

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 25, 2020

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Agenbroad, Senators Martin, Lakey, Guthrie, Thayn, Souza, 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 27798 **Unanimous Consent Relating to Fire Districts.** **Senator Guthrie** reported the purpose of this legislation is to provide an additional option for a fire district to be split. Currently, Idaho Code provides for the creation and organization of fire districts. Consolidation, dissolution, inclusion, annexation, and withdrawal are allowed as changing conditions and growth patterns may dictate these changes.

Senator Guthrie noted there will be no impact to the General Fund. If a local fire district were to split, there could be a positive or negative fiscal impact, determined on a case-by-case basis, and it is impossible to quantify. **Chairman Patrick** asked Senator Guthrie to request unanimous consent from the Committee.

MOTION: **Senator Guthrie** asked for unanimous consent to send **RS 27798** to a privileged committee for printing. There were no objections.

S 1351 **Relating to Occupational Licensing.** **Senator Lakey** reported this legislation came from the work of the Occupational Licensing Reform Interim Committee (OLRIC). This legislation seeks to enhance competition and apply standards to evaluate new proposed regulation in the form of new licensure or registration of occupations. **Senator Lakey** indicated the legislation is a three-year pilot, which establishes a licensing review committee. He outlined the requirements for the new Licensing Review Committee (LRC) (Attachment 1). He noted this bill provides for a sunrise process. He said the vast majority of the bill was to make corrections.

Senator Lakey stated the fiscal impact would be minimal, but difficult to determine. The costs could include fees for a new license and the typical costs associated with the one or two meetings needed to review new licensing requests. He noted there would be additional staff time to review applications for new licensure and preparation for LRC meetings. This can be handled with current staffing levels. **Senator Lakey** asked the Committee to send this bill to the amending order to change some wording.

DISCUSSION: A discussion ensued with Senators Martin, Burgoyne, and Lakey regarding the timeline for review from the new Licensing Review Committee (LRC). **Senator Lakey** indicated the decision of the LRC was non-binding and the applicant is required to go through the process.

Senator Souza and **Senator Lakey** discussed the requirements for approval, including applications for employment for someone with a criminal background, and if the LRC's decision would be available to prospective employers. **Senator Lakey** commented that as far as a criminal conviction was concerned, that decision would be up to the particular board.

Senator Guthrie asked for clarification on whether legislation could be brought forward or would it have to be considered by the LRC. **Senator Lakey** explained the legislation would have to go through the evaluation process.

MOTION: **Senator Souza** moved to send **S 1351** to the 14th Order of Business for possible amendment. **Vice Chairman Agenbroad** seconded the motion.

TESTIMONY: **Lindsay Atkinson**, Idaho Freedom Foundation (Foundation), testified in support of the bill. She noted the Foundation liked the Licensing Reform Act, which included universal licensure.

Alli Megal, Idaho Freedom Foundation (Foundation), testified in support of the bill. She remarked she had a felony and wanted to be a nurse midwife, but due to her conviction, she was unable to obtain the license. This bill will help those convicted of felonies.

DISCUSSION: **Senator Martin** stated he would vote to send this bill to the amending order, but reserved the right to change the wording on page 3, line 40 so that a sunshine review was not required.

Senator Lakey remarked the ORLIC took a hard look at the language in this bill and decided it was important to make the LRC a requirement.

VOICE VOTE: The motion to send **S 1351** to the 14th Order of Business for possible amendment carried by **voice vote**.

S 1321 **Relating to Workers' Compensation.** **Alex LaBeau**, President, Idaho Association of Commerce and Industry, stated the purpose of this legislation is to add language to Idaho Code § 72-209 to clarify the intent of the Idaho Legislature with respect to the "exclusive remedy" in workers' compensation. **Mr. LaBeau** reported the Idaho Supreme Court has recently noted that there is a lack of clarity as to when a claim for compensation for a workplace accident may go outside of the workers' compensation process to file a regular tort claim. The Idaho Legislature did not define the term "willful or unprovoked physical aggression." **Mr. LaBeau** remarked that previously, it was understood that only those claims that could demonstrate an intention to commit harm to an employee were exempt from the exclusive remedy in the workers' compensation system.

Mr. LaBeau gave a brief overview of what needed to be amended in Section 1. He stated there is no fiscal impact to any state or local government budgets. He noted the language is only clarifying boundaries of when an individual may file a tort claim for a workplace incident.

DISCUSSION: **Senator Souza** questioned the use of the word "servants" in this bill. She remarked that would be worth researching.

Senator Guthrie asked for clarification of the phrase "unprovoked physical aggression." **Mr. LaBeau** explained it is the willful intention to do something harmful to someone, unprovoked or otherwise.

TESTIMONY: **Erik Rossman**, representing himself, testified in opposition to the bill. He cited various scenarios when people were killed and said this was not good legislation.

Bob Naerbout, Idaho Dairyman's Association, testified in support of the bill. He remarked employers are concerned for employees. He stated the safety program developed for dairies has become a national program. He commented agricultural employees are sent into risky situations with animals. This bill puts the potential injuries to workers under workers' compensation, unless there is an intention to harm employees.

Darel Hardenbrook, Business Agent, Teamsters Local Union 483, testified in opposition to the bill. He stated the Teamsters Union was not asked to participate in discussions. The intent to harm or kill is the only exception in this bill. He indicated there should be further updates and he asked the Committee to postpone moving the bill forward.

DISCUSSION: In response to questions from Senator Burgoyne, **Chairman Patrick** noted workers' compensation was discussed at the last Industrial Commission meeting.

TESTIMONY: **Stacey Satterlee**, Executive Director, Idaho Grain Producers, testified in support of the bill. She remarked businesses need consistency and this bill will create certainty for employers and employees.

Brad Eidam, Idaho Trial Lawyers, testified in opposition to the bill. He commented this bill would prevent redress by injured workers. He pointed out the 2016 Gomez case when a woman was killed at a seed company in Canyon County. The seed sorting table was not checked for safety and the woman was instructed by her supervisors to get inside while the machine was running to clean it. Proper safety guards were not in place and the company had been cited by the Occupational Safety and Health Administration (OSHA) for other offenses. He noted that in the Gomez case safety was consciously disregarded. **Mr. Eidam** noted this bill would affect other cases.

DISCUSSION: **Senator Burgoyne** and **Mr. Eidam** discussed the specific "intent to harm" language in the bill and the "willful or unprovoked physical aggression by the employer" and the consequences.

Senator Thayn and **Mr. Eidam** discussed that aggression can be held against any co-worker or employer if the employer provoked or authorized the aggression.

Senator Souza mentioned inspections of equipment and the facility, and if concerns were noted and followed up by the inspector. **Mr. Eidam** stated the egregious cases he cited are rare and a narrow exception to the Workers' Compensation Act. Sometimes workers are injured as a result of a safety violation, but the employer is unaware.

Vice Chairman Agenbroad stated the willful intent to hurt someone was more a disregard for someone's safety. **Mr. Eidam** noted that as the statute is written now the Idaho Supreme Court says that a conscious disregard for risk or serious injury fits the description of willful or unprovoked aggression. The statute says that an employer must know an injury or death may occur.

Senator Ward-Engelking queried if there was language that would address the issues in this bill that would be acceptable to stakeholders. **Mr. Eidam** noted there were several proposals, but the wording of "would occur" should be replaced with "substantially likely."

TESTIMONY: **Chyla Wilson**, Idaho Farm Bureau, testified in support of the bill. She commented clarity should be in the definition and work could be done to make some simple changes.

Mr. LaBeau stated that in summary, there is nothing in the existing law regarding conscious disregard of employees. There needs to be clarifying language in this bill and discussions will be ongoing.

DISCUSSION: **Senator Ward-Engelking** stated this bill was important. She suggested the bill be held at the call of the Chair. **Chairman Patrick** reassured her the bill was going to the amending order, which would allow time for compromise.

Senator Burgoyne expressed a concern about sending the bill to the amending order because the amendments might not reflect a compromise. He asked to hold the bill for two days, which would give everyone enough time for revisions.

Senator Lakey disclosed for the record that he had a possible conflict of interest pursuant to Senate Rule 39(H), but intended to vote. He stated he supported sending this bill to the amending order.

Letters of support were received from the following: 1.) Scott Madison, Executive Vice President, Intermountain Gas Company; 2.) Ken Dey, Director of Government and Public Affairs, J. R. Simplot Company; 3.) Mark D. Olsen, General Counsel, the Idaho National Laboratory; 4.) Wayne L. Hammon, Chief Executive Officer, Idaho Associated General Contractors of America; 5.) Stacey Satterlee, President, Food Producers of Idaho; 6.) Anna Torma, Vice President, Public Affairs, PotlatchDeltic Corporation; 7.) Michael S. Gadd, Senior Vice President and General Counsel, Clearwater Paper Corporation; and 8.) Rick Naerebout, Chief Executive Officer, Idaho Dairyman's Association.

MOTION: **Senator Souza** moved to send **S 1321** to the 14th Order of Business for possible amendment. **Senator Lakey** seconded the motion. The motion carried by **voice vote** with **Senators Burgoyne** and **Ward-Engelking** requesting they be recorded as voting nay.

Senators Souza and **Ward-Engelking** expressed hope for consensus in the amending order and prior to the bill being heard on the floor.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:58 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary