

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 10, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, Schmidt and Ward-Engelking

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 Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

H 485 **Employment Security Act. Kenneth Edmunds**, Director, Department of Labor (DOL), reported this legislation amends provisions of the Employment Security Law. Section 1 changes the minimum and maximum base tax rates by rounding the existing tax rates to their nearest tenth of a percent. Section 2 would stabilize the benefit amount at 55 percent of the State average weekly wage paid by covered employers. This legislation would also create a sliding scale for the maximum weeks of entitlement to benefits by indexing the maximum number of weeks to the seasonally adjusted unemployment rate. Currently, the maximum duration for unemployment benefits is 26 weeks. The new maximum would range from 20 to 26 weeks. This bill requires the weekly benefit amount to be "determined by the director" to make the language consistent with that used in Idaho Code § 72-1367(c).

Director Edmunds said there is no fiscal impact to the General Fund or to local government funds. Section 1 would have no impact on the Employment Security Fund's solvency. Section 2 would lower the liability of the Employment Security Fund and have no impact on the trust fund's solvency. It would decrease for every one percent reduction in Idaho's unemployment rate.

Operational costs funded by the Federal Unemployment Tax Act would result in a one-time cost of approximately \$65,000 for the programming, testing and implementation of Idaho's automated unemployment insurance tax and benefit system.

DISCUSSION: **Vice Chairman Martin** asked what was the overall reason for changing the minimum and maximum base tax rates? **Director Edmunds** remarked the DOL was trying to make unemployment collection less enticing especially when the unemployment rate is low. **Senator Schmidt** asked what if there was a prolonged downturn in the economy, would there be a downturn in wages? **Director Edmunds** said that when there was a downturn in the economy a few years ago, there was no wage growth, but no downturn in wages.

Senator Thayn asked Director Edmunds to explain when people receive unemployment benefits based on wages, how does the wording on page 4 of this bill fit the individual. **Director Edmunds** said this is driven more by personal history and not by the State average. Fixing the benefit allocation at 55 percent will result in a more stable maximum benefit amount during economic contractions

and expansions. **Senator Thayne** asked for more information about the 55 percent of the State average weekly wage paid by covered employers for the preceding calendar year. **Director Edmunds** said this refers to the maximum weeks of entitlement and was adjusted downward based on what the employee has earned or their employment history.

Senator Schmidt wanted to know if Director Edmunds knew if these changes would accomplish the goal of this bill. **Director Edmunds** commented that these changes were adopted in other states in different forms, but he was not relying on what has been done in other states. He said the expectation of the DOL was for someone on unemployment to find a job when economic times are good. They discussed a study on welfare benefits and how that was not included in the calculation for unemployment benefits.

MOTION: **Vice Chairman Martin** moved that **H 485** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

H 371 **Relating to Factory-Built Structures.** **Steve Keys**, Deputy Administrator, Division of Building Safety (DBS), reported this legislation would merge the Manufactured Housing Board (MHB) and Modular Building Advisory Board (MBAB) into a single governing board to be named the Factory Built Structures Advisory Board (FBSAB). The MHB is currently charged with developing and monitoring the licensing and continuing education requirements for people engaged in manufacturing, selling and installing manufactured homes. These homes are built to a federal standard and regulated by the U.S. Department of Housing and Urban Development (HUD). The MBAB is responsible for the regulatory framework applicable to constructing modular buildings that are constructed in accordance with the International Building Codes (IBC), as are site-built structures. Many manufacturers, retailers and installers in Idaho are involved with both products.

For the purpose of the FBSAB's advisory authority only, the term "factory built structure" will include any building that is of closed construction and substantially prefabricated or assembled at a location other than the building site, including modular buildings and manufactured homes. The newly created FBSAB will comprise eight members representing various participants of both industries. One member shall represent a manufacturer of commercial modular buildings; one member shall be a consumer who lives in a manufactured home; two members shall be licensed as either a retailer or installer of manufactured or mobile homes; one member shall represent a manufacturer of manufactured homes; two members shall be either a dealer or installer of modular buildings; and one member shall be a consumer who uses or has used modular buildings. The administration of both the modular building and manufactured housing programs by the DBS will remain the same, including the manufacturing and installation standards, the inspection and enforcement standards and procedures, fees and any applicable licensing requirements. The only change will be to the governing body, which will advise the DBS with regard to its administration of matters related to each industry.

This legislation will have no adverse fiscal impact. **Mr. Keys** said this bill should go to the amending order to allow for the inclusion of language stipulating that members of the FBSAB would serve "at the pleasure of the Governor."

TESTIMONY: **Jack Lyman**, Housing Alliance of Idaho, testified in support of **H 371** at the Committee meeting of March 8, 2016.

DISCUSSION: **Senator Lakey** asked if the amendments were a result of a court action. **Mr. Keys** said "yes."

MOTION:

Senator Lakey moved that **H 371** be referred to the 14th Order for amendment. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 454

Relating to Environment, Energy and Technology Committee - Underground Facilities Damage Prevention. **Neil Colwell**, Avista Corporation, said the purpose of this legislation is to provide for Idaho primacy in the protection of the public health and safety regarding underground facilities and to reduce damages to those facilities by the creation of a representative Stakeholder Board (Board). The Board will be housed at the DBS and will provide statewide education and administrative enforcement of the underground damage prevention statutes. If adopted, this legislation will also prevent federal oversight and enforcement related to underground facilities that is authorized by Title 49 of the Code of Federal Regulations (CFR) Part 198 that took effect on January 1, 2016. He said the elements of the legislation are to create and fund a board, collect and analyze data and eliminate court enforcement.

There will be no fiscal impact to the General Fund. Recovery of costs associated with administration of this legislation will be borne entirely by underground facility owners. Funds generated for Board operation will be approximately \$50,000 annually and will need to be authorized by the Joint Finance-Appropriations Committee (JFAC) annually through its appropriations process.

Mr. Colwell said that as of January 1, 2016, Idaho was faced with a simple choice of either federal or local control. He pointed out that under federal control the federal government has the power to enforce dig-law violations against the homeowner digging with hand tools. There is the ability to impose civil penalties up to \$200,000 per day per incident or \$2 million per incident. Constituents would have to contend directly with federal employees and the process. He said underground facilities pay a fee for each call someone makes for a dig location. He noted that when the Board is formed they will be able to listen to complaints. Members of the industry will collect data and the Board will analyze. This bill allows the Board to handle enforcement so it does not go through the courts.

Mr. Colwell referred to a letter received by the Attorney General's office of Idaho from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), stating that on July 23, 2015, the Pipeline Damage Prevention Program Final Rule 49 FR 43835-43869 may impact the state of Idaho. He said the rule includes new criteria and procedures to determine the adequacy of state damage prevention enforcement programs, administrative procedures for states to contest a notice of inadequacy, the Federal requirements PHMSA will enforce against excavators where federal authority is exercised.

Mr. Colwell gave a brief history. He said PHMSA agrees with the comments from the Interstate Natural Gas Association of America (INGAA), Texas Pipeline Association (TPA), Iowa Association of Municipal Utilities (IAMU), the Black Hills Corporation, Iowa One Call and National Association of Pipeline Safety Representatives (NAPSR), oppose an exemption for homeowners excavating on their own property with hand tools. The exemption for homeowners has been removed from the final rule. PHMSA has not included any exemptions for excavations in this final rule. He pointed out that PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level.

DISCUSSION: **Senator Thayne** wanted to know who appoints the Board and who will be writing the rules? **Mr. Colwell** indicated the industry will recommend its own representatives and will be made a part of the DBS. The Board members will write the rules and other rules as may be necessary for orderly administration, except for those related to underground facilities damage prevention.

TESTIMONY: **David Nelson**, District Manager, Intermountain Gas Company, testified in support at the meeting of March 8, 2016.

Celynda Roach, Cable One, testified in support and said that in 2015 her company had unidentifiable disruptions from cut wires. Several areas were without cable and phone service. If gas or electric lines are cut, lives can be lost. She highly recommended adoption of this bill.

MOTION: **Senator Rice** moved to send **H 454** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Rice remarked this bill was very responsible and he liked the idea there would be collaboration. **Senator Lakey** remarked he appreciated the stakeholders. The motion carried by **voice vote**. Senator Rice will carry the bill on the floor.

H 480 **Relating to Licensure Boards.** **Mitch Toryanski**, Attorney, Idaho Bureau of Occupational Licenses (IBOL), said this bill will remove the requirement that the Idaho Board of Licensure of the Professional Engineers and Professional Land Surveyors (IPELS) hire a licensed professional engineer or professional land surveyor as its executive director, that the Board of Nursing (BN) hire a licensed nurse as its executive director, and that the Board of Pharmacy (BP) hire a licensed pharmacist as its executive director. The IPELS, the BN and the BP are the State's only three regulatory licensure boards that are compelled by statute or rule to hire a licensee as their executive director. This bill will allow these boards to hire a licensee if the board wishes, but does not mandate it. There is no fiscal impact. This bill would give these three boards the same flexibility in hiring as Idaho's occupational licensing boards.

DISCUSSION: **Senator Ward-Engelking** remarked she has received several emails on this bill. She explained the people who were impacted by this legislation were unaware of the proposed legislation. **Ann Beebe**, Special Assistant to the Governor for Boards and Commissions, said she contacted each board at least three times. There were 35 boards who were in favor of this legislation and one board who did not want to speak with her concerning this bill.

TESTIMONY: **Thomas Judge**, land surveyor, said it was worth noting that his professional organizations had not spoken to the boards because as State employees they are prohibited from speaking to members at that stage of legislation. He remarked he found out about this bill approximately three weeks ago. There were some conversations that should have taken place. He said if this change is made, someone is being put in a position who cannot do the job and who would have to hire a consultant to help them. This opens the door for any applicant who is not licensed to be hired.

DISCUSSION: **Senator Rice** expressed a concern about the comment made by Mr. Judge regarding State employees being prohibited from speaking to employees when legislation is being crafted. He asked Mr. Judge if he was aware of a specific code section that prohibits boards from talking to an association or employees about statutes they may be working on. **Mr. Judge** said State employees are not allowed to talk about policy that is coming from the Governor's office. **Senator Rice** said he would be very concerned that if that is the case and if it was anything within the control of the Legislature, they would want to do something about it. He asked for this information be given to him if such a policy exists.

Senator Schmidt talked about the drafting issue which usually addresses something within a profession and this legislation is covering many boards. He wanted to know if this legislation had gone beyond the single subject. **Mr. Toryanski** explained this legislation covers three boards and a single subject, which is the qualifications of the executive director. This is not the legislation that covers many boards.

TESTIMONY: **Jeremy Chou**, Givens-Pursley, representing the American Council of Engineering Companies of Idaho, said there is no opposition. He expressed concerns about this legislation with the Governor's office and he said he will be working with the Governor this summer. This change came about because of an Idaho Supreme Court case.

DISCUSSION: **Mr. Toryanski** pointed out there are other boards with executive directors who are not licensed. However, a licensed individual could still be hired by any of the boards. This bill gives flexibility to the boards. **Senator Lakey** and **Mr. Toryanski** discussed the idea that this bill does not limit a board's ability to hire a licensed individual.

MOTION: **Vice Chairman Martin** moved to send **H 480** to the floor of the Senate with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Chairman Patrick will carry the bill on the floor.

H 482 **Relating to Boards - Outfitters and Guides.** **Mr. Toryanski** reported this bill will reduce the exposure Idaho's regulatory boards, commissions and members have to federal and anti-trust prosecution by modernizing older regulatory licensure board/commission statutes to mirror newer regulatory licensure board/commission statutes. This legislation will: 1) allow the Governor to consider for board/commission appointments all qualified candidates who are recommended by trade associations and by any individual residing in this State; 2) direct that all board/commission members serve at the pleasure of the Governor; and 3) require that each regulatory licensure board/commission have at least one consumer member.

This change will permit all qualified candidates to be considered for appointment to Idaho's regulatory boards/commissions, permit the State to more closely supervise regulators and bring the consumer perspective to all regulatory licensure boards/commissions responsible for the health, safety and welfare of the public.

There will be no impact to the General Fund. The four boards/commissions adding a member operate solely on dedicated funds derived primarily from licensing fees. The impact to the dedicated fund for each of these is: Genetic Counselors Licensing Board - \$200 per year; Public Works Contractors License Board - \$500 per year; Board of Cosmetology - \$1,500 per year; and Real Estate Commission - \$9,355 per year.

Mr. Toryanski related that one year ago, the U.S. Supreme Court issued an opinion, North Carolina Board of Dental Examiners versus the Federal Trade Commission (FTC), which increased the exposure of state regulatory boards

and the citizen volunteers who serve on the boards to federal and state anti-trust lawsuits. This bill is a response to this increased risk. He pointed out that **H 482** strengthens State supervision over State regulators to reduce the likelihood that they will unlawfully restrain trade between citizens and businesses.

This bill takes three features from the statutes of more recently established boards and extends them to older boards. There is more separation between Idaho's State regulatory boards, whose duty is to protect the public and private associations whose role is to promote their profession. These three features will: 1) allow the appoint authority (Governor) to consider all qualified candidates for board membership from any nominating source, rather than only the nominees of a private organization; 2) require all board members serve at the pleasure of the Governor; and 3) ensure that every board has a public member to share the consumer perspective with the professional experts on those boards. **Mr. Toryanski** pointed out that in recent years, these three features have worked well for many boards. This bill would extend these features to all occupational licensing boards and provide an extra margin of separation between these government boards and private professional organizations. Putting all licensing boards on the same level in these three areas is desirable, particularly due to the opinion of the U.S. Supreme Court.

TESTIMONY:

Mr. Judge remarked there was short notice on this bill. He testified in opposition. The idea of adding a public member was well-received. All members can be nominated by anyone and having a public member on the board is not a problem. He remarked that by serving "at the pleasure of the Governor" members can be removed from the board for misconduct and would be held to a higher standard. He felt this would politicize the board. He said he believes clearly articulated policies and State supervision is already in place.

Senator Lakey asked Mr. Judge if an individual had to be licensed in order to become a member of the IPELS association. **Mr. Judge** said an individual did not have to be a member of the association to maintain a license. **Senator Lakey** wanted to know about those who are in the profession who decide they do not want to be in the IPELS association and they could possibly be a good candidate for the board, but less likely to be nominated. **Mr. Judge** said currently there is a list of active surveyors and those outside of the ranks have been asked for input. He remarked the profession is a small community of approximately 600 people. They discussed the matter of non-members being excluded from being nominated because they had not joined the ranks.

Ken McClure, representing the Idaho Society of Certified Public Accountants, testified in support of this bill. He said he appreciates what the Governor has done with the professions. He was not thrilled at first, but after reading the FTC's guidance and the U.S. Supreme Court case in North Carolina, he commended the Governor's office and said this was an appropriate and necessary step.

DISCUSSION:

Mr. Toryanski said Mr. McClure did a good job of summarizing and he said sending this bill forward is a good course of action. He said it was not good for private organizations to serve as gatekeepers for a board. He said it was startling to see how closely the IPELS Board parallels this bill and that of North Carolina. He remarked that as a matter of policy, there is a large amount of talent in Idaho with over 7,000 licensed engineers. It would be a shame not to have all of that talent available for the Governor's appointment.

Mr. Toryanski addressed the phrase "at the pleasure of the Governor" and said these boards are public agencies in the executive branch and the Governor is politically responsible for supervision. The boards are independent and if they want

to change rules and laws, they have to come to the Legislature. They are expected to follow rule and law.

Senator Guthrie said he was concerned about the difference of opinion about how much outreach was done and asked if the boards were contacted. **Mr. Toryanski** said the boards were notified on August 24 and September 2 of 2015. The Governor sent out a letter to all boards and asked them to meet. Phone calls were made. On February 5, 2016, the Governor sent another letter to the boards and solicited concerns and attached a first draft of the bill. It was suggested the boards share the information with their members. Changes were made in consideration of the input received. Many of these features are in place with many of the boards.

Senator Schmidt asked Mr. Toryanski how he would respond to the comment "at the pleasure of the Governor" and Mr. Judge's concern about the phrase. **Mr. Toryanski** said everyone is appointed by the Governor and what they do is ministerial. Many volunteers are hard to find. The advantages far outweigh the negatives. **Senator Schmidt** wanted to know if there were some boards where the ratio of the political affiliation or lack thereof is supposed to be in statute and was that considered. **Mr. Toryanski** said that is true for some boards, but not the IBOL.

MOTION:

Vice Chairman Martin moved to send **H 482** to the floor of the Senate with a **do pass** recommendation. **Senator Rice** seconded the motion.

Vice Chairman Martin remarked he has had difficulty finding someone to serve on a board. **Senator Lakey** said he was in support of the motion. He expressed a concern there are private organizations that want to be the gatekeeper. There may be someone who is excellent and who may not want to participate in an organization.

Senator Rice said he wanted to address the communications piece. He remarked he has known Ann Beebe for many years and she has always been organized and very candid. When he heard from Ann that every one of these boards were contacted, he knows they were. The board could have dropped the ball and not talked with those who have licenses, but he is satisfied that every board was contacted more than once.

The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

H 501

Workers' Compensation Insurance. Woody Richards, Associated Loggers Exchange, said the purpose of this legislation is to allow insurance companies to utilize certain Idaho bonds as security deposits for the Idaho Industrial Commission (IIC). There is no fiscal impact.

He said Associated Loggers Exchange writes workers' compensation insurance policies. Workers' compensation insurance companies are regulated by both the Department of Insurance (DOI) and the IIC. The DOI requires defined amounts of capital and surplus for insurance companies to insure against insolvency. The IIC authorizes insurers to write workers' compensation policies and determines the adequacy of the security deposits held in trust by the State Treasury. When an insurer is authorized to write business in Idaho, a security deposit is required by the IIC to secure compensation liability if the insurer should become insolvent. The instruments that can be used as security deposits are defined in Idaho Code § 72-301. **Mr. Richards** said that until 2014, Idaho Code § 72-301 permitted workers' compensation deposits to include interest bearing bonds of any state, any county and any municipality in the United States. Because of concern regarding the economic soundness of certain instruments across the United States and an

inability to monitor such a large number of bonds, the law was amended in 2014 to permit only U.S. bonds and certain surety bonds issued by insurance companies.

Currently, the DOI still allows investments in Idaho-issued bonds as part of an insurance company's bond portfolio. Importantly, these bonds may have a higher yield than treasury notes, which allows insurance companies to be stronger financially and to maintain lower premium rates.

Mr. Richards pointed out that discussions to reach a compromise between the pre-2014 Idaho law and the current law were begun approximately six months ago with the DOI and the IIC. After these discussions and several drafts for amended language were exchanged, the current wording was created. The DOI and the IIC are neutral with regard to the amended language. The A-rated Idaho bonds required by the amendment are considered investment grade. The IIC has access to the description and the credit rating relating to these bonds. If the bond is downgraded below A-, the workers' compensation insurer is required within 30 days to replace the bond with one that meets the credit quality requirement in the amended law. The bonds are liquid and can be easily sold but **H 501** only requires that they be replaced at the IIC by other bonds. The purchase of the bonds helps to maintain Idaho's infrastructure. Idaho bonds may have a higher yield than treasury notes, which allows insurance companies to be stronger financially. This legislation is supported by the insurance industry and by the Idaho Association of Commerce and Industry. He said he knew of no opposition to the legislation.

Senator Lakey disclosed for the record that he is the Senate representative on the State Fund Insurance Fund dealing with workers' compensation.

MOTION: **Senator Ward-Engelking** moved that **H 501** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the bill on the floor.

HCR 48 **Chairman Patrick** announced this concurrent resolution would be moved to last on the agenda.

H 398 **Relating to Revised Uniform Athlete Agents Act.** **Dale Higer**, Chairman of the Idaho Uniform Law Commission, said the Revised Uniform Athlete Agents Act updates and improves the Uniform Athlete Agents Act by expanding the definition of "athlete agent," providing for reciprocal registration of agents, adding new requirements to the signing of an agency contract, expanding the notification requirements to educational institutions and providing remedies to student athletes. He said this act has been endorsed by the National Collegiate Athletic Association (NCAA) and is supported by Boise State University (BSU) and the University of Idaho (U of I). He said he wanted to yield some of his time to Joe Stegner, U of I.

TESTIMONY: **Joe Stegner**, U of I, said he works for the President of the university in Government Relations. He said the U of I is supportive. These laws are in response to bad practices representing student athletes as they become professional players. There are enormous sums of money at stake which attracts dishonest people. The State already has a uniform law. The U of I does not have many agents in the State, but many come from outside of the State. The message from this legislation is to let agents know that when they come to Idaho, they will be covered by uniform law that is prevalent in many other states. This is a safety measure.

Senator Rice asked Mr. Stegner what the difference was between this revised bill and the original bill. **Mr. Stegner** said the revised bill makes it harder for agents to come into the State and represent themselves in the final contracts for athletes. **Senator Rice** commented he appreciated Mr. Stegner being there to address this issue.

MOTION: **Senator Schmidt** moved that **H 398** 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**. Senator Schmidt will carry the bill on the floor.

HCR 48 **A Concurrent Resolution Relating to the Appointment of a Committee Relating to Public Procurement.** **Vice Chairman Martin** said this resolution was unanimously recommended by the members of the Purchasing Laws Interim Committee (PLIC), which met from August 2015 to January 2016 to study the State purchasing laws and make recommendations for revisions. It is the belief of the PLIC that some issues require additional study, including the appeals process for the Division of Purchasing, ethics in procurement, information technology contracts, and provisions of law relating to multiple contract awards, public works construction, purchasing by political subdivisions and void contracts.

This resolution authorizes the Legislative Council to appoint a committee to undertake and complete a study of issues relating to public procurement and to report its findings and recommendations to the First Regular Session of the 64th Idaho Legislature.

The cost of the study is not expected to exceed \$10,000. The study will be paid for by the Senate and House of Representatives from their existing appropriation in the legislative account.

MOTION: **Senator Lakey** moved that **HCR 48** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Vice Chairman Martin will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 3:03 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary