

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 25, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

**ABSENT/
EXCUSED:**

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 Heider** called the meeting to order at 3:10 p.m. and welcomed the audience. He asked the secretary to take a silent roll. He announced first on the agenda is the confirmation hearing of Suzanne Budge to the Hazardous Waste Facility Siting License Application Review Panel for a term commencing March 30, 2012 and ending March 30, 2016.

HEARING: **Suzanne Budge** stated she is a re-appointee and that this is her third term. She stated this panel is one of the best boards to be on because they rarely, if ever, meet. They have only met about twice in all the years she has been on it. It only meets when there is a hazardous facility siting license request through the Department of Environmental Quality. She thought she was going to be term limited out, but they found a way to re-appoint her because they couldn't find another geologist. She stated she is from Soda Springs, Idaho. She went to Utah State for her undergraduate degree in geology; she then attended University of Idaho-BSU program and BYU-Utah State. She did her graduate work in geology through Colorado School of Mines. She spent some time in the mining business for the U.S. Geological Survey as well as the oil and gas business. She came to Boise in 1989, after doing a brief stint at Idaho National Laboratory working in their hazardous waste program. She then began doing government affairs work.

Senator Schmidt stated that he had reviewed her client list and asked if she felt there is a conflict of interest with any of her clients, particularly Thompson Creek Mining. **Ms. Budge** stated there haven't been any conflicts of interest; the board so far has only reviewed two applications relating to Idaho National Engineering and Environmental Laboratory. She stated she does not have any clients in the hazardous waste business, so there shouldn't be any problems in the future; but if there was one, she would recuse herself.

Chairman Heider thanked Ms. Budge for her service on the board. He announced next on the agenda was the confirmation hearing Mark P. VonLindern to the Hazardous Waste Facility Siting License Application Review Panel.

HEARING:

Mark P. VonLindern thanked the committee for the opportunity to be considered for reappointment. He stated he has served on the board since it was first established. He went to the University of Idaho. He is a licensed engineer in the State of Idaho. He worked as a public works director in the Idaho Division of Environmental Quality as the Division Two Director for about five years. He worked in the public sector. He has worked at ATK in Lewiston for the last twenty five years. He believes he has a broad background in hazardous waste in Idaho as well as technical experience. He stated he is looking forward to continuing his service on this board. He also serves as the Vice Chairman on the Clearwater Basin Advisory Group for the Department of Environmental Quality. He likes having the opportunity to give back to the community and ATK supports this as well.

Chairman Heider inquired if Mr. VonLindern was happy being on the board. **Mr. VonLindern** responded that he was. It has been easy work, but it is an important issue. Through his current job at ATK, he oversees a number of large scale manufacturing operations in different states and understands the pros and cons of environmental regulation. He stated the community doesn't want to see Idaho become the nation's repository for nuclear waste, but it does have a place here. As long as we continue to manage it well, we can be responsible stewards. **Chairman Heider** commented on photos he has seen in the past of irresponsible dumping of hazardous waste. He asked if he and Ms. Budge were involved in bringing an end to that. **Mr. VonLindern** responded that he was aware of the history and said that the industry has come a long way.

Senator Hagedorn inquired if Mr. VonLindern perceives environmental rules getting stricter during the time he has spent in the industry and how has regulation affected ATK. He asked if regulators become easier to work with. **Mr. VonLindern** responded that his background working for the Idaho Department of Environmental Quality and with the Environmental Protection Agency in the 1980 when environmental regulations were just starting to gain traction, and now working on the side of regulated industry has been interesting. He stated that in the beginning, the regulations were so broad that regulators didn't have a very good understanding of them. In his experience, over the last five or ten years, they have become much better at working with industry. Companies are given more of an opportunity to be in compliance. In Idaho, there seems to be more common sense in the application of environmental regulation than in other states like California. Industry seems to recognize this and take this into consideration when determining locations for their facilities.

Chairman Heider thanked Mr. VonLindern and stated that the committee will vote on his confirmation on the following day.

PASSED THE GAVEL:

Chairman Heider announced the next item on the agenda was a pending fee rules. He passed the gavel to **Vice Chairman Nuxoll**, who then called upon Mark Johnson to present the fee Rule.

DOCKET NO. 27-0101-1205

Mark Johnston, Executive Director of the Idaho Board of Pharmacy (Board), stated that he was before the committee to ask approval of **Docket No. 27-0101-1205**, which began on page 52 of the Pending Fee Rules Review Book. These rules are brought forward pursuant to the passing of H 17, as discussed during the committee hearing for said bill.

The Board printed two notices of intent to promulgate rules in the Idaho Administrative Bulletin, took testimony at three public Board meetings, conducted months of negotiation, and received eleven pieces of public comment on this topic just during the 21 day public comment period last October.

As with H 17, Idaho State Pharmacy Association, Idaho Retailers Association, Idaho Society of Health-System Pharmacists, large mail service pharmacies/pharmacy benefit managers (such as Medco, Express Scripts and OptumRx) and cognitive service companies (such as PipelineRx) are supportive of this docket. **Mr. Johnston** was aware of no opposition to it, and it took a long time to get to this position.

While this is considered a fee Rule, this docket contains the same fees already approved in H 17. As many of the new terms used in statute are also used in Rule, many exact definition changes from H 17 appear in this docket as well. New pending Rule 29 (on page 64) concisely reiterates the pharmacist licensure and registration parameters approved in H 17. New pending Rules 35 (on page 65) and 73 (on page 66) take existing statutory registration application parameters that H 17 struck and places them into Rule, where they are more appropriately located. The following changes only exist in Rule, and the Board believes these to be extremely important.

Current Rule 650 and 651 (pages 69-71) were promulgated as required in 2009 by the series of legislative changes run by the Idaho Hospital Association and regulate the practice of telepharmacy across state lines...for the two facilities that are currently registered as such. As we expand the practice of pharmacy into Idaho with H 17, most of these rules have been struck and moved into new pending Rule 610 (on page 68). Although Rule 610 appears to be new, it contains just a few substantive changes as it transitions from the combination of Rules 650 and 651. For example, a private, encrypted connection between the two facilities was added, and as H 17 allows such practice from home offices, this docket requires a secured area that is restricted to authorized personnel.

Current Rule 320 (page 67) allows an Idaho licensed pharmacist to practice pharmacy outside of a pharmacy if a few basic parameters are followed, such as if the pharmacist makes a decision, he should ensure that he has enough information to actually make the decision and then document the decision. Also, as private health information is no longer within the confines of the pharmacy, extra care should be taken to protect such information. Rule 320 was developed to allow pharmacists to provide cognitive services at health fairs, brown bag events at senior centers whereby citizens bring in their various vials of drugs to be evaluated for overlap, etc., or even counseling a person at the kitchen table. This "independent practice of pharmacy," independent from practicing within a pharmacy, is currently allowed across state lines so that a pharmacy owner or hospital pharmacist, for example, who is on vacation out-of-state, may practice pharmacy back into Idaho, if called by their respective pharmacy. However, Rule 320 has been used as justification for out-of-state companies to license their pharmacists in Idaho and then start practicing pharmacy on a wide-scale basis into Idaho, not being subject to rules that are intended to regulate this activity, which is termed "centralized pharmacy services."

For example, current Rule 650 and 651, which transition to pending Rule 640, require written contracts, mandatory training, appropriate communications between the facilities, secure common electronic files, continuous quality improvement programs, audit trail documentation, and policy and procedure manuals. Currently, out-of-state, but Idaho-licensed pharmacists are practicing pharmacy into Idaho without following any of these provisions, simply by following the independent practice of pharmacy Rule that was not intended for this wide-scale purpose.

Pending changes to 640 clearly state that when a pharmacy centralizes services to another, the services must be performed from a pharmacy, central drug outlet (such as a secure business office in a strip mall) or from a remote office location, such as a home office (and not from a Starbucks, for example), and all of the requirements of 640, just listed, must be followed. Changes to 320 clearly state that centralized pharmacy services may not be performed under the guise of the independent practice of pharmacy's minimal regulation, intended only to regulate the practice of pharmacy at simple functions, such as health fairs. It is this important distinction that makes this docket important enough to be brought on the heels of H 17, which expands the practice of pharmacy into Idaho, not waiting to promulgate until 2014.

Senator Hagedorn commented that H 17 has not yet been signed into law by the Governor. If the Governor does sign it, it doesn't go into effect until July 1, because there is no emergency clause. He asked what of this Rule has the effect of H 17 that they might be approving. **Mr. VonLindern** responded it was his understanding that a Rule cannot exist without statutory authority, therefore, anything written in this Rule that does not have statutory authority could not be enforced until H 17 goes into effect. It is their intent to not enforce much of this Rule until July 1. He stated their renewal period ends on June 30, and that it is important to wait until July 1 because it gives them time to rework their software in order to be able to enforce the Rule.

Senator Bock inquired as to the legal ramifications of approving the Rule without legal authority to adopt the Rule. **Mr. Johnston** deferred to Dennis Stevenson, Administrative Rules Coordinator. **Mr. Stevenson** stated this is a pending fee Rule, so it must be appropriately approved by concurrent resolution. Statute also dictates that the Rule becomes effective on the date the concurrent resolution is adopted or the date specified in that concurrent resolution. Therefore, some parameters could be placed on the Rule by specifying that it cannot go into effect until July 1. In that case, if H 17 does not go into effect, the Board could rescind the portions of this Rule that do not comply with statute.

Chairman Heider asked if this rule is approved and H 17 does not go into effect, does the Rule then revert back to their original content? **Mr. Stevenson** responded no, a Rule cannot revert back. He stated the agency would have to rescind the Rule and bring forward another Rule change in the next legislative session in order to make the correction.

Senator Bock asked if they approve the Rule, could the resolution then be modified to go into effect on July 1, which would get around the issue of essentially approving a rule without the rule having statutory authority? **Mr. Stevenson** responded that was correct; normally an agency would specify that the Rule would go into effect on a day other than the adoption date of the resolution. It is correct that they would have to put into the resolution the date the Rule should go into effect if they want it to be other than the adoption day of the resolution.

Senator Hagedorn commented that this was the first time he has seen a rule come out so quickly after a bill, even before the Governor could sign it. He asked if the committee was being premature in considering approving this rule and if it would be prudent to hold off on it for a few weeks until after H 17 has been passed into law. **Mr. Stevenson** responded that generally he does not advise agencies to write a rule before statutory authority exists for that rule because that can be problematic. The committee certainly has the authority to not approve the rule; however, if they do approve the rule and it does not have statutory authority, the agency cannot enforce the rule. **Senator Hagedorn** asked if they take no action on the rule, would there then be a temporary rule in place until they can consider it during the next session? If that happened, could the agency collect the fees associated with this rule prior to July 1? **Mr. Stevenson** responded that was correct; the agency

could develop a temporary rule and that rule, if H 17 was passed, would meet the criteria for such a rule.

MOTION: **Senator Bock** moved to approve **Docket No. 27-0101-1205**, provided that the concurrent resolution specifies that the rule is in effect July 1, 2013. **Senator Schmidt** seconded the motion.

SUBSTITUTE MOTION: **Senator Hagedorn** moved that **Docket No. 27-0101-1205** be held until the gentlemen on the second floor take action. **Senator Martin** seconded the motion.

DISCUSSION: **Senator Guthrie** asked what the outcome would be to the rule if the Governor were not to sign H 17. **Mr. Stevenson** responded this pending fee Rule must be affirmatively approved; if no action is taken, it dies.

Senator Martin commented that H 17 passed the Senate floor. The Governor doesn't always pass their legislative ideas, but this bill was passed unanimously on both the House and Senate floor; therefore, the chance that the Governor would not sign it was extremely minimal.

Senator Bock asked Mr. Stevenson what the simplest course of action would be for the agency. **Mr. Stevenson** responded that he could manage any course; however, it would be simplest to approve the Rule. Either way, they would be forced into rulemaking again.

ROLL CALL VOTE: **Vice Chairman Nuxoll** called for a vote on the substitute motion to hold **Docket No. 27-0101-1205** until the gentlemen on the second floor sign H 17. **Vice Chairman Nuxoll** and **Senators Hagedorn, Martin** and **Lahey** voted aye. **Chairman Heider** and **Senators Guthrie, Bock** and **Schmidt** voted nay. Senator Lodge was excused prior to the roll call vote. The motion failed.

Vice Chairman Nuxoll then called for a vote on the original motion by **Senator Bock**, seconded by **Senator Schmidt** to approve **Docket No. 27-0101-1205**. The motion carried.

PASSED THE GAVEL: Vice Chairman Nuxoll passed the gavel to Chairman Heider.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:45 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary