same financial implications as pursuing advancement inside the judiciary. **Judge Sullivan** outlined two scenarios for retirement, one under PERSI and the other under the JRF. She pointed out that, for some magistrates, leaving the bench may not be favorable because of retirement consequences. In short, defining "ineligible" is a deterrent from magistrates applying for other positions in the judiciary.

**Judge Sullivan** reported there are 44 sitting district judges serving the State. Ten judges began their judicial careers as a magistrate judge. She cited the careers of several judges who first became magistrate judges early in their careers. She cautioned the Committee this bill will deter recruitment and retention of the backbone of the judiciary.

**DISCUSSION:**

**Senator Lakey** commented compliance with the IRS seemed to be the primary concerns of the PERSI Board. **Senator Lakey** and **Judge Wood** had a discussion about finding a workable solution with PERSI. **Mr. Drum** explained the history of this bill. He commented it was suggested to the judges several years ago to use the same recommended language passed by the teacher's union. He stated any type of recommendation comes from the employer. He reported this legislation would affect only those appointed after July 1, 2018.

**Senator Burgoyne** and **Judge Wood** discussed the JRF, whether a judge can elect to stay in PERSI, and the financial advantages and disadvantages of remaining in PERSI or the JRF.

**Vice Chairman Guthrie** and **Mr. Drum** discussed the definition of "double-dipping," or drawing a retirement benefit while continuing to work. **Mr. Drum** explained PERSI defines "double-dipping" as an inservice benefit. He explained when teachers retire, they are terminated from the school district and rehired. **Mr. Drum** reiterated, if the bill does not pass, there are some severe implications with IRS due to being out-of-compliance.

**Mr. Drum** and **Senator Burgoyne** addressed the discussions between the PERSI Board and the courts related to compliance with the IRS. **Mr. Drum** explained interest is still paid on PERSI account contributions until retirement, when a judge moves from a magistrate judge to a district judge, as benefits are based on years of service.

**Chairman Patrick** asked what the penalties were if the PERSI plan was found to be out-of-compliance. **Mr. Drum** stated the penalties could be as minor as a letter of reprimand or the plan could be declared "not qualified," which would put the entire PERSI plan at risk.

**Senator Martin** suggested the enacting clause be moved from July 1, 2018 to July 1, 2019. **Mr. Drum** said he believed the IRS may not look very favorably upon PERSI if the Legislature did not act. **Senator Burgoyne** commented he thought the bill could be sent to the 14th Order within a week. **Mr. Drum** remarked his goal is to stay in compliance with IRS. **Judge Wood** stated judges would participate to ensure there was consensus regarding the bill.

**MOTION:**

**Senator Burgoyne** moved to send **H 401** to the **14th Order**. **Senator Martin** seconded the motion.

**DISCUSSION:** **Senator Lakey** remarked the PERSI fund could not be out-of-compliance with the IRS. He asserted the effort to amend this legislation is worthwhile. **Senator Ward-Engelking** commented if the language could not be worked out, an amendment could possibly be done to change the enacting clause. **Senator Martin** said he thought that would be worth pursuing. **Senator Potts** commented he thought an amendment may not work. He suggested the best course may be to enact this legislation and an emergency clause.

**SUBSTITUTE MOTION:** **Senator Potts** moved to send **H 401** to the floor of the Senate with the understanding the enacting clause be worked on next year. The motion died due to the lack of a second.

**AMENDED SUBSTITUTE MOTION:** **Vice Chairman Guthrie** moved to hold **H 401** subject to the call of the Chair. **Senator Potts** seconded the motion.

**DISCUSSION:** **Vice Chairman Guthrie** remarked the House did not have a single "no" vote. He remarked this is an important issue and the burden has been put on the Committee. He said he did not want to put the PERSI fund in jeopardy.

**VOTE:** The motion carried by **voice vote**.

**H 402** **Relating to Firemen's Retirement Fund.** **Don Drum**, Executive Director, Public Employee Retirement System of Idaho (PERSI), gave a brief history of the Firemen's Retirement Fund (FRF), which PERSI administers. He advised the FRF was closed in 1980 and the 22 employers who were paying into the FRF were responsible to address the funded status and for sustaining the FRF for the participants. **Mr. Drum** remarked, if one of these employers is annexed into a fire district, it is imperative the liabilities associated with the FRF be transferred to the new employer.

**Mr. Drum** stated current Idaho Code § 72-1432 is not specific regarding the transfer of funding requirements if a new fire district is formed and annexes another city or district's fire responsibilities. He disclosed this lack of specificity could create a situation in which a city or fire district believes it can circumvent the funding requirement by forming a new entity to provide fire coverage for its geographical area. Adding clarifying language in this code section would explicitly state that the funding responsibility transfers to the annexing entity.

**Mr. Drum** advised there is no fiscal impact with this additional language. The funding mechanism currently outlined in this statute would remain the same and be transferred to the new entity.

**MOTION:** **Senator Thayn** moved to send **H 402** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**H 399** **Amending Juvenile Corrections Law.** **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections, stated currently the PERSI Retirement Rule of 90 applies to officers of the Idaho Department of Juvenile Corrections and those employed by Idaho's counties that work in the areas of juvenile detention, juvenile probation, and misdemeanor probation. These professionals are required to have Idaho Peace Officers Standards and Training (POST) certification. She advised staff are not able to stay in these positions until they reach the age of 65 because of the physical demands.

**Ms. Harrigfeld** reported the change in classification from the Rule of 90 to the Rule of 80 will acknowledge the safety, security, and stress individuals in these positions experience. **Ms. Harrigfeld** remarked. in addition, agencies will have another tool to recruit and retain employees that require extensive and extended training in their field. An emergency clause is necessary to allow current employees an opportunity

to elect to remain at the Rule of 90.

**DISCUSSION:** **Senator Martin** asked if the change in classification was optional or a requirement. **Ms. Harrigfeld** remarked incumbents have an option, but anyone hired July 1, 2018 or later will be required to be enrolled in the Rule of 80. **Senator Martin** and **Ms. Harrigfeld** conversed regarding the retirement contribution responsibilities of an employee.

**Vice Chairman Guthrie** and **Ms. Harrigfeld** discussed the requirements for retirement, working at another job after retirement, and PERSI.

**TESTIMONY:** **Skip Clapp**, Idaho Association of County Juvenile Justice Administrators, testified in support of this bill. He stated his organization believes the juvenile detention officers and the juvenile probation officers deserve the benefit of the Rule of 80. He remarked both of these positions require a high degree of professionalism and ongoing training to maintain best practices and POST certification. The cost is not significant.

**DISCUSSION:** **Senator Potts** asked, what were the chances of an employee being hired in an administrative position under the Rule of 80. **Mr. Clapp** answered if an employee retired from PERSI, but was hired for another job with PERSI benefits, they are only allowed to work a certain number of hours or they would lose their PERSI benefits.

**Mr. Drum** reported if an employee was under the Rule of 80, there would be no impact on PERSI. **Senator Potts** and **Mr. Drum** discussed mixed service, earning under the Rule of 80, and transitioning to the Rule of 90, drawing full retirement, and suspension of retirement when working full-time.

**MOTION:** **Senator Ward-Engelking** moved to send **H 399** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Guthrie** voted **nay**.

**Chairman Patrick** announced **H 433** and **HCR 41** would be continued to the March 8, 2018 meeting due to time constraints.

**ADJOURNED:** There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:11 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary