

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, January 29, 2014

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: 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 Heider** called the meeting to order at 3:00 p.m. and welcomed the audience, inviting those who wish to speak to sign in.

RS 22650 **Rules relating to Hazardous Waste Management to Revise Definition of "Restricted Hazardous Waste":** **Roy Eiguren**, Eiguren Fisher Public Policy Firm, explained that this legislation amends the Hazardous Waste Act, the statute providing legal authority for the Department of Environmental Quality (DEQ), to regulate waste facilities in Idaho. The DEQ regulates the only commercial hazardous facility in Idaho, US Ecology's treatment and disposal facility in Owyhee County near Grandview.

Mr. Eiguren reminded the Committee members that US Ecology's CEO addressed them last year regarding the company's operations. If this bill is printed, the intent is to provide an update on those operations, details about the type of waste that is the subject of this legislation, and testimony from DEQ officials who assisted in drafting this legislation.

Mr. Eiguren explained that the Hazardous Waste Act was amended in 2001 by the Legislature to direct the Department to promulgate rules governing the disposal of "low activity radioactive materials." Those rules were authorized into law in 2002 and have been amended over time providing the DEQ with a specific and detailed process to regulate low activity materials. Low activity radioactive material are generally construction debris and dirt.

According to **Mr. Eiguren**, the federal government regulates the production of nuclear energy per the Atomic Energy Act of 1954, including the regulation of nuclear waste. Some wastes contain very high levels of radioactivity, such as those stored at the Idaho National Laboratory. These types of waste are regulated by the Nuclear Regulatory Commission for wastes in the commercial nuclear cycle, or the Department of Energy for other types of wastes such as those from defense related programs.

The Atomic Energy Act provides that some wastes of low level radioactivity, called "below regulatory concern", no longer need to be regulated by federal agencies. Through the 2001 statutes and subsequent rules, it is appropriate for the DEQ to regulate these materials. When the wastes fall out of federal regulation, the State has made the determination to regulate them.

Mr. Eiguren added that currently the Hazardous Waste Act provides that wastes that are "exempted from licensing" by the Nuclear Regulatory Commission may be disposed of at the Grandview facility. It does not provide the authority for wastes no longer regulated by the Department of Energy to be disposed of at that facility. This legislation clarifies the act by providing express authority for wastes "released from regulatory control" by the Department of Energy to be disposed of at the facility. It also provides that such wastes will be disposed of pursuant to the permit and related waste acceptance criteria set by the DEQ.

A handout illustrating the intent of the bill was shared with the Committee and is attached. It basically shows that the US Atomic Energy Act of 1954 created the US Atomic Energy Commission. That Commission splits into the US Nuclear Regulatory Commission and the US Department of Energy. The Nuclear Regulatory Commission exempts low level wastes from regulation; the Department of Energy releases them from radiological control. This legislation allows the Department of Energy materials to be disposed of under the state regulations.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

Chairman Heider asked if there is any difference in the end result of those being exempt from licensing or those being released from radiological control.

Mr. Eiguren answered that the material is exactly the same, i.e. construction debris, dirt, rubble, it is just labeled differently—Nuclear Regulatory Commission or Department of Energy.

Senator Bock stated that he would like to hear from someone other than the industry about whether this is good, bad, or indifferent.

Mr. Eiguren replied that the DEQ will be here, will testify and will explain their program to the committee.

Senator Martin asked, regarding fiscal impact, if a positive \$100,000 is correct.

Mr. Eiguren stated that the amount is correct. There is a tax imposed on every gate ton of material disposed of at the facility. That tax is generated for the state general account, and he is anticipating that the additional material coming from the Department of Energy will generate additional tax revenue in the amount of \$100,000 per year.

MOTION:

Vice Chairman Nuxoll moved, seconded by **Senator Martin**, to print **RS 22650**. The motion carried unanimously by **voice vote**.

RS 22374

Rule related to the Board of Nursing's fingerprint-based criminal background checks: **Sandra Evans**, Executive Director, Idaho Board of Nursing (Board), stated that **RS 22374** amends Idaho Code § 54-1401(3) by clarifying the existing authority to conduct fingerprint-based criminal background checks on applicants for nurse licensure. The changes will correct deficiencies identified during recent FBI and Idaho State Police audits of the Board's authority and practices. This proposed legislation has no fiscal impact.

Vice Chairman Nuxoll asked for an explanation of what the bill does.

Ms. Evans replied that the Board has had authority to conduct fingerprint-based criminal background checks since 2005, and they are consistently picked for audit due to the large number of nurses applying for licensure. On the most recent audit by the FBI and the State Police, language was found in the statute stating that the fees for fingerprint background checking are paid directly to the State Police, and that is not correct. The fee is actually collected by the agency and is forwarded on to the police.

The other changes, according to **Ms. Evans**, just reflect cleanup language, deleting outdated references to license applications prior to 2005 which are no longer necessary.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 2).

MOTION: **Senator Bock** moved, seconded by **Vice Chairman Nuxoll**, to print **RS 22374**. The motion passed by **voice vote**.

RS 22389 **Rule relating to the assessment of a monetary penalty as an alternative to formal discipline:** **Sandra Evans**, Executive Director, Idaho Board of Nursing (Board), indicated that Idaho Code § 54-1404(3) authorizes the Board of Nursing to establish alternatives to formal discipline when a licensee violates Board statutes, and when license revocation or suspension would constitute an unreasonably harsh sanction. This docket amends the code to add a monetary penalty not to exceed \$1,000 as another alternative, in addition to the currently authorized participation in a remediation program. This penalty allows the Board an alternative when a non-reportable monetary penalty is a more appropriate response.

Ms. Evans also stated that the proposed legislation may result in a positive fiscal impact to the Board's dedicated fund. The projected impact would likely be less than \$15,000 a year.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 3).

Senator Schmidt commented that this RS has to do with the duties of the Board. He asked what would happen if someone didn't pay, and if the license code will reflect that the nurse is not in good standing.

Ms. Evans said she would respond to the question, but the Board's attorney was present for clarification if needed. Based on other business done by the Board, she understands that if the agreement developed for that process is violated, i.e. non-payment of the fine, the law would support moving ahead with other disciplinary actions.

Vice Chairman Nuxoll asked why they came up with \$1,000.

Ms. Evans stated that the amount was set up to \$1,000 so the Board could look at other increments. She continued that the Board didn't want to set the amount so high that it would be onerous to the nurse, but that they wanted to provide a deterrent for future behavior. Up to \$1,000 has been effective in other areas.

Senator Martin referred to a similar issue addressed last year and asked if this was a different statute.

Ms. Evans replied that something similar was presented last year not as an alternative, but as a modification of the ability of the Board to assess a penalty of \$100 per event.

Senator Martin asked if it is correct that the Board's fund is outside the general fund.

Ms. Evans said the Board is funded through a dedicated fund from licensure fees and other payments.

Senator Martin asked for the balance of the fund.

Ms. Evans responded that the balance is around \$2 million. Expenditures throughout the year draw from that.

Senator Hagedorn asked if, because the Board is dependent upon the number of nurses licensed and/or fines, the Board's decision was unanimous. He asked how the Board concluded that these changes are necessary.

Ms. Evans said the nine-member board, appointed by the Governor, meets quarterly and operates as a policy-driven governance Board. Strategic planning is an annual event, and members of the Board are fully engaged in the process. They discuss throughout the year administrative rule revisions or statutory revisions that would keep them relevant and in line with the evolution of regulation and practice. Every spring the Board's attorney, general counsel, and the staff of the Board present recommendations and suggestions for possible legislative activities. The Board discusses each recommendation and moves ahead or abandons the idea.

Senator Hagedorn asked if there have been discussions about cash flow requirements compared to cash on hand. Two million dollars seems significant. He also asked if there have been discussions about reducing nursing licensing fees to reduce the balance or meet the flow requirements.

Ms. Evans said that about 24,000 nurses are licensed, and the majority of revenue is generated through license renewal. The remaining revenue comes from renewal licensure, reinstatement licensure, or other activities. The policy for fund management is to maintain six months of operating expenses. By practice the Board prefers to have about 12 months of operating expenses. The dedicated fund supports the activities of the Board, and the ability to spend the fund is directed by the Legislature through the budget appropriation process. Part of the reason for the large balance is our projection that the baby boom nurses will discontinue their renewal of licensure, impacting the revenue generated by the Board. There are initiatives that come forward that may not be funded by the Legislature.

Senator Martin asked for the amount of the operating expenses for six months or a year.

Ms. Evans replied that the annual operating budget is around a million dollars.

Chairman Heider recognized that revocation or suspension is a harsh sanction and is recorded on a nurse's history. He asked if this fine would also be recorded on a nurse's history.

Ms. Evans replied that the Board reports formal sanctions to the public and to a national disciplinary databank. It also has the ability to take informal action that would not be publicly reported. A monetary sanction could fall into either category. If the violation was significant enough that the public needed to be aware of the nurse's conduct, it would not fall into the informal category. However, any violation is kept on file in the Board's office to track behavior of nurses and to identify repetitive behavior. If there are repeats, the sanction would rise to the formal level.

MOTION: **Senator Hagedorn** moved, seconded by **Senator Lodge**, to print **RS 22389**. The motion carried by **voice vote**, but discussion was requested.

DISCUSSION: **Senator Guthrie** commented that there is a lot of sanction opportunity, and this does not say anything about what the employer says about the performance of the nurse. He added that any sanctions that are monetary would not benefit the Board because the balance is two years out, and they don't need the money. This is beyond what is reasonable so he could not support it.

Vice Chairman Nuxoll stated that she agreed with Senator Guthrie because nurses don't get paid very much. This could destroy a nurse based on someone becoming angry.

POINT OF ORDER: **Senator Hagedorn** pointed out that the vote was already taken.

Chairman Heider noted that the vote had been taken and it will be recorded as being passed with three nay votes and six aye votes. **RS 22389** will be sent to print.

RS 22460

Relating to changes to Board of Nursing statute establishing grounds for denial of an application for nurse licensure and disciplinary action against an existing nursing license: Sandra Evans, Executive Director, Idaho Board of Nursing, stated that the changes in **RS 22460** more fully protect the public by broadening and clarifying grounds for discipline. It accomplishes this in two ways:

1. The change authorizes the Board to impose disciplinary action against an Idaho license when formal sanctions have been imposed by another jurisdiction on that license in another state.
2. "Sexual misconduct with or sexual exploitation of a patient or former patient by a licensee" is added as specific grounds for discipline. The change provides for appropriate rules defining the terms and implementing the statutory provision, and is in response to a court decision holding that the Board's authority was insufficiently clear to impose discipline against a nurse who engaged in sexual misconduct with a patient.

Ms. Evans concluded by stating that the changes in the proposed legislation are consistent with national uniform licensure requirements and provide for greater uniformity and consistency between states.

Ms. Evans reported that this proposed legislation has no fiscal impact.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 4).

Senator Lakey and **Senator Bock** expressed concerns about the wording of the proposed legislation.

After discussion about the wording with the Board's General Counsel, **Roger Gable**, **Ms. Evans** withdrew **RS 22460** to reword it for clarification.

RS 22390

Relating to Vital Statistics: Revising a Definition and Clarifying the Role of an Advanced Practice Registered Nurse: James Aydelotte, Bureau Chief, Bureau of Vital Records and Health Statistics, Department of Health and Welfare, explained that in 2012, the Legislature passed **S 1273** changing the term "advanced practice professional nurse" to "advanced practice registered nurse." The old term is used often in the Vital Statistics Act. **RS 22390** updates the Vital Statistics Act to be consistent with the term's use in other parts of Idaho law. **Mr. Aydelotte** stated there are no changes to responsibilities or scopes of practice.

Senator Hagedorn asked if there had been a mistake in changing the name and if the statute was being changed to cover the mistake. He also asked if it would be cheaper to go back to the original name than the \$10,000 that will be spent to update everything.

Mr. Aydelotte replied that it was not a mistake, but that they are trying to reflect a change that was made by the nursing community for accuracy. The cost is a reflection of the changes we will need to make to death certificates. That will be internal money, not general fund money. It may be lower than that estimation.

MOTION:

Senator Hagedorn moved, seconded by **Senator Lodge**, to print **RS 22390**. Motion passed unanimously by **voice vote**.

ADJOURNED: Chairman Heider thanked the committee and adjourned the meeting at 3:40 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary

Carol Cornwall
Assistant Secretary