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## CIR Compromise

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The Platte Institute has kept careful watch over the development of CIR reform during this legislative session and we are disappointed that Business and Labor Committee Chairman Steve Lathrop failed to make an effort to achieve the real reform that Nebraska communities need to control costs. We maintain that true CIR reform must place greater control in the hands of taxpayers, apply equitably to all public labor sectors, and allow for meaningful cost containment. Thursday evening, the final reiteration of Senator Lathrop's LB397 was made public, and is being heralded as a historic compromise. The Senators opposed to Senator Lathrop's prior bills have worked diligently to achieve a legislative accord and have proposed legislation that has garnered the assent of Governor Heineman. We believe this compromise amendment makes improvements to the CIR process and it is a step in the right direction.

The Compromise Amendment, AM1528, improves the original bill by:

**Improving Oversight and Transparency** - Currently only one out of the five commissioners must actually hear the dispute; AM1528 requires a majority of commissioners to decide all labor disputes thus providing an additional check on potentially unilateral action by one unelected commissioner. In addition, both the public employer and the union, under AM1528, must submit their final offer as part of their respective pleadings to the CIR. Each party is required to vote to accept or reject the other's final offer and the vote of the public employer shall be made public. Only when both parties have rejected each other's final offer is CIR allowed to order wages.

**Reducing Array Size and Eliminating Perverse Teacher Incentives** - The compromise amendment rightly removes Lathrop's previous requirement that school districts engage in mandatory negotiation for higher salaries for failing teachers in failing schools. The amendment also reduces the maximum number of comparable employers used in an array from thirteen to nine. Limiting the number of comparable employers lessens the risk of including employers who pay inflated wages or benefits.

**Provides Possibility of Cost Containment** - Under prior versions of LB397, if an employer was found to be paying too high of a wage, the CIR was only able to freeze the wage until the market average was the employer's wage - regardless of how disproportionate the wage was to market conditions. The compromise provides for an expanded midpoint calculation whereby the CIR must order wages to decrease for any

employee if wages are above 102 percent of the average. Likewise, if the employee's total compensation is found to be below 98 percent of the average, then the CIR must order an increase up to 98 percent or 95 percent during a recession. Although this range is relatively narrow, this concept affords a significant opportunity for cost savings especially when compared to the previous freeze-only option. This concept is also one of the few provisions that apply to all public employees, including teachers.

There are, however, still provisions in this bill that are cause for concern:

**Retains Minimum Staffing Requirements for "Safety"** - One of several unnecessary provisions that remain in the compromise amendment is language that requires staffing to be a mandatory subject of collective bargaining when the staffing issue pertains to "safety." This provision ostensibly follows a recent CIR ruling involving Omaha firefighters, but provides no definition of safety and thus affords both additional litigation opportunities and the real potential for what is normally a management prerogative to be transformed into a topic subject to union demands.

**Gives Special Treatment to Schools** - The requirement that true reform be equitably applied still is not realized by the compromise amendment. Teachers and administrators remain held to a differing, more lenient standard than all other public employees. Lathrop's failure to apply the same rules to schools that apply to municipalities may likely result in a disproportionately adverse effect on rural communities and an inability to provide property tax relief to farmers and ranchers.

**Provides No Guarantees That Nebraska Cities Will Not Be Compared To Large Urban Areas** - Under the amendment, the Metropolitan Statistical Area, or MSA, calculation may still be set aside by the CIR based on sufficient evidence. This means that Lincoln may still be compared to Minneapolis and thus result in an order for artificially inflated compensation.

**Does Not Adequately Resolve the Subpoena Power Issue** - Current law allows the CIR to subpoena employer records to conduct its comparability analysis. Instead of making a simple change to this provision, Sen. Lathrop chose to force private employers out of the equation. Therefore, under the compromise amendment, private employers are no longer included in the array calculation. This omission is likely to cause a hindrance to cost containment.

Considering the fact that the Commission of Industrial Relations has not been the subject of significant legislation for over forty years, this compromise adds some value for Nebraska taxpayers. The Platte Institute maintains that the stakes for taxpayers are great and as such this legislation should be just the beginning of real reform.



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