

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 03, 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 3:04 p.m., and requested the Secretary take a silent roll call.

RS 22660 **A Joint Memorial Relating to SNAP: Senator Lodge** reminded the Committee that last year she had brought before them some legislation on Supplemental Nutrition Assistance Program (SNAP) benefits. The legislation made it through the Senate with no problem, but by the time it got to the House it was near the end of session and did not get a hearing on that side. Throughout last summer, the Idaho Medical Association (IMA), with the assistance of Molly Steckel, helped in putting this legislation together. This is a memorial to Congress asking for flexibility so that the state of Idaho can have control over the types of foods that are obtained using the SNAP benefits. It's also the aim to encourage the purchase of foods produced in Idaho, with the focus on more healthy foods rather than foods of convenience.

MOTION: **Senator Bock** moved that the Committee send **RS 22660** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

S 1226 **Relating to Dentists - Amending Sections: Susan Miller**, Executive Director, Board of Dentistry (Board), stated that **S 1226** is primarily a housekeeping bill wherein the Board proposes to amend several sections of Idaho Code. Some of the sections in the code have more substantive revisions. This legislation is a result of the Board undertaking the task of reviewing the entire Dental Practice Act to ensure the statutes reflect current licensing and practice standards for dental professionals, and to address other areas in the code that needed clarification. The Board had invited comment and input from licensees as well as the dental and dental hygienists associations with no comments given, but support offered.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

Senator Martin wanted to confirm the point that either the Board could do the exam or someone they select or hire could. He also wanted to know if this is going on currently and who exactly these outsiders are. **Ms. Miller** responded that this is currently the practice of the Board, and that they currently accept examinations offered by the Western Regional Examining Board (Board), which is a collection of about 13 western states that are members of this examining agency. The Board conducts clinical examinations for dental hygienists, dentists and dental specialists. There are other regional examining agency test results that the Board also accepts.

Senator Schmidt wanted to know about the "Licensure by Credentials" and wanted

to know if an applicant had a pending disciplinary proceeding in front of a board in another state, would it be made known to the Board in Idaho by the other state, or is it up to the applicant to report that to the Idaho Board. **Ms. Miller** stated that since this is an application for state licensing, it would be incumbent upon the applicant to report that at the time with the application. **Senator Schmidt** then asked if the Board is actually comfortable in leaving it up to the applicant since it seems to leave a hole in the process since a dentist could have a problem in one state, leave, come to Idaho and start over with a clean slate. **Ms. Miller** responded that the Board isn't necessarily comfortable with this idea, but it comes down to a legal matter as to what the prior state's board is legally obligated or allowed to disclose to the Idaho Board. **Senator Schmidt** thought there was somewhere in the rules that if the applicant makes a false claim on their application it becomes an invalid application and if discovered the practitioner could lose their license. **Ms. Miller** answered that this is correct, and it would be grounds for revocation of the license.

MOTION:

Senator Schmidt moved that the Committee send **S 1226** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motioned carried by **voice vote**. Senator Schmidt will carry **S 1226** to the floor.

S 1256

Relating to the State Board of Medicine: Nancy Kerr, Executive Director, Idaho State Board of Medicine (Board), stated that the purpose of **S 1256** is to change Idaho Code §54-1805 of the Medical Practice Act to allow Board members to continue in their term until the appointment of a new member and the new member is qualified to take over the role. The Idaho Board of Medicine is responsible for the licensure and regulation of physicians and other health care professionals in Idaho. Part of the regulatory duties include the responsibility to make decisions as to the ability of a licensed professional to retain a license to practice. Members must be familiar with the laws and rules, administrative process and due process in order to fairly and impartially make these decisions.

Ms. Kerr noted the terms of appointment have expired in the middle of the administrative hearing process, putting a burden on the Board to ensure a qualified quorum of the Board members to hear the case. For an administrative hearing the members must read all documents related to the hearing. This can be more than several hundred pages. The Board members must be familiar with the rules and laws of the Board in order to make a fair and impartial decision affecting a licensee of the Board. While appointments are made promptly, it is very difficult to welcome a new Board member to the Board by asking them to read several hundred pages of legal documents, be familiar with the laws and rules of the Board and make informed, impartial decision in a few days. The changes suggested to Idaho Code §54-1805 will allow the experienced members of the Board to continue the hearing process and allow new members the opportunity to be appropriately oriented to the Board's responsibilities, laws, rules and procedures before having to assume the important responsibility of the administrative hearing process.

Senator Hagedorn wanted to know what happens to a Board member who is convicted of a crime, found guilty and is sentenced to prison before his term on the Board has ended. Would that member still remain on the Board until his time is up? **Ms. Kerr** responded that the Governor can remove any Board member at any time for a number of reasons, including committing a felony crime which would cause them to lose their license and also not qualify them to be on the board any longer.

Senator Lakey was curious to know how this would work if someone wanted to resign from the Board. **Ms. Kerr** answered that the Board would go through the same process as with a new appointee to the Board, by asking the Idaho Medical Association (IMA) for nominations. The IMA presents them to the Governor and the Governor appoints to the Board. **Senator Lakey** mentioned that the wording as it

now stands doesn't seem to provide for much flexibility. **Ms. Kerr** stated that in her 19 years on the Board she did not recall a public member of the Board ever being removed or leaving office prior to their term ending. If that were to happen, the Board would go to the Governor's office and request a nomination to fill that post.

Senator Schmidt was concerned with the confusing wording and wanted Ms. Kerr to read a specific example to illustrate his problem with the grammar. **Chairman Heider** stepped in and read the part requested by Senator Schmidt. **Ms. Kerr** apologized for the confusion, declaring that this was actually a draft that was worked on between the Board and several other organizations and it became a compromise in language as they addressed several changes. It didn't receive such tight scrutiny at that time. **Chairman Heider** requested that Ms. Kerr make the needed changes and bring it back before the Committee so that it will be correct as they would like to have it printed.

Senator Lakey noted that while corrections are being made to the document, it might be helpful to add something to the effect that this is not a mandatory requirement. This might allow for more reasons to leave the Board other than the expiration of their term. **Senator Lodge** wanted to be clear as to what the process would be before the Committee since **S 1256** is a bill, will it be sent to the Amending Order or is the Chairman going to call it back, or will it be tabled. **Chairman Heider** responded that he does not want to send it to the floor as it is now. He thought it should be tabled at this point and have a new RS presented to the Committee.

Senator Guthrie noted that there is another section to the bill that needs clarification on how long a Board member has to remain in office, especially if the Board is in the middle of a serious case and his term is almost over, but the new appointee is not ready to take on the role. Who determines how much longer the veteran member has to stay on beyond his term? **Ms. Kerr** answered that the new appointee would have the opportunity to meet with other board members and others who could familiarize them with the process. **Senator Guthrie** brought out the point that there are several boards operating throughout the State that are short members, and it doesn't seem like such a big issue to allow them to be short for a time.

MOTION:

Senator Hagedorn moved to table **S 1256** before the Committee and wait for a corrected RS which would be better than trying to fix what they currently have. **Vice Chairman Nuxoll** seconded the motion.

SUBSTITUTE MOTION:

Senator Bock proposed that tabling is not necessarily the correct approach since the RS deadline is coming in a few days. He moved that **S 1256** be sent to the floor on the 14th Order for possible amendment. **Senator Lodge** wanted to confirm that Senator Bock would be willing to work this through for the 14th Order, and **Senator Bock** stated he would.

Senator Hagedorn had concern with the substitute motion since there are a number of other groups that need to be notified and consulted with as far as the changes, and that could take some time. He requested the Committee go back to his original motion to table since there really is no hurry and that what the Board is currently doing seems to be working just fine.

**AMENDED
SUBSTITUTE
MOTION:**

Senator Guthrie asked that the Committee to consider another option, to hold **S 1256** in Committee. **Senator Martin** seconded the motion.

Chairman Heider then reviewed the three motions that had been placed before the Committee. **Senator Bock** wanted to know what the purpose was of holding the bill in Committee. **Senator Guthrie** responded that the aim would be to solve the problems before it reaches the floor since there seems to be too many to be solved in the Amending Order. **Senator Martin** stated that in seconding the motion, he has not given up on **S 1256**, and by holding it in Committee, the Chairman has the power to bring it before the Committee again.

Chairman Heider stated that the motion to hold **S 1256** in Committee was before them, and had been seconded. The motion passed with all voting aye except for **Senator Schmidt** who voted nay. The motion carried by **voice vote**.

S 1261

Relating to Nurses: to Revise Provisions Relating to Criminal History Checks and to Make a Technical Correction: Sandra Evans, Executive Director, Idaho Board of Nursing (Board). **Ms. Evans** stated that **S 1261** amends Idaho Code §54-1401(3), related to the existing authority for the Board to conduct fingerprint-based criminal background checks on applicants for initial and reinstatement of nurse licensing. The National Crime Prevention and Privacy Compact governs the exchange of criminal history record information for non-criminal justice purposes, such as applicant licensing, and requires participating agencies to strictly adhere to established standards concerning enabling statutory language, record use and dissemination, and information security among others.

Ms. Evans stated that the changes are necessary to correct deficiencies identified in the 2011 FBI and Idaho State Police audits of the Board's compliance with state and federal regulations related to non-criminal justice use of criminal record history information. 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 2).

MOTION:

Senator Martin moved that the Committee send **S 1261** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**. **Senator Martin** will carry **S 1261** to the floor.

S 1262

Relating to Nurses: to Revise Terminology, to Authorize the Imposition of a Monetary Penalty as an Alternative to Formal Discipline Against Nurses Who Violate Nursing Statutes or Rules, to Correct a Codifier Error and to Make Technical Corrections. Ms. Evans stated that Idaho Code §54-1404(3) allows for the Board to establish alternatives to formal discipline when a licensee revocation or suspension would constitute an unreasonably harsh sanction. The purpose of **S 1262** is to amend the code by adding the authority to impose a monetary penalty, not to exceed \$1,000, as an alternative form of discipline. Other professional licensing boards in the State, including both health and non-health related professions, have the ability to impose monetary sanctions for proven violations. The Board has determined that a penalty of up to \$1,000 is appropriate to deter nurses from future violations without imposing undue hardship on the nurse. **Ms. Evans** noted that the proposed legislation may result in a positive fiscal impact to the Board's dedicated fund and the projected impact would 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).

MOTION: **Senator Hagedorn** moved that the Committee send **S 1262** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

Senator Martin reminded the Committee that this legislation had come before them last session, and though it has been cleaned up a little, he still has a problem with the penalty and feels it is too harsh. **Senator Guthrie** also voiced opposition against the motion feeling the penalty is too steep where other corrections could be put into place. **Vice Chairman Nuxoll** had the same problem with the penalty and would not be able to support the motion. **Senator Hagedorn** noted that there are a number of other licensing boards that have the authority to impose monetary penalties on their members without the harsher penalty of pulling their license to practice and make a living. The language states that the Board may fine "up to \$1,000", the intent is not to fine everyone and every situation \$1,000 but to serve as a deterrent rather than ending someone's career.

Senator Martin requested to address a question to Ms. Evans by asking if it's not already in statute that a monetary fine of \$100 can be imposed. **Ms. Evans** responded that there is, but that is only a fine imposed if a nurse is found to be practicing without a license, and the \$100 can be imposed each day for the time they are not licensed. **Senator Martin** then asked if there is not currently a provision in code such that if they want to impose a monetary penalty they have the authority to do so. **Ms. Evans** answered that there is currently nothing to give them authority to impose a monetary penalty.

ROLL CALL VOTE: **Chairman Heider** asked the Secretary to take a roll call vote on sending **S 1262** to the floor with a **do pass** recommendation. **Chairman Heider, Senators Lodge, Hagedorn, Schmidt,** and **Lakey** voted aye. **Vice Chairman Nuxoll, Senators Guthrie** and **Martin** voted nay. The motion carried by **voice vote**. Senator Hagedorn will carry **S 1262** to the floor.

ADJOURNED: There being no further business to come before the Committee, **Chairman Heider** adjourned the meeting at 3:43 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary

Linda Harrison
Assistant Secretary