

MINUTES

**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, March 17, 2015

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

**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 Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

**MINUTES APPROVAL:** **Senator Lee** moved to approve the Minutes of March 3, 2015. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Heider** moved to approve the Minutes of March 5, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**RS 23614:** **Unanimous Consent for Referral to Senate State Affairs for Printing.** **Senator Nuxoll** said this resolution urges Congress to provide another option for citizens to access medical care and reduce costs by allowing a Health Care Sharing Ministry (HCSM) with a Health Savings Account (HSA). Citizens would have the ability to choose between participation in a HCSM or the purchase of a high-deductible health insurance plan. **Senator Nuxoll** asked the Committee to refer this RS to the Senate State Affairs Committee for printing.

**UNANIMOUS CONSENT REQUEST:** **Senator Cameron** asked for unanimous consent to send **RS 23614** to the Senate State Affairs Committee for printing and return to the Committee at the discretion of the President Pro-Tem. There were no objections.

**H 137AA** **Public Employee Retirement System of Idaho (PERSI) - Deputy Sheriffs and Police Officers.** **Michael Kane**, Attorney, representing the Idaho Sheriff's Association, said this bill was an amendment to provide that certain deputy sheriffs and city police officers who act in a supervisory capacity shall not lose their police officer status and to make technical corrections.

**Mr. Kane** said the purpose of this bill is to ensure that peace officers who are promoted to perform supervisory duties do not lose police officer status for purposes of retirement calculations performed by PERSI. The Rule of 80 is designed to apply to first responders so they are eligible to retire somewhat earlier than many other governmental employees, due to the physical demands of the job. **Mr. Kane** explained there is a point where performing the basic tasks can be physically dangerous. This bill does not seek to change that concept. Rather, it is designed to clear up a vague term in the law, defining who is and who is not in the Rule of 80. For many years the term has included the generality "active law enforcement service." This unclear term has led to occasional anomalies, resulting in officers who have been promoted to supervisory duties not being considered "active" in the same sense as a road officer, and thereby losing the Rule of 80 police officer status. This can act as a disincentive for an officer to accept a promotion.

**Mr. Kane** explained this bill clarifies that one who holds a current peace officer certificate and is promoted or hired to fulfill a supervisory role does not lose Rule of

80 status. The primary reason for this is that supervisors are often called upon to make arrests, engage in searches, or engage in other similar physical tasks, just as the officers they supervise.

There is no impact on the General Fund. At the Idaho State Police (ISP) all of the command staff is in the Rule of 80. There is no impact on the PERSI Fund as peace officers pay more into the fund than other employees in order to fund retirement under the Rule of 80. The PERSI Director is not opposed to this bill.

**Senator Cameron** asked **Mr. Kane** to explain what was changed in the bill. **Mr. Kane** said that on page 2, lines 8 and 25, the term "peace officer" was changed to "police officer." **Mr. Kane** explained that "police officer status" is a term that is mentioned in the title of this section of the code. **Senator Cameron** referred to line 21 and wanted to know why the term "peace officer" was not being amended in this section of the bill. **Mr. Kane** explained that in the earlier part of the amendment, "peace officer certificates" is used; whereas, in another part of the amendment, "police officer status" is a special term that is addressed in the code section. **Senator Cameron** and **Mr. Kane** talked about the possibility of an officer being promoted and considered to have a loss of status. **Senator Cameron** wanted to know if this bill would possibly protect an officer who had a loss of status. **Mr. Kane** gave the example of an officer who is wearing a badge and carrying a gun, who is still expected to go out on a search warrant. As long as the officer is not in some of the special categories, they will stay in the Rule of 80.

**Senator Schmidt** referred to page 2, lines 6 and 23, and said he was concerned whether disqualification through disability was simultaneous. **Mr. Kane** said if an officer is temporarily or permanently disabled and is on light duty or certified as not fit for duty, they would not fall under the Rule of 80 but would instead be under the Rule of 90. He said most agencies do not have the luxury of putting people on lifetime light duty. **Senator Schmidt** asked if disability and promotion can be considered independent of one another. **Mr. Kane** replied, "yes." **Senator Martin** wanted to know if the bill included or excluded anyone in the workforce. **Mr. Kane** stated there were a couple of examples at the county level and one is currently pending with the PERSI Board.

**MOTION:** **Senator Schmidt** moved to send **H 137aa** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** will carry the bill on the floor.

**H 99:** **Chartered Banks.** **Gavin Gee**, Director, Department of Finance (Department), said this bill repealed certain sections of Idaho Code and amended other sections. **Director Gee** went over all of the proposed changes. He said **H 99** contains amendments to the Idaho Bank Act, which was originally passed 110 years ago in 1905, and much of that law still exists today and forms the basis for current law. The banking industry is one of the heaviest regulated industries in the United States (U.S.) today because of long-standing public policy centered around protecting the over \$11.5 trillion of U.S. depositors' money. In Idaho, that protection is for the approximately \$21 billion of bank deposits (\$4.5 billion in community banks).

**Director Gee** said accordingly, the central theme of bank regulation is focused on having safe and sound banks in order to instill confidence in the banking industry, knowing deposits are absolutely safe and available to withdraw today, tomorrow, next month, next year, 20 years from now or whenever. Since 2008 the banking industry has been under significant stress with the Great Recession and the financial crisis which has resulted in nearly 500 bank failures nationally and 2 failures in Idaho (2009 and 2014). **Director Gee** said that moreover, during this period, bank regulators were working hard to rescue more than half of the community banks that were troubled. While one state chartered bank was lost, the great news is that all the other troubled banks survived or merged and today there are no Idaho-based banks under formal regulatory enforcement actions. He stated that as state regulators, the greatest success is helping troubled banks to not fail and have them restored to financial health.

**Director Gee** said there is a unique regulatory structure in this country called the dual banking system whereby banks can choose to operate with a state or federal charter with a primary state or federal regulator. For example, in Idaho since 1979, 20 new banks chose a state charter and 1 bank chose a federal charter. A healthy bank can change its charter at any time. Since 1997 16 federally chartered banks converted to a state charter and 2 state chartered banks converted to a federal charter. **Director Gee** stated this is very important to understand because every day state bank regulators must compete for charters with much larger, much better funded and more powerful federal chartering agencies.

**Director Gee** pointed out **H 99** is essential for two reasons. First, according to current community bank outreach and initiatives to support community banks, some regulatory burden relief is proposed in state law based on feedback received from Idaho community bank Chief Executive Officers (CEO) and the Board of the Idaho Community Bankers Association. While most regulation of the banks is federal and tied to Federal Deposit Insurance Corporation (FDIC) requirements and federal consumer protection laws, there are provisions in this bill to provide some regulatory relief at the state level which will result in some cost savings to community banks.

Second, accreditation is critically important to the Department's credibility and relationships with state and federal bank regulators, policy makers, the banking industry, staff and others. Every five years, the Department must undergo a thorough on-site audit by the accreditation authority. The audit will take place this year. In addition, off-site follow-up and self-evaluation is required every year. Among the accreditation program standards are requirements that each state banking department update its state law to conform with federal requirements and update its enforcement authority to match other high national standards. **Director Gee** said it is important to note all of the added regulatory authority granted to the Department in this bill is due to accreditation standards. This authority already exists at the federal level and in most states.

Finally and importantly, **Director Gee** emphasized that the Department has worked very closely for several months with the banking industry on this bill, with multiple meetings with the Idaho Bankers Association, Dawn Justice, Trent Wright, Mike Brassey and others. The industry supports the bill and the Department is not aware of any opposition.

**TESTIMONY:**

**Mary Hughes**, Bureau Chief, Financial Institutions Bureau (Bureau), said Section 1 lists 11 of the current sections of the bill proposed to be repealed because they will be obsolete or conflict with amended provisions; in total 16 sections will be repealed. In the definitions sections of the bill, the reference to "banking facility" as a defined term will be eliminated as it is obsolete. Instead the bill will refer to loan production offices, mobile or temporary facilities. The terms "home state" and "host state" are common terms in the banking industry and refer to banks chartered in one state but doing business in another state. "Mobile or temporary facilities" are defined as places of business for a bank for limited activities for limited periods of time. An obsolete prohibition will be deleted for an Idaho bank being acquired by another bank unless it was in business for five years.

The requirement that banks hold shareholder meetings only in certain months will be deleted and instead will allow the meetings as determined in a bank's bylaws.

The requirement that banks file stock transfer reports with the Department will be eliminated. Currently, banks are required to do so within 20 days of any transfer of stock. Currently, banks are required to obtain approval if 7 percent of outstanding stock is transferred. The bill will change the requirement so that approval is needed if, after the transfer, the person acquiring stock will own or control 10 percent or more of the bank's stock. This will be consistent with change of control requirements of federal bank regulators.

The status of the law is clarified regarding interstate branching. An Idaho bank may branch with the approval of the Department. If branching into another state, the bank must meet the requirements of that state's law and federal law. Similar requirements apply to banks chartered in other states that want to branch into Idaho.

A new section has been added defining loan production offices. These are offices that solicit loans, but cannot accept deposits or disburse loan proceeds like a bank branch. The bill will require banks to provide notice to the Department before establishing a loan production office in Idaho. **Ms. Hughes** referred to Sections 9, 10 and 11 on page 9. She said these sections together relate to loan production offices, mobile and temporary facilities. The sections clarify that these are not branches. Any bank with a loan production office, mobile or temporary facility is responsible for keeping books and records for all transactions at those locations. Because a primary use for mobile and temporary facilities would be an emergency, the requirement of regulations to govern their use, and the restriction that they be operated only in communities where there is no bank, are eliminated.

Banks will be allowed to determine the market value of foreclosed property by an evaluation, instead of an appraisal, when the bank's investment in the property is less than \$250,000.

Language has been deleted which refers to the Department's ability to charge banks from other states an annual fee, and this authority has been eliminated by federal law. The Department will be allowed to charge banks for the review of certain applications, limited to the Department's costs of review. The Department will be authorized to enter into fee sharing agreements with other states that have banks operating in Idaho.

The Department will be allowed enforcement authority to meet accreditation standards. Many of these responsibilities are already in the bill, but the amendments restructure and enhance them for accreditation purposes. The Department will be authorized to order the suspension or removal of a bank director, officer, or employee upon certain findings. If removed, the person is prohibited from again

becoming employed by a bank in Idaho unless permitted by the Department.

The Department must comply with the Administrative Procedures Act. Changes will authorize the Department to issue cease and desist orders for unsafe or unsound practices, violations of law, rule, order, condition or agreement, and assess civil money penalties. The Department will be authorized to bring an action in court based on unsafe or unsound practices, violations of law, rule or order; seek injunction, other remedies, and penalties. The Department will also be authorized to determine whether the use of the word "bank" in a corporate name is misleading or deceptive so as to cause harm to the public. The unauthorized use of the word is already defined as a felony in the bill. The changes in this section will allow the Director to grant a waiver to allow its use in certain circumstances.

The remainder of the bill contains necessary revisions so that Idaho's interstate branching laws will be consistent with federal law. Federal law now provides that banks may branch into other states if approved to do so by their primary federal regulator, if notice is provided to the state regulator, and if the bank has registered with the Secretary of State. Idaho banks that want to branch into other states will also need the approval of the Department. The changes in the bill will open up the branching process and remove barriers.

The Department has worked with the Idaho Bankers Association (Association) on this bill and the Association supports the bill. The Department is not aware of any opposition to the proposal.

**Chairman Tippetts** referred to page 15 and wanted to know if Ms. Hughes could give an example of when a director has the authority to issue a waiver. **Ms. Hughes** said waivers were quite common. For example, a company or group could use the word "bank" in their name, such as a food bank or bank of pizza, which could qualify for a waiver. **Ms. Hughes** said the Bureau always checks with the Secretary of the State for advice prior to issuing a waiver.

**Senator Schmidt** and **Ms. Hughes** discussed the change on page 7 relating to the time period of the annual meeting as determined by the bank's bylaws. They also talked about the nature of the original prescription of months (January through April), which was initially put into place so as not to delay the annual meeting.

**MOTION:** **Senator Cameron** moved to send **H 99** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

**H 117:** **Relating to Occupational License Renewal of Licenses or Registration.** **Maurice Ellsworth**, Counsel, Bureau of Occupational Licenses (Bureau), said this bill amended Idaho Code adding a new section to provide that certain licenses or registrations be subject to annual renewal and reinstatement requirements.

**Mr. Ellsworth** said **H 117** is brought on behalf of the Bureau. He said the Bureau contracts with 29 self-governing boards and commissions to provide administrative, fiscal, investigative and legal services. He said this bill repeals and replaces the existing provision which governs the procedure for renewal, reinstatement, and re-licensure or re-registration by individuals or entities licensed or registered by boards or commissions served by the Bureau. Outdated language is removed and the existing statute is revised to make it easier to understand and comply with by organizing it into several operative subsections arranged in a more logical sequence. Currently, if a license or registration expired and was not renewed, reinstatement requires renewal fees to be paid for each year the license or registration was expired. This bill eliminates the requirement for payment of back renewal fees and raises the reinstatement fee from \$25 to \$35. The current

requirement to pay multiple prior years' fees has been a barrier for some who wish to be reinstated.

**Mr. Ellsworth** said the bill clarifies a requirement for renewal or reinstatement that a licensee or registrant be in compliance with the legal renewal requirements of the relevant board and with any financial obligation to or payment arrangement with the board. The application process and the requirements to obtain a license or registration are also clarified. Currently the law states the Bureau is to examine the person's qualifications. The board determines qualifications for licensure and also provides the relevant board flexibility to assure the individual's current competence to practice. This bill clarifies and simplifies the process of license and registration renewal, reinstatement and re-licensure or re-registration.

The following associations support the bill: Idaho Counseling Association, Idaho Psychology Association and the Idaho Rural Water Association. The Bureau is unaware of any opposition to this bill.

**Chairman Tippetts** remarked there was no grace period for renewals and wanted to know if any groups had a grace period that is being eliminated. **Mr. Ellsworth** said an applicant has five years to renew their license or registration. The bill provides the applicant can renew up to six weeks prior to the expiration date. All applicants are notified ahead of time.

**Senator Schmidt** referred to the last line of the bill, "persons who fulfill the conditions and requirements of this subsection shall be issued a new license or registration," and wanted to know if there are other professions who have a stricter requirement. **Mr. Ellsworth** said the existing language was being preserved from the current law. The applicant will have to meet the current requirements for licensure.

**MOTION:**

**Senator Martin** moved to send **H 117** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor.

**H 116:**

**Relating to the Bureau of Occupational Licenses Assessment of Costs and Fees.** **Maurie Ellsworth**, Counsel, Bureau of Occupational Licenses (Bureau), said this bill revised the list of agencies to which the Bureau provides services and provides that such agencies may assess costs, fees and attorney fees incurred in investigations and prosecutions and declaring an emergency.

**Mr. Ellsworth** stated this bill does not create or add any new boards or commissions. The current act does not list all boards and commissions the Legislature has authorized the Bureau to serve. This bill adds the names of those currently served to the bill.

**Mr. Ellsworth** said this bill also clarifies the authority of boards and commissions served by the Bureau to assess and collect attorney fees incurred in the investigation and prosecution of violations of their laws and rules. This bill is needed because a 2014 decision of the Idaho Supreme Court held that existing language in the Bureau statute which allows "boards to recover costs and fees incurred in the investigation and prosecution of violations" is inadequate because it does not specifically say "attorney fees" like the language in statutes of the Real Estate Commission, Board of Medicine and some other boards.

Boards and commissions are charged with public protection. They self-regulate their respective industries and rely on licensure fees for their operations. They receive no General Fund money. To remain self-supporting, a board or commission's only alternative will be to raise licensure or registration fees for all

licensees and registrants if they are unable to recoup costs and fees from those found to have violated their laws and rules. This bill will help keep licensure and registration fees down.

The following associations support the bill: Idaho Building Contractors Association, Idaho Chapter American Institute of Architects, Idaho Midwifery Council, Idaho Occupational Therapy Association, Idaho Psychology Association, Idaho Rural Water Association, Idaho Chapter of the National Association of Social Workers, Idaho Professional Beauty Association and the State Relations Representative for the American Cosmetologists Association. The Bureau is not aware of any opposition to this bill.

**Chairman Tippetts** and **Mr. Ellsworth** discussed the recovery of attorney fees as clarified by the Idaho Supreme Court.

**Senator Martin** referred to page 2, line 6, relating to licensing versus registering an applicant. **Mr. Ellsworth** said there are some boards who register applicants rather than license them. An applicant does not register to become licensed.

**Senator Heider** referred page 1, line 24, and wanted to know whether naturopathic medical examiners were registered or licensed. **Mr. Ellsworth** said the Bureau no longer contracts with that group and he was not sure if they were still operative. **Tana Cory**, Bureau Chief, said there had not been a contract with naturopathic medical examiners since 2007.

**TESTIMONY:** **Tyler Mallard**, Government Affairs Liaison with Risch Pisca and representing Idaho contractors, testified in support of this bill. He said the contractors rely on the Bureau, which has provided outstanding service.

**Senator Schmidt**, **Mr. Ellsworth** and **Ms. Cory** discussed updating the statute in the future to remove the Board of Naturopathic Contractors from legislation.

**MOTION:** **Senator Heider** moved to send **H 116** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Lee will carry the bill on the floor.

**ADJOURNED:** There being no further business, **Chairman Tippetts** adjourned the meeting at 2:30 p.m.

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Senator Tippetts  
Chair

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Linda Kambeitz  
Secretary