

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, March 01, 2016

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Vice Chairman Bayer, Senators Patrick, Souza, Lee, Den Hartog, Harris, Ward-Engelking and Burgoyne

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 Rice** called the meeting of the Senate Agricultural Affairs Committee (Committee) to order at 8:02 a.m.

MINUTES APPROVAL: **Senator Den Hartog** moved to approve the Minutes of February 9, 2016. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Bayer moved to approve the Minutes of February 11, 2016. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

H 381 **Relating to Veterinarians. Jodie Ellis**, Executive Director, Board of Veterinary Medicine, said the Idaho Board of Veterinary Medicine (IBVM) seeks to change the name of the IBVM sub-group, currently known as the Certified Euthanasia Task Force (CETF), to the Committee on Humane Euthanasia. Both the SBVM and the CETF members feel the new name will better reflect the group's permanent status and its mission to promote the practice of humane euthanasia of animals in Idaho.

The CETF was first established in 1994 to create and oversee a program that provides humane, regulated euthanasia of shelter animals throughout Idaho. Its purpose is to improve human safety as well as provide a compassionate death to animals when necessary. The task force was originally envisioned as temporary, but the need for the program has grown over the years. There are currently 17 certified agencies and 60 certified technicians in the State.

The CETF consists of a dedicated group of volunteers, five veterinarians and one Certified Euthanasia Technician. This group oversees the training, testing and certification of both certified euthanasia agencies in Idaho and of the technicians who perform euthanasia and manage the programs. Members of the CETF conduct comprehensive training for technicians and inspections of facilities every year. The CETF works closely with other agencies such as the Board of Pharmacy to create a safe environment for workers and animals alike.

The label CETF implies a temporary status. This group has proven its permanent merit, and BOVM believes a change in name is warranted. The name change will necessitate minor amendments to two statutes, followed by corresponding amendments to BOVM rules.

Senator Den Hartog asked why a separate committee was created outside of BOVM to handle the euthanasia? **Ms. Ellis** replied the reason the CETF became separated from BOVM was that the work of the CETF is time-consuming. Even though they only meet twice a year, the meetings are long and the training sessions are all-day events.

The BOVM looked for experience in shelter medicine, and at the time CETF was created no one on the BOVM possessed that skill. Euthanasia is not a pleasant task and the individuals who volunteer for CETF strive to ensure animals who must be euthanized are treated humanely.

MOTION:

Senator Souza moved to send **H381** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 382

Relating to Veterinarians. Jodie Ellis, Executive Director, BOVM, stated the BOVM is requesting a change to Idaho Code § 54-2118. Currently the statute authorizes the BOVM, under defined circumstances, to extend a non-disciplinary option (NDO) to veterinarians and certified technicians who violate continuing education and record-keeping requirements. Because of BOVMs very positive experiences with the NDO, the BOVM wishes to extend the possible use of NDOs to other violations of the Veterinary Practice Act (VPA). The NDO is designed to be used only for minor infractions that need to be addressed but are not severe enough to rise to the level of formal discipline. Formal discipline becomes a part of licensees' and certificate holders' permanent records and is tracked throughout their careers. Formal discipline is imposed when there is a severe infraction that, in the BOVM opinion, directly and immediately threatens the well-being of the people and animals of Idaho.

Expanding the use of the NDO in the BOVM disciplinary toolbox has the potential to prevent larger, more serious problems. This will ultimately provide better protection for Idaho citizens and their animals by allowing veterinarians and technicians who have made minor missteps to improve themselves before real harm occurs. An alternative to formal discipline is not suitable for all situations. It cannot be offered in cases where a practitioner's deficiency threatens the safety of people and animals. It is not suitable for those who have been formally disciplined by the BOVM in the last five years. Existing code prohibits its application when the licensee is on probation. It will not be available when felony charges are pending or a criminal investigation is ongoing; if convicted the licensee would likely lose his or her license. The NDO is not designed for the chronic or serious offender but rather for licensee or certificate holders, who on making a one-time or infrequent slip, need a nudge back onto the correct course.

The proposed legislation will greatly facilitate the BOVM's ability to successfully address borderline situations that constitute a significant part of the complaints that the BOVM receives, using a less harsh but very effective approach.

Senator Burgoyne said on page 1, the bill references alternatives to formal disciplinary action. What are the alternatives? **Ms. Ellis** answered that the alternatives they use are a civil fine that ranges from \$500 to \$1,000. The licensee might also have to take a corrective action based on the problem.

Senator Burgoyne asked what are the minor missteps? **Ms. Ellis** replied that a younger veterinarian may make a minor error in surgery or medicine that does not directly threaten the patient but is brought to the BOVM's attention. What the veterinarian needs is correction, not formal discipline.

For example: The young veterinarian used the wrong type of suture. The vet might need a little mentoring rather than a formal process that would imply that they were engaging in malpractice. **Senator Burgoyne** asked for clarification on language in the statute that reads, "An alternative to formal discipline may be offered by the board's liaison officer to a licensee or certificate holder when the officer has determined, in his sound discretion, that animal and public safety will not be compromised and the violation can most appropriately be resolved without formal discipline."

Is there any BOVM oversight, prior to the formal discipline, contemporaneous or an after the fact? **Ms. Ellis** answered that last year BOVM put forth legislation that allows their liaison officer to consult with the BOVM president; the liaison officer makes the final decision. At the October BOVM meeting they hold a yearly review of cases for the benefit of all the BOVM members who eventually rotate into a BOVM position. There is a discussion of every discipline case that has come before BOVM.

Senator Burgoyne questioned the language on page 2, lines 23 and 24, in respect to the BOVM investigative expenses and costs. This language also appears in the existing statute on page 1, lines 18 and 19. **Senator Burgoyne** stated that he has long held the view that if any licensing board is going to seek to recoup its investigative expenses, including attorney's fees, in the event that an action proves not to warrant any discipline, the licensee should be able to recover their attorney's fees. When would BOVM choose the process of an alternative to formal discipline? How much money would a veterinarian have to pay in this formal discipline course? **Ms. Ellis** answered that BOVM's experience is using the non-disciplinary option for the continuing education and record-keeping violations. There have been no costs for attorney and paralegal fees. The legal cost language has been placed in the legislation because BOVM is a small board and if major legal fees were incurred in a formal disciplinary action BOVM would need to recoup its expenses. She has not seen this formal discipline process used. **Senator Burgoyne** stated his concerns with the bill are: 1) there is no BOVM level approval to make sure that the liaison officer's determination is a minor matter; 2) the statute as proposed does not seem to define what these minor matters would be; and 3) the structure on the issue of costs and attorney's fees might elevate a matter to a formal discipline situation because of those fees. Individuals who are licensees are often going to be subject to criticism from customers. The bill should offer a process that if the veterinarian is exonerated, they should be reimbursed for their fees and costs; otherwise this is a one-way process.

Ms. Ellis explained that a serious complaint would go before the BOVM and be reviewed. It would not be necessary for the liaison officer to be questioned on a complaint action because they are the most senior member of BOVM. The liaison officer has been through five years of training and is capable of deciding whether a matter would rise to the level of serious or remain in the non-disciplinary mode. The cases are reviewed once a year; if a situation arose where there were problems deciding the course of discipline, there would be a consultation between the BOVM president and liaison officer. BOVM's system works well and their purpose is to improve practices for the citizens of Idaho and to give their licensees a chance to redeem themselves before a situation would become a serious problem.

Senator Harris stated that his ranch activities revolve around a veterinarian. Mistakes do take place; animals are unpredictable they are animals, he would not like to have a veterinarian burdened with a large fine for a simple mistake. **Ms. Ellis** said that Senator Harris' comment is in the spirit of what the BOVM intends to convey. It is the BOVM intent to offer assistance to licensees in the correction of minor mistakes.

Chairman Rice said as he understands the existing statute, the BOVM can discipline with a fine of any amount up to \$5,000. The licensee would also have to pay the investigatory expenses, paralegal and attorney's fees or proceed with any other BOVM administrative action, such as additional training. The licensee has to be given notice and a hearing. If the violation is related to record-keeping or continuing education, the licensee or certificate holder can elect to pay a civil penalty of an amount between \$500 and \$1,000, as long as they have not been disciplined within the preceding five years, are not currently on probation, have not previously elected to pay the penalty and they remedy the situation.

Ms. Ellis replied in the affirmative, that is the current statute. **Chairman Rice** stated that the bill changes would eliminate the licensee's ability to choose to pay the penalty of \$500 to \$1,000 in record-keeping or continuing education situations. In place of this option, the statute change reads "among other terms and conditions, an alternative to formal discipline may require the licensee or certificate holder to comply with the board's instructions on remedying the violation, pay a monetary civil penalty to the board of up to \$1,000 and pay all BOVM investigative expenses and costs, including reasonable paralegal and attorney's fees." **Ms. Ellis** answered this is the correct new language.

Chairman Rice asked what level of proof BOVM requires in the disciplinary proceeding that has the penalty of up to a \$5,000 fine. **Ms. Ellis** responded that in the process of formal discipline, if the BOVM felt that it had enough information, they would then engage their own investigator who would speak to all parties and submit a report. At that point the BOVM would engage their prosecutor for a formal discipline procedure. The prosecutor would prepare a stipulation and consent agreement and present it to the licensee. The licensee then has the option of accepting the agreement or asking the BOVM to amend the action or they may choose a formal hearing. If they choose a formal hearing in court, the burden of proof would be on them. **Chairman Rice** clarified that if the licensee asks for a hearing, what is the level of burden of proof that the BOVM uses to conclude that the licensee has committed the violation. **Ms. Ellis** stated that she is not qualified to answer this question. **Chairman Rice** said that he needs to know the difference between a fine and civil penalty, what burden of proof is needed and who must prove what. If the BOVM is making the licensee prove that they did not neglect their duties, rather than the BOVM having to prove that the licensee did commit the violation, there may be some constitutional questions. **Ms. Ellis** reiterate that even with the civil penalty this is voluntary. For example, if the BOVM found that a veterinarian had not fulfilled his or her continuing educational requirements, they could suggest a civil penalty, and the licensee can refute the allegation. In this case it would move on to formal discipline.

Senator Patrick said that this procedure is not any different than some of the other licensing boards; they are not a court of law, they are an agency.

Senator Lee stated she had concerns about the amount of the fine and questioned why a licensee would pay BOVM a \$500 to \$1,000 fine to forgo a disciplinary hearing. **Ms. Ellis** answered that the BOVM has the option of not pursuing disciplinary measures on licensees and certificate holders. If a licensee or certificate holder deliberately or carelessly disregards the requirements of the BOVM, it will take action.

Vice Chairman Bayer asked how many licensees in recent years have had formal discipline and non-disciplinary actions according to the existing code for record-keeping and continuing education? **Ms. Ellis** responded that BOVM has 12 open cases of formal discipline that have come from formal complaints, some from other veterinarians and some from owners. In the last two years BOVM has had five cases of non-disciplinary action for continuing education violations and two cases for record-keeping violations.

Vice Chairman Bayer asked with the broadening of the language, how many of BOVM complaints related to record-keeping and continuing education violations is BOVM handling? **Ms. Ellis** answered not more than two or three cases. **Vice Chairman Bayer** asked if the BOVM does not see the need for applying this formal discipline segment of the bill, except for rare circumstances, he did not see the value in having the provision in the proposed new language for an alternative to NDO.

Ms. Ellis answered that the language is to protect a small agency with the smallest budget of all the medical boards. In the case of a situation arising that needed formal discipline, the language and procedure would be in the statute.

A lengthy discussion ensued concerning the broadening of NDO and imposing a formal disciplinary action in the process of investigating licensee and certificate holder violations.

Vicki Smith, Executive Director of the Idaho Veterinary Medical Association (IVMA), stated the IVMA is in support of **H 382**. IVMA views this legislation as freedom for the practicing licensee or certificate holder by allowing the process of a NDO for minor violations. Individuals who are brought before the BOVM on a formal disciplinary action are usually not members of the IVMA. **Ms. Smith** indicated that their members see fewer of these violations through the IVMA education and mentoring. IVMA views the change in this legislation as giving more flexibility to the BOVM.

Senator Burgoyne stated that he agreed that the BOVM would benefit from legislation along these lines. However, he would like to have the opportunity to work on some amendments to make it a better bill.

MOTION: **Senator Burgoyne** moved that **H 382** be held subject to the call of the Chair. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: Alfalfa and Clover Seed Commission (ACSC). **Rick Waitley**, Administrator, stated the ACSC annual report in the Committee members' packets details the activities of this past year. The ACSC received just under 6 million pounds of alfalfa seed at the current assessment of .004 cents per pound, which is collected at the first point of sale. The 2015 crop was down 1 million pounds from the previous year due to the reduction of alfalfa seed growers switching to production of other great commodity priced crops. The farmer who grows alfalfa seed is making a commitment for more than one growing season. The crop for next year will suffer lower production because of the increased vole population that is eating the stands of alfalfa.

ACSC is working on three research projects that were funded in 2015: 1) The Treasure Valley Pacific Northwest Pest Alert; 2) Idaho One Plan and 3) ACSC has entered into an agreement with Oregon State University to collaborate on troublesome weeds in alfalfa seed production.

ADJOURNED: There being no further business, **Chairman Rice** adjourned the meeting at 9:27 a.m.

Senator Rice
Chair

Carol Deis
Secretary