

MINUTES

## SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

**DATE:** Tuesday, March 14, 2017

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

**MINUTES APPROVAL:** **Senator Burgoyne** moved to approve the Minutes of March 7, 2017. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**H 145** **Public Employee Retirement System of Idaho (PERSI) - Revise Definition.** **Representative Harris** said the definition of an "employer" for the purpose of admittance into PERSI is very broad. This bill narrows that definition, limiting it to a "unit of government" for any new entry into PERSI.

**Representative Harris** said there is no fiscal impact to the General Fund because the amendment is consistent with current legislative practices.

**Representative Harris** referred to possible amendments to the current bill. He said that the language in the current bill stated that "provided however, that on and after the effective date of this act, no new employer that is not a statutorily created unit of government of the State of Idaho may be added to PERSI." He proposed the language could be modified to, "provided however, that on and after the effective date of this act, all new employers added to PERSI must be in compliance with Internal Revenue Service (IRS) regulations governing governmental retirement plans."

**TESTIMONY:** **Don Drum**, Executive Director, PERSI, said that PERSI has to be in compliance with IRS. State law can be stricter than federal law. **Mr. Drum** gave a brief history of entities that use governmental plans but that do not meet the proposed rules. He remarked that the new clarification in the code helps PERSI.

**DISCUSSION:** **Senator Thayn** asked if the current wording of the proposed bill was preferable to the amended wording. **Mr. Drum** said the current language in the proposed bill is more restrictive than IRS code. He stated he would accept either the current language or the amendment.

**Senator Burgoyne** asked if there were any entities currently in the PERSI plan. **Mr. Drum** explained that the way the bill is written, would have no effect on those already in the plan. **Senator Burgoyne** asked if there were any other non-governmental entities that are interested in joining PERSI. **Mr. Drum** remarked that in the last four or five months PERSI has been approached by several entities who are not in compliance with the current or proposed IRS regulations. Some entities who work under cities and counties via a contract wanted to join PERSI. If for any reason the contract was terminated, cities and counties would have

unfunded liability.

**Senator Lakey** asked about the wording of "statutorily created unit of government" and if that was an attempt to describe what is in IRS code. **Mr. Drum** said there was an attempt to limit PERSI to governmental entities. **Senator Lakey** stated the issue was compliance with the government retirement plan and asked if Mr. Drum was comfortable with the amendment. **Mr. Drum** said he was comfortable with the wording in either proposal. **Representative Harris** remarked that PERSI wanted to be compliant with IRS regulations.

**Senator Lakey** stated his preference would be to send the bill to the amending order as he had a concern with the existing language because "statutorily created unit of government" is not language used or defined in Idaho Code and created a gray area.

**Vice Chairman Guthrie** stated he preferred the current language in the bill because when "IRS" is inserted into the language, problems can be created.

**Senator Burgoyne** stated he supported Senator Lakey's approach since PERSI will ultimately have to follow IRS regulations.

**Senator Thayn** stated there could be a different amendment that addresses Vice Chairman Guthrie's concerns and he was in support of sending this bill to the amending order.

**Senator Lakey** offered to help with amending the bill and reiterated that PERSI will have to comply with IRS regulations.

**MOTION:**

**Senator Lakey** moved that **H 145** be referred to the 14th Order for amendment. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**H 243**

**Relating to the Department of Labor Requesting Criminal Records.** **Kenneth Edmunds**, Director, Department of Labor (DOL), said this change allows the DOL to request and require an employee, applicant, contractor or prospective contractor, who has or will have access to Internal Revenue Service (IRS) federal tax information, to provide the information and fingerprints necessary for obtaining criminal history information from the Idaho State Police (ISP) and the Federal Bureau of Investigation (FBI), pursuant to Idaho Code § 67-3008. The IRS has a new requirement for positions with access to federal tax data to have a national criminal history background check. The DOL will use the information derived from the background check to determine the suitability of those positions, employees, applicants, or contractors that would have access to federal tax information.

**Mr. Edmunds** explained that there are 26 employees who currently work with or have access to federal tax information and are required by the IRS to undergo a State and federal fingerprint-based background check. The estimated fiscal impact of this legislation includes conducting FBI fingerprint-based background checks through the ISP for 26 existing employees and contractors at \$47 per person for a total of \$1,222.

**Mr. Edmunds** said the U.S. Department of Labor requires the DOL to use the IRS Treasury Offset Program (also known as federal tax information) to recover unemployment insurance overpayments paid to claimants who obtained those benefits through fraud or misreported earnings. He said the DOL began using the Treasury Offset Program in 2013. Since that time, this program has resulted in recoveries of slightly more than \$9.5 million.

**DISCUSSION:** **Senator Burgoyne** asked if refund checks were State or federal. **Mr. Edmunds** said the checks were federal. **Senator Burgoyne** asked how the \$9 million was recovered in the past without this bill. **Mr. Edmunds** explained that the recovery was mandated and these are new requirements.

**Senator Souza** asked what the anticipated financial benefit was to the State. **Mr. Edmunds** said the new mandate will allow the DOL to continue to collect tax refunds, amounting to several million dollars a year.

**Senator Burgoyne** clarified that if Idaho employers do not pay the unemployment taxes assessed by the State of Idaho that would result in the DOL seizing their individual federal refund. **Mr. Edmunds** said that if someone is not paying their fair share, seizing the federal refund helps all taxpayers. **Senator Burgoyne** asked if there were situations where the DOL would be using the opportunity to seize tax refunds. **Mr. Edmunds** deferred to Michael Johnson, Administrator, Unemployment Insurance, DOL. **Michael Johnson** said that something like that would take place under limited circumstances. Partnerships or corporations rarely receive tax refunds.

**Senator Burgoyne** said that he thought this proposed legislation is of benefit to those who have to pay unemployment tax so that all pay their fair share.

**MOTION:** **Senator Burgoyne** moved that **H 243** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**S 1150**

**Relating to Individual High Risk Reinsurance Pool.** **Hyatt Erstad**, Chairman, Idaho High Risk Insurance Board (Board), said the purpose of this bill is to amend existing law to allow for individuals with high risk medical conditions and their dependents who are enrolled in individual health benefit plans to be reinsured through the Idaho Individual High Risk Reinsurance Pool. Current pool enrollment consists only of individuals and dependents who were unable to obtain health insurance due to a health condition and who had enrolled in one of five standardized plans. These standardized plans are no longer feasible, so the bill proposes a different method to continue to utilize the pool as a reinsurance mechanism (while grandfathering coverage for current pool enrollees) that will help stabilize the individual health insurance market in Idaho, encouraging insurers to continue to offer individual health benefit plans to Idaho consumers.

**Mr. Erstad** stated there is no direct fiscal impact to the General Fund or any other State fund or expenditure. However, allowing for reinsurance of high risk individuals will act to stabilize the individual insurance market, increasing the likelihood that Idahoans will continue to have a robust choice of insurers and health plans, which will foster competition and tend to lower health insurance premiums. Each carrier would be required to pay an assessment in the event there were more claims than revenue.

**DISCUSSION:** **Senator Thayn** asked why the "prior to April 1, 2017" for highly visible plans was mentioned in the bill. **Mr. Erstad** said that the Individual High Risk Insurance Pool that was established in the past used the April 1 date and he said those currently in the pool should not be forced out and will be grandfathered in prior to that date.

**Senator Thayn** asked for an explanation for high risk in the bill, page 6, lines 19 through 22, "the Board shall not submit for approval by the director a plan of operation or an amendment with an initial level of less than \$25,000 or a reinsuring carrier coinsurance percentage of less than 20 percent." **Mr. Erstad** explained that in the past when there was high risk, carriers were paying reinsurance costs to cede that business to the Board. Under the new legislation, there will be no need to be doing that aspect. **Senator Thayn** said he was not sure how everything worked together and asked for an explanation. **Mr. Erstad** stated the pool, since the Affordable Care Act (ACA) has been in place, has not been taking on any additional risks. However, as new legislation is moving forward, the makeup of the bill is changing.

**TESTIMONY:** **Dean Cameron**, Director, Department of Insurance (DOI), said that prior to this bill a person could purchase a high risk pool product. There were five standardized plans that are being stricken from this bill. One of the products could be purchased if an individual had been declined by a carrier, which under current ACA law, that is not permissible. **Mr. Cameron** explained that no one can be declined. Most people left the high risk pool to sign up for the ACA. What this bill does is to be proactive depending on what is coming from the federal government. Instead of buying a product, the insurance company would cede the risk and would determine if the insured person is a high risk individual as defined by the Board. The carrier would determine if the individual was a high risk that qualified and would cede that risk to the pool. **Mr. Cameron** stated the pool would share in the claims with a \$25,000 deductible, which is the point at which the pool begins, and the pool pays 80 percent while the insurance carrier would pay 20 percent. Based on the amount of revenue the pool has, a readjustment can be made. Regardless as to whether federal funds are received, the DOI has money that currently flows into the pool which are premium tax dollars or one-fourth above \$45 million and payment by the carriers. There is a mechanism that if there are more claims than revenue collected then all the carriers are assessed to balance out the risk. The bill is broad. He said the Board met with the insurance carriers and decided that if something was changed, it would be harmful to the industry and consumers. The current law was restrictive as to who could participate.

**Senator Burgoyne** said his question relates to the definition of an eligible individual who is not eligible and did not participate in a group plan, but is enrolled in an individual health plan. He wanted to know how the premium is determined for someone enrolled in an individual health plan and how does an individual get into a high risk pool. **Mr. Cameron** explained that in the past an individual would be in the high risk pool by purchasing a plan. The future is that an individual is participating in the pool by virtue of being ceded by a carrier. A consumer is not going to know whether they are involved in the high risk pool. The carrier will make a determination based on a person's health risk and will decide if they want to cede the risk. **Mr. Cameron** stated that under current law, a carrier cannot rate an individual higher. The individual will not know at the time of application whether they have a health risk. It is only after the carrier has started paying the claims on that individual that they might know the customer has coronary heart disease, for example. The future federal law may allow some rating of individuals. Pre-ACA there were requirements both in State and federal law that restricted how much someone could be charged who had high risk conditions versus someone who was perfectly healthy. Pre-ACA it was defined as a plus or minus 50 percent. An index rate for someone who was perfectly healthy could receive a discount of up to 50

percent, but if an individual had significant health conditions, the index could be raised to as much as 50 percent higher. If a carrier decides to cede the risk, they have to pay a cost for ceding the risk.

**Vice Chairman Guthrie** reported a possible conflict, pursuant to Senate Rule 39 (H) at the print hearing of the Routing Slip; conflict disclosure is continuing.

**MOTION:** **Vice Chairman Guthrie** moved that **S 1150** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**H 136** **Relating to Insurance.** **Michael Kane**, representing the Idaho Sheriff's Association, said the purpose of this bill is to assure that inmates in a county jail are not put in a position to be pressured by other inmates to do business with certain bail agents to the exclusion of other bail agents.

**Mr. Kane** said this bill has no fiscal impact on the General Fund of the State or any unit of local government because the Department of Insurance (DOI) is funded through premium taxes, and no local funds are involved in DOI enforcement proceedings.

**MOTION:** **Senator Burgoyne** moved that **H 136** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**H 138** **Relating to the Practice of Accounting.** **Ken McClure**, representing the Board of Accountancy, said this legislation updates the Idaho Accountancy Act to conform to current professional standards to American Institute of Certified Public Accountants (AICPA standards) and professional service offerings now provided by Certified Public Accountants (CPA's). Accountants' work has changed from "merely" working on financial statements to performing a different array of professional attest services that include internal control reviews for information systems, performing internal control work for publicly traded companies, and performing specific work for their parties, such as banks and governmental entities.

**Mr. McClure** stated there is no fiscal impact to the General Fund, to local units of government, or to the Idaho State Board of Accountancy (ISBA) because this is an update of current law and does not change regulatory activity nor raise fees or fee caps. The ISBA is a dedicated fund agency funded by accounting license fees and receives no monies from the General Fund.

**MOTION:** **Vice Chairman Guthrie** moved that **H 138** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**H 99AA** **Relating to Real Estate Licenses.** **Michelle Bird**, Executive Director, Real Estate Commission (RE Commission), said Idaho law requires anyone brokering real property located in this State to hold an active Idaho real estate license. This proposal addresses a need in the market for a limited entry into Idaho for the purpose of brokering commercial real property. This need is driven by large scale consumers who may have portfolios with multiple properties across several states. This proposal would define commercial real estate and establish a cooperative license between an individual licensed in another jurisdiction and an Idaho broker for a single commercial real estate transaction. This legislation outlines requirements for out-of-state licensees to act in commercial real estate transactions in this State. It provides for supervision of the transaction by an Idaho licensed broker, document retention within this State, errors and omissions insurance, and consent to service with the Executive Director of the Idaho Real Estate Commission.

**Ms. Bird** said there is no General Fund or State or local political subdivision fiscal

impact. The agency's Special Real Estate Account would see a potential revenue increase from cooperative licenses of \$3,000. There would also be a \$2,000 agency cost for education on the law change. There is no fiscal impact because the amendment is consistent with current legislative practices.

**Ms. Bird** explained that currently, a commercial agent from another state that wants to do business in Idaho must obtain an Idaho license prior to practicing real estate in Idaho. An out-of-state agent that represents a larger investor, or a large company like Target, typically will not have the time or motivation to become licensed in Idaho, however, they would be willing to work with an Idaho agent to invest in Idaho. The out-of-state agent will seek to be involved in the transaction and split the commission, which is illegal under Idaho law. Unfortunately, under the current law there is an incentive for the Idaho agent to break the law and work with the out-of-state agent because of the large nature of the commission on these transactions. Agents typically see any fine from the RE Commission as a cost of doing business.

**Ms. Bird** stated that several years ago, Idaho and most states, had reciprocity with each other, so if an agent was licensed in one state that agent could do business in several other states. Nationwide that has completely disappeared, for a variety of reasons, over the past decade. While this has not had much of an impact on residential or farm and ranch listings, a problem has been caused in the commercial sector around the country. Many states have moved to address this issue. At present, there are only eight states left that have the same system as Idaho.

**Ms. Bird** said this bill would allow an out-of-state agent to sign a cooperative agreement with an Idaho broker for each transaction that they are involved with in Idaho. The agreement would be filed with the RE Commission and would require the out-of-state agent to abide by Idaho laws and show proof of errors and omissions insurance. The Idaho broker would have to agree to handle any money involved in the transaction, and agree to oversight of the out-of-state agent. The Idaho broker will ultimately be responsible for the transaction and the actions of the out-of-state agent. The unlicensed practice of real estate currently represents the largest number of violations of license law the RE Commission sees on an annual basis, particularly in the commercial sector. This bill will help cut down on these violations and allow Idaho agents to legally do business with their counterparts in other states and increase commercial investment in Idaho.

**DISCUSSION:** **Chairman Patrick** asked what kind of license is required for online transactions. **Ms. Bird** explained an Idaho real estate license would be required in order to work on any transaction in Idaho. **Chairman Patrick** remarked he was referring to transactions coming from another state. **Ms. Bird** said that as long as the realtor is in Idaho, the transaction could take place, but licensing and legislation would have an effect.

**Senator Souza** asked how the commissions would be split between an out-of-state agent and an Idaho agent. **Ms. Bird** said potentially the agents would split the commission, but it would depend on the agreement. The RE Commission does not regulate how commissions are split.

**MOTION:** **Senator Lakey** moved that **H 99 aa** 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 2:01 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary