

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 04, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Chairman Tippetts

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.

APPROVAL OF MINUTES: **Senator Schmidt** moved to approve the Minutes of January 21, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

APPROVAL OF MINUTES: **Senator Ward-Engelking** moved to approve the Minutes of January 23, 2014. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Zelda Geyer-Sylvia of Boise, Idaho to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Zelda Geyer-Sylvia thanked the Committee and said it was a privilege to be considered for the Idaho Health Insurance Exchange Board (Board). She said that currently she is the President and Chief Executive Officer and Executive Vice President and Chief Operating Officer for Blue Cross of Idaho in Boise. She said she has full responsibility for leading the day-to-day operations of Blue Cross, a 700,000 member insurance company with revenues of over \$1 billion. She said she had over 30 years of health insurance and provider management experience.

Senator Cameron asked Ms. Geyer-Sylvia if there were other states that have company presidents on the Insurance Exchange Board. **Ms. Geyer-Sylvia** said she had not heard of any other company presidents being on boards in other states and she said that she felt it was a privilege and a unique situation. **Senator Cameron** asked Ms. Geyer-Sylvia what she saw as the largest challenges for the Exchange going forward. **Ms. Geyer-Sylvia** said she thought the largest challenge was to continue to have the collaborative spirit the Board has established. She continued that what has impressed her the most is that the Board works well together to solve problems for the State. **Senator Cameron** commented he had the privilege of being associated with Ms. Geyer-Sylvia, that she was dynamic and he wanted to say publicly that we are lucky to have someone of her caliber. He thanked her for her willingness to serve. **Vice Chairman Patrick** said he agreed.

MOTION: **Senator Martin** moved to send the gubernatorial appointment of Zelda Geyer-Sylvia to the Idaho Health Insurance Exchange Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the confirmation on the floor of the Senate.

RS 22577

Relating to Legal Rate of Interest, was presented by Senator Goedde. **Senator Goedde** explained this legislation amends Idaho Code § 28-22-104, to establish provisions relating to the calculation of prejudgment interest. He said that in 1981, the Legislature set prejudgment interest at 12 percent. This rate is no longer reasonable and the legislation would use the same formula currently in Idaho Code for post judgment interest as the rating mechanism for prejudgment interest. There was no fiscal impact, but the cost of unfavorable court decisions would be reduced during current economic conditions.

MOTION:

Senator Cameron moved to print **RS 22577**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
14-0101-1301**

Relating to Rules of Procedure of the Board of Registration for Professional Geologists, beginning on page 111, was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it is being adopted as originally proposed. He stated this rule clarifies when a geologist can use a seal. The bill provides guidance and clarity and was consistent with other professions, such as architects. He indicated the seal and signature can only be used when the work being stamped was under the registrant's responsible charge. Additionally, in the event a registrant in responsible charge of a project leaves employment, is transferred, promoted, becomes incapacitated, dies, or is otherwise not available to seal, sign and date final documents, the duty of responsible charge for the project will be accomplished by a successor registrant who will become familiar with and review, in detail, and retain the project documents to date. **Mr. Hales** said the rule is consistent with the national approach for engineers and architects. There was no opposition to this rule. There is no fiscal impact.

Vice Chairman Patrick asked if the rule had been negotiated. **Mr. Hales** replied that there was an "open" notice given and everyone involved had the opportunity to provide input and to express any concerns. There was no opposition.

MOTION:

Senator Schmidt moved to adopt **Docket No. 14-0101-1301**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0201-1301**

Rules of the Board of Barber Examiners, beginning on page 205 was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. He said this proposal reduces regulation and eliminates continuing education for instructors. The Board does not believe the education is necessary for public health and safety. The profession does not change significantly and there is limited availability of continuing education classes. There was no opposition to this rule.

Senator Schmidt asked if any of the self-regulated agencies graduate out of this status by saying they do not want to be licensed. **Mr. Hales** replied the issue was that instructor licenses were being held due to the continuing education requirement. Barber instructors can still practice their trade with this license. There is no fiscal impact. **Senator Lakey** said he was not aware of the continuing education requirements. **Mr. Hales** replied that the rule was not detailed and crystal clear and that is why the Board wanted to eliminate this requirement.

MOTION:

Senator Lakey moved to adopt **Docket No. 24-0201-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

Rules of the State Board of Morticians, beginning on page 208 was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. He said the proposed rules added a new cremation process and updated the rules to be consistent with law. He said in the case of alkaline hydrolysis, a pressurized vessel heated to 150 degrees Celsius (330 degrees Fahrenheit) for a minimum recommended period of 30 minutes, meets or exceeds the United States Center for Disease Control (CDC) requirements for the complete destruction of human pathogens. All pertinent federal, state, and local permits have to be obtained when operating an alkaline hydrolysis retort (crematory chamber).

The funeral director or licensed mortician who supervised or was otherwise directly responsible for the burial, cremation, or other disposition, must sign documents. The term "funeral director" was added to make the rule consistent with the law. This rule clarified disciplinary rules as they relate to licensees and morticians. There was no opposition to this rule. There is no fiscal impact.

Senator Cameron asked if Mr. Hales was aware of any state permits that were required for the alkaline hydrolysis retort process described on page 211. **Mr. Hales** replied that he was not aware of any special permit requirements, but he understood that some resulting liquid could be discharged through the drainage system. He said the Board wanted to make sure that anyone who has to do this has the proper permits. **Senator Cameron** wanted to know if Mr. Hales was anticipating additional permits. **Mr. Hales** responded that some crematory chambers are in operation, and he doesn't know what type of permits would be required. The Board wanted to make sure that anyone that wanted to use the alkaline hydrolysis process must explore the requirements and obtain relevant required permits.

Senator Cameron said he has issues when the negotiated rulemaking process is not used, and he wanted to know why the Bureau did not use that process. Sometimes, he commented, legislators hear complaints when an agency has submitted rules and gone through the notice process. Constituents report they were unaware of any changes. **Tana Cory**, Chief of the Bureau of Occupational Licences, testified that legislation provides for another process. She said the Bureau used informal negotiated rulemaking and that they work differently than other agencies. All of their Board meetings are open meetings and notices are posted on their website. She indicated that if they were to receive comments, they would go through formal negotiated rulemaking. **Senator Cameron** said he had seen other agencies have their rules rejected because they did not go through negotiated rulemaking. He encouraged the Bureau to continue to be diligent and said he would like to see them participate in the negotiated rulemaking process.

Vice Chairman Patrick agreed.

Ms. Cory commented that they communicate with the boards they serve. She added that a postcard is mailed out to all licensees when the rules are posted.

MOTION:

Senator Goedde moved to adopt **Docket No. 24-0801-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

Rules of the Real Estate Appraiser Board, beginning on page 214 was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. He said the Board was amending its rules to comply with recent Appraiser Qualification Board (AQB) changes mandated in federal law and regulation regarding state licensed or certified appraisers and was required to be in effect by January 1, 2015. He said the Board was also adopting a rule to address appraisers' duties when testifying in a court proceeding.

Mr. Hales went through all of the changes in the rule. Some of the changes he mentioned were cleaning up the language in the rule, clarifying language, eliminating grandfather clauses and establishing new requirements. He outlined the three classifications of appraisers, namely, registered trainee real estate appraisers, licensed residential real estate appraisers, and certified residential real estate appraisers. He defined the role for each. He explained that a registered trainee had to document, within five years preceding their application, completion of at least 75 classroom hours of courses in subjects related to real estate appraisal. He said the courses were outlined in the rule. The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one to four non-complex residential units having a transaction value less than \$1 million and a complex of one to four residential units having a transaction value less than \$250,000. Applicants must meet education, experience and examination requirements. Subsequent to being licensed, every licensee must meet the continuing education requirement annually. A certified residential real estate appraiser classification applies to the appraisal of residential properties of four or less units without regard to transaction value or complexity. Subsequent to being certified, every licensee must meet the continuing education requirement annually.

Mr. Hales said the entire set of rules were reviewed by a federal subcommittee and advised the Bureau this was the approach they wanted them to take. He talked about the new requirements, which included a supervisor for trainees and not being able to repeat the same course twice in order to receive credit. Other new requirements include an Associates Art degree or higher for a licensed residential real estate appraiser classification or a Bachelor's degree for a certified general real estate appraiser classification. He pointed out that the new requirements will apply to those who are new to the profession beginning January 1, 2015. All of these changes were discussed in open Board meetings, and postcards were sent out to all appraisers. There was no opposition to this rule. There is no fiscal impact.

Vice Chairman Patrick said he assumed the banks required the adoption of the recent Appraiser Qualification Board (AQB) changes mandated in federal law and regulation regarding state licensed or certified appraisers. **Mr. Hales** responded that in order to participate in a federal loan transaction, the appraiser must meet certain federal requirements. He said the worst case scenario would be if Idaho appraisers were not certified, no one in Idaho could get a federal loan. **Senator Martin** asked Mr. Hales if these changes were good for Idaho and for the Board of Appraisers. **Mr. Hales** said that by raising qualifications and certifications, this was a benefit for the State.

Senator Lakey commented he appreciated the optimism of Mr. Hales, but he thought the changes were overregulated. He questioned page 219, Subsection(e) relating to credit toward education requirements, which may be obtained through completion of a degree in real estate from "an accredited degree-granting college or university that has been approved by the Association to Advance Collegiate Schools of Business" (Association). He said that Mr.

Hales had defined "accredited" quite well. Why do we have to have the Association versus accreditation? **Mr. Hales** said the requirement came from the federal government, and was almost a template that was provided by the federal subcommittee. He said he would be happy to follow up with the Board and federal regulators to find out if they have any discretion.

Senator Lakey questioned the time period of "within the preceding five years" and was wondering why there was such a short time period allowed. **Mr. Hales** said it was his understanding that the educational requirement should be recent because if not, the applicant would have to repeat the education. **Senator Martin** wanted to know if the legislative action came from Congress or a department within the government. **Mr. Hales** said these changes were mandated by the federal government subcommittee.

Senator Goedde expressed a concern that if the requirements were stricter, would it decrease the number of appraisers in the State. He further stated he thought real estate deals may fall apart due to the lack of qualified appraisers. **Mr. Hales** and **Senator Goedde** discussed the possible decline in the number of appraisers due to the added requirements and the increase or decrease in home sales.

Vice Chairman Patrick commented that he did not like overregulation, but there were certain rules that we had to follow in order to obtain a federal loan, and he asked Mr. Hales for any follow up comments. **Mr. Hales** said the Board recognizes the changes were necessary in order to maintain the profession.

Senator Guthrie asked if there was anything in the numerous bullet points that were beyond or in addition to what the federal or state levels would require. He said that without having something in the rule regarding federal lending, it almost looked like it was self-governing. Unless an appraiser is certified to appraise a property whenever there is a federal loan involved, then the appraiser could not be involved. **Senator Guthrie** said he thought the market would take care of that issue without the rule. He asked Mr. Hales to explain. **Mr. Hales** said the rules will only affect new applicants and indicated that anyone currently in the profession has already met the requirements. He said he was not aware of anything in the rules that were beyond what was asked by the federal government or the State. The requirements are mandated by the federal government. If for some reason Idaho did not continue to meet the requirements, the federal government could decertify the State and none of the appraisers could perform an appraisal for any federal loan.

Senator Goedde asked Mr. Hales if the House approved this rule. **Mr. Hales** responded, "they approved it."

MOTION:

Senator Schmidt moved to adopt **Docket No. 24-1801-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. **Senator Martin** voted **nay**.

**DOCKET NO.
24-2501-1301**

Rules of the Idaho Driving Business Licensure Board, beginning on page 234, was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. The proposed rule conforms to H 127 passed last year that allows the Board to collect fees to pay the Idaho State Police for background checks. Portions of the rule are clarified for the benefit of the business. The business can rely upon a permit that the apprentice has met qualifications. This takes the burden off business owners to collect the information. He is not aware of any opposition. There is no fiscal impact.

Senator Schmidt asked what "satisfactory driver's license record" meant. **Mr. Hales** said the definition was on page 239, section 250.3 of the pending rule book. He said "an unsatisfactory record includes, but is not limited to, two moving violations in the past 12 months, or suspension or revocation of a driver's license in the last 36 months, or a conviction involving alcohol or controlled substances within the last 36 months."

Senator Martin asked if the regulations applied to school districts with a driver's training program. **Mr. Hales** said the regulations only applied to private driving schools.

MOTION:

Senator Martin moved to adopt **Docket No. 24-2501-1301**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0401-1301**

Fee Rule of the Idaho Board of Cosmetology, beginning on page 2, was presented by Roger Hales, Bureau of Occupational Licenses (Bureau). **Mr. Hales** said there were no changes to the fee rule and it was being adopted as originally proposed. This rule clarifies the rule for schools and inspections associated with new school applications. The rule adds a clinical definition for "hands on", which relates to practice by a student. Board members are volunteers and the Bureau provides support for cosmetology schools. Inspection rules associated with new schools have been relaxed. Expenses have been less than revenue from license fees.

The Board is proposing a change relating to the inspection of schools within 30 days of their application, but not before the building of the school is completed. There is no opposition, but there may have been some concern about the fee reductions. This rulemaking is anticipated to reduce the amount of dedicated fund fees collected annually by the Board of Cosmetology by approximately \$119,905. There is no fiscal impact on general funds.

Senator Schmidt asked if, since the Board was reducing fees, they had made projections for their budget for the next five years. **Tana Cory**, Chief of the Bureau of Occupational Licenses, said the Board monitors and adjusts their fees as needed.

MOTION:

Senator Schmidt moved to adopt **Docket No. 24-0401-1301**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. **Senator Guthrie** suggested the Board look at fees and balances and consider waiving fees for someone who has been in the program for a long time.

**DOCKET NO.
24-0701-1301**

Relating to a Fee Rule of the Idaho State Board of Landscape Architects, beginning on page 13, was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said the Idaho State Board of Landscape Architects was amending Rule 300.01 to clarify the passing score of the approved examination due to a comment received and considered on the proposed rule. The application deadline has been eliminated and the exam language has been updated to recognize a national prepared and conducted exam, but allowed other exams as necessary. Exam regulations have been reduced. The exam administrative fee has been eliminated because the Board no longer handles the exam. This rule provides flexibility in Board meeting dates.

The text of the pending rule has been amended in accordance with Idaho Code § 67-5227. Only those sections that have changes that differ from the proposed text are printed in the bulletin. The original text of the proposed rule was published in the September 4, 2013 Idaho Administrative Bulletin, Volume 13-9, pages 179-181.

Senator Schmidt asked about the removal of any standardization for exams and the minimum passing score for each section of the exam which was determined by the examination provider. He said he thought that, according to the rule, the Board could write their own exam and score it. He said there was no protection. **Mr. Hales** indicated the cost to create an exam is approximately \$150,000. The wording in the rule, he explained, allows the Board the latitude to approve other examinations it deems appropriate. This is not a usual scenario and the Board has no intent of creating their own exam.

This rulemaking is anticipated to reduce the Board's dedicated fund by approximately \$225 per year based on the number of examination applicants in the last calendar year.

MOTION:

Senator Guthrie moved to adopt **Docket No. 24-0701-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** voted nay.

S 1204

Relating to Rights and Privileges of Veterans and the State Employee Personnel System (PERSI) was presented by David Fulkerson, Interim Director, Division of Human Resources. **Mr. Fulkerson** said this proposed legislation addressed the clarification of the current language for the application of veterans' preference points added to the passing score of an examination for veterans applying for classified positions. Preference is given by awarding 5 points to an eligible veteran or spouse or 10 points to an eligible disabled veteran or spouse. Current language addresses the preference points as a "percentage" rather than a whole number. Veterans' preference points have historically been applied to the passing score of an examination as a whole number of 5 or 10 points and not as a "percentage". The term "percentage" before points creates a lower outcome if the total exam score is less than 100 points. The proposed legislation removes the term "percentage".

MOTION:

Senator Martin moved that **S 1204** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Martin** will carry the bill on the floor of the Senate.

S 1205

Relating to Idaho Real Estate Law, was presented by Jeanne Jackson-Heim, Director of the Real Estate Commission. **Ms. Jackson-Heim** said this was housekeeping legislation, which added a definition for "regular employee", modified the definition of "state or jurisdiction" to include the District of Columbia, and clarified references to day and time. She indicated that at the print hearing of this bill, Senator Lakey asked for some clarification on the proposed definition of "regular employee".

She said the license law provides an exemption from licensure for regular employees of the owner of a property, or what is sometimes referred to as the "for sale by owner" exemption. An employee of the owner is exempt, but an independent contractor is not exempt. The proposed definition would clarify the difference between an employee and an independent contractor for the purposes of determining whether the exemption applies, based on whether or not the employer withholds payroll taxes. The language was based on the Utah definition of the same term and is consistent with how the Commission has interpreted and applied the exemption.

She also mentioned it was not necessary to have a written document in order to have a contract for hire under the common law. If someone agreed to work for an employer and the employer agreed to pay the person in exchange for services, that would be an implied contract, which is still considered a contract.

MOTION:

Senator Goedde moved that **S 1205** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Vice Chairman Patrick** adjourned the meeting at 2:53 p.m.

Senator Patrick
Vice Chair

Linda Kambeitz
Secretary