

MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
NIELSEN SUBCOMMITTEE
Administrative Rules Review

DATE: Monday, January 21, 2013
TIME: Upon Adjournment of the Full Committee
PLACE: Room EW42
MEMBERS: Chairman Luker, Representatives Nielsen, Perry, Dayley, Malek, Burgoyne
**ABSENT/
EXCUSED:** Rep. Nielsen
GUESTS: Lt. Bob Clements, Alcohol Beverage Control (ABC)/Idaho State Police (ISP); Kimra & Patrick Burger; Jeremy Pisca, Risch Pisca

Rep. Luker served as the committee chairman because **Rep. Nielsen** had a family emergency.

Chairman Luker called the subcommittee meeting to order at 2:27 p.m.

DOCKET NO. 11-0301-1201: **Matthew Gamette**, Lab Manager for Idaho State Police (ISP) Forensic Services, presented **Docket No. 11-0301-1201**. He said this is a rule that came before the committee last year and there have been no changes. He explained this is a codification of a former rule and then clarified the wording. He said the words "at least" clarifies the blood concentration level in a Blood Alcohol Concentration (BAC). He said ISP uses kits to take BAC which are purchased from manufacturers and the tubes within the kits contain a certain amount of sodium fluoride in them. If the tubes are not full, the concentration of the sodium fluoride is greater, but this higher concentration has no effect on BAC. He added that the purpose of the sodium fluoride is to provide an additional means of preservation.

MOTION: **Rep. Malek** made a motion to recommend approval of **Docket No. 11-0301-1201** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 11-0501-1101: **Lt. Bob Clements**, Alcohol Beverage Control (ABC) within Idaho State Police (ISP), presented **Docket No. 11-0501-1101** and said it is a temporary rule that has been in effect for over one year. He explained the purpose of the rule was to allow certain establishments to host all-ages events that may serve alcohol and still allow minors to be present. The previous rule contained no definition of "multipurpose arena." Lt. Clements said this has been problematic for the places that host all-ages events because they have endured fights and gang activity, due to the lack of a definition. He said an example of a multipurpose arena would be the Knitting Factory and ABC has worked with them to determine the needs of the facility and what would be required to maintain the over/under status. He discussed the rules in greater detail and outlined some of its requirements: service of burgers and other snack food, the venue must provide a list of events to ABC, and an explanation of how the venue plans to keep under 21 occupants from gaining access to alcohol. He explained further that this rule and its associated provisions allows a facility to do something they were not previously permitted to do. He added, ISP received no negative formal comments on this law. He provided some examples of facilities in the area that would fall under the multipurpose definition and how these facilities have made adjustments to security to accomplish the overall goal of the rule.

In response to committee questions, **Lt. Clements** said the rule was held last year to allow more time for public comment. He also said stakeholders worked extensively with ABC over the last year to obtain additional comments and the rule before the committee now is a final rule, identical to the temporary rule that came before the committee last year. Lt. Clements explained that a business would want to get an endorsement on a liquor license in order to be permitted to admit minors. He said this new definition of "multipurpose arena" is completed through rulemaking rather than statute because the statutory definition of restaurant is very vague. The rules can be used to define the restrictions on the statutory definition as they change with business needs over time.

Lt. Clements confirmed that this rule regards a multipurpose arena and provides a chance for minors to have access to community events, shows, and concerts when a business applies for and receives an endorsement on their liquor license. He reiterated that increased security, as is required by the rule, makes it so minors can attend. In response to a question on restriction of events and public feedback, he said there was no feedback in response to the "events." In regards to "multipurpose arena," he said those events would generally serve alcohol and the plans in place could be no-alcohol or all alcohol, depending on the type of event. If the event was endorsed as "MUA," the event must be planned one month in advance and the applicant may amend that plan by notifying an ABC officer at least 24 hours in advance.

MOTION: **Rep. Burgoyne** made a motion to recommend approval of **Docket No. 11-0501-1101** to the full committee. **Motion carried by voice vote.** **Rep. Perry** requested to be recorded as having voted **NAY**.

DOCKET NO. 11-1101-1201: **William Flink**, POST/ISP, presented **Docket No. 11-1101-1201**. He offered handouts to the committee that contained information in support of the rules. (See attached handout) He explained there was a technical error in the rules, based on the need of law enforcement profession to be able to expedite cases they are involved with. He provided a synopsis of the cases POST Council has had over 2011. He also said that these rules will allow officers to have their issues heard more quickly and provide more protections than they have under current procedures. They will also mean a decrease in hearing costs.

Mr. Flink referenced the second document and explained the prior rules were broad and this rule is modeled after the professional code of ethics; the rule differs from the national code because the word "police" was replaced with "law enforcement." Additionally, the rule includes full discovery and an additional piece of due process, allowing the administrator to sit down with the person being complained against and listen to their views of the allegations before them. He emphasized that the process saves money and is more efficient. Mr. Flink indicated most actions will come under the non-summary decertification process. He next outlined some of the concerns from the committee on these rules which were heard last legislative session: Hearings were only going to be held in Meridian and POST Council has now been to Meridian, Jerome and Moscow in order to address these concerns. He further explained the main goal of the process is to provide fairness to the officer and to the profession and also to expedite the process for the individuals involved. He added that currently, it takes over a year to get a hearing. He explained that the Senate Jud/Rules Committee had moved to strike out **§ 91-09** and we will do the same here.

In response to committee questions, **Mr. Flink** explained the summary decertification process means the agency would bring the hearing to the individual. Mr. Flink said this is a review process, based on a cause of action found by POST Administrator who will provide a written decision. He said the hearing board has already been established by POST Council and contains 3 POST Council members. If the decision were to be appealed by the individual, these 3 members would not participate again in a review/appeals process. In regards to standard of review, POST council will review the record and have the opportunity to disagree with the hearing officer's conclusions. There was committee concern that there are still no intermediate sanctions within the rule, rather the options are to certify or decertify. Mr. Flink said the agency had included intermediate sanctions, with an option for a letter of reprimand, and this option was removed and it was not put back into the rules in error.

Mr. Flink emphasized that timing is a central issue in these hearings and though he thinks the hearings will be rare, it is important to have timely hearings, especially if it's a serious case that could potentially result in law enforcement capabilities being taken away immediately. He then referenced the handout that contained the 2011 decertification cases. He said immediate action may be appropriate where substantial evidence exists that a violation has occurred. There was continued committee concern over the exclusion of the intermediate sanction provision in this rule and Mr. Flink emphasized the need for passage of this rule based on the current difficulty of getting these cases heard, as some are almost two years old. Mr. Flink confirmed that the 2011 Decertification Rules would continue to be used if these rules were denied by the committee and stated that the additional piece of due process contained in these rules is intended to make the process more fair.

MOTION:

Rep. Burgoyne made a motion to recommend rejection of **Docket 11-1101-1201** to the full committee.

Rep. Burgoyne cited lack of an intermediate sanction, lack of specified summary proceeding location and practices referred to during the rule presentation that are not codified in the rules as reasons for not being able to support the rule. Furthermore, he said the non-summary adjudication hearing still requires the officer to travel to Ada County, which will be very expensive.

In response to committee questions, **Mr. Flink** promised to address the committee's concerns over the missing provisions in the rules and indicated that technology can help the hearing process reach those that are outside the Meridian area and POST Council recently voted to add additional POST Council meetings, in Coeur d'Alene and Eastern Idaho. Mr. Flink also indicated that POST would pay for witnesses in Meridian.

SUBSTITUTE MOTION:

Rep. Perry made a substitute motion to recommend approval of **Docket 11-1101-1201** to the full committee with the exception of **Subsection 91.01**.

Chairman Luker explained the ramifications and procedure of rejecting the rule to the committee. In response to committee questions, **Mr. Flink** said the practical effect would be continued delays with their cases. The stress on the individual is great and he finds this is the quickest way for the employer to meet the needs of the process. In regards to committee concern about the best way to approach the missing language in the rule, Mr. Flink said that with the exception of the intermediate sanctions, most of the procedures are attainable with POST Council vote, which can be used until POST gets a rule addressing it specifically. POST Council wants reasonableness and fairness, and when shown to be strong cause that officer shouldn't be in law enforcement any more in this state, that is provided for.

**VOTE ON
SUBSTITUTE
MOTION:**

Motion carried by voice vote.

**DOCKET NO.
11-1101-1202:**

William Flink, POST/ISP, presented **Docket No. 11-1101-1202**. He said the first change was the definition of "law enforcement professional," where "emergency services provider" was added. Next, under procedures, the change makes it so medical exams shall remain valid for one year, unless extended by the POST Administrator for good cause. Mr. Flink explained the purpose is to not require another examination before officers become certified. The final change, says that an applicant is not eligible for POST certification of any kind while under investigation.

MOTION:

Rep. Malek made a motion to recommend approval of **Docket No. 11-1101-1202** to the full committee. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:00 p.m.

Representative Luker
Chair

Stephanie Nemore
Secretary