

MINUTES
Approved by the Committee
Occupational Licensing and Certification Laws Committee
Friday, September 27, 2019
9:00 A.M.
Room EW41
Boise, Idaho

Cochair Lakey called the meeting to order at 9:00 a.m.; a silent roll call was requested. Members present: Cochair Senator Todd Lakey and Senators Fred Martin, Lori Den Hartog, and Grant Burgoyne; Cochair Representative Gayann DeMordaunt and Representatives Robert Anderst, Randy Armstrong, and Elaine Smith (by phone); Legislative Services Office (LSO) staff Matt Drake, Maggie Smith, Christine Otto, and Jennifer Kish.

Other attendees: MiChell Bird - Idaho Real Estate Commission; Arica Todd - Risch Pisca; Stephanie Lotridge - Board of Dentistry; Kelley Packer, Rob McQuade - Idaho Bureau of Licensing (IBOL); Liz Hatter - Veritas Advisors; Margaret Major - Board of Medicine; Jim Szatkowski - Idaho Board of Licensure for Professional Engineers and Professional Land Surveyors (IPELS); Colby Cameron - Division of Financial Management (DFM).

NOTE: presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website <https://legislature.idaho.gov/sessioninfo/2019/interim>; and copies of those items are on file at the Legislative Services Office in the State Capitol.

Cochair Lakey, Cochair DeMordaunt, Sen. Burgoyne, Sen. Den Hartog, and IBOL Chief Kelley Packer shared their observations from attending the National Conference of State Legislatures (NCSL) Occupational Licensing Policy Learning Consortium meeting held September 11-13, 2019 in Park City, Utah. Overall, feedback was positive and members felt it was a productive opportunity to network with other states and stakeholders and to share perspective and procedures.

Cochair Lakey requested a motion to approve the minutes of the August 27 meeting; motion made by Sen. Burgoyne, seconded by Cochair DeMordaunt, and approved unanimously by voice vote.

At 9:12 a.m., Cochair Lakey called upon Matt Drake, Legislative Drafting Attorney for LSO, to begin his presentation on proposed draft legislation. Mr. Drake began with [DRMDD020](#), which was comprised of three new SECTIONS: sunrise review committee (67-9408), universal licensing (67-9409), and prequalification requests (67-9410).

SECTION 1. (67-9408) would create a pilot committee to conduct sunrise review of new occupations; LSO would assist the pilot committee with staffing and with a summary and verification of the application content.

- Cochair Lakey summarized that the proposed legislation provided who would do the review, who would provide assistance to the committee, and that the committee would provide a recommendation to the Legislature rather than make the final decision.
- Sen. Den Hartog observed that the legislation provided a process for a brand new occupation, but inquired whether it was intended to also provide for a new type of license within an existing occupation.
- Sen. Martin suggested to add "to" before "become" (page 1, line 34); and asked whether the \$500.00 application fee (page 2, line 11) would be a barrier to applicants. Mr. Drake responded that the fee - based on discussion and current law in Utah - was intended to make the applicant take time to do necessary research and consider the process seriously. Mr. Drake noted that the proposed fee would not be sufficient to cover expenses for a sunrise review committee.

Sen. Martin suggested that the application fee should go to the occupational licensing board rather than the general fund (page 2, line 14).

- Sen. Burgoyne suggested: (page 1, line 34) remove "that is not licensed by the state"; (page 2, line 3) add "staff or" before "committee,"; (page 2, line 6) delete "required" and insert "necessary"; (page 2, line 9) questioned the definition of "significant"; and suggested adding an additional requirement for the submission of factual data that supports the requirements for items (i) and (ii) and adding a new PART [sic] requesting "any other relevant information". He proposed adding a new "(e)" that would direct LSO staff to evaluate the application/data and prepare an analysis report for the committee that would be made public and be submitted to the applicant - noting that the application should be made public likewise.
- Cochair DeMordaunt agreed that the proposed fee likely would not cover expenses of the board; and explained that the June 1 deadline for applications was chosen due to LSO staffing the committee, ideally fitting into LSO's annual workload.
- Rep. Anderst asked for clarification whether (1) a new license would go through this statute and (2) whether the new committee would hear every application. Mr. Drake responded in the affirmative to both questions.
- Rep. Armstrong, considering data that only one or two new licenses are proposed each year, inquired why the appropriate germane committee would not just hear the application or why the Occupational Licensing and Certification Laws committee could not remain in existence to do the review. Cochair Lahey responded that both options would be appropriate but that this committee needed to make the recommendation. He noted that the preview/screening process by a review committee was desired to provide a more in-depth and neutral evaluation of the application before being assigned to the appropriate germane committee. Cochair DeMordaunt surmised that the current committee could be assigned the review duties, however, the permanent existence of the current committee as the review committee needed to be placed in statute. She echoed the purpose of the review committee to be an analytical review of the application with ample time for review before being brought to a germane committee and the Legislature. Cochair Lahey summarized that the intent was for support staff to analyze the data without recommendation; whereas the review committee would make the recommendation based on the data (approval/denial), and that the germane committee would have final approval/denial. Sen. Den Hartog recognized there being a value of having both parties and chambers represented on a review committee.
- Rep. Smith weighed in with being in favor of the application fee going to an occupational licensing board; agreed to delete "required" and insert "necessary" (page 2, line 6); felt a need of support staff's role to be outlined; felt that the same committee should do the reviews for consistency, before submission to a germane committee; and found no need for a pilot committee - just establish the review committee.
- Rep. Anderst suggested the proposed process be placed in statute as the requirements for an application that goes to a germane committee, thereby cutting out the need for an additional committee.
- Sen. Martin inquired (1) how many applications were forthcoming from IBOL and (2) what was the current process for an application. Ms. Packer, Chief at IBOL, reported that (1) she was aware of seven requests/applications within the previous nine months, which included new industry licensing and additional type of licensing within an occupation. She noted that the current process required an individual to pitch the idea to a legislator in the hope of it being sponsored and approved (IBOL has no role in the proposal/application process). She encouraged the committee to be very specific in statute about the requirements of the application and supported that the proposed application fee go to the general fund to be allocated properly through JFAC to agencies for staff/administrative needs.

- Rep. Anderst asked how the process operated for the applicant. Mr. Drake provided that, per the proposed legislation, the application would be available from LSO and an applicant was responsible for completing and submitting the application.
- Sen. Den Hartog proposed that the review committee membership include both a House of Representatives and a Senate member from each of the appropriate germane committees. Cochair Lakey proposed that the review committee cochairs be appointed by the Speaker of the House and the President Pro Tempore, rather than by the committee itself (page 1, lines 26-28).
- Cochair Lakey wondered whether the appropriation for staffing (page 1, line 30) by statute was appropriate/protocol. LSO staff commented that it would need to look into it further. He also suggested the edit of "significant" (page 2, line 6) [page 2, line 9] to "substantial"; and (page 2, line 17) the term "shall" to "may".
- Rep. Smith expressed concern about the amount of time that could lapse from the proposed June 1 deadline until the germane committee's approval/denial of an application for the following session.
- Sen. Den Hartog noted that the review committee should also be able to suggest alternative avenues, such as certification or registration with other entities, rather than state licensing.
- Sen. Burgoyne questioned when legislation for the proposed license would be presented within the process (during application, post-approval by review committee) and who would bring the legislation (the applicant, a review committee member). Mr. Drake would review how other states handled those questions and report his findings to the committee.
- Rep. Anderst inquired whether any germane committee cochairs had submitted feedback on the idea of a review committee for licensing. Cochair Lakey reported that he had heard nothing, but that he and Cochair DeMordaunt would reach out and solicit feedback.

SUMMARY: Cochair Lakey, in polling the members on the:

- idea of a pilot committee, found most members to be in favor of a sunset on the initial review committee.
- membership of the pilot committee, found most members to be in favor of the cochairs being appointed by the Speaker of the House and the President Pro Tempore;
- deletion of "that is not licensed by the state" (page 1, line 34), found members to be in favor.
- idea of LSO staff performing an evaluation - not a recommendation - of the data per the application, found most members to be in favor. (A suggestion was made to place that detail into the proposed legislation as Legislative Intent language.)
- idea of a provision for additional data by the applicant or as "requested by staff and the committee," found most members to be in favor (page 2, lines 3-10).
- idea of an application fee, found most members to NOT be in favor of that factor. (A suggestion was made to track the administrative time and costs for the duration of the pilot committee.)
- idea of having new legislation or new regulation for new licensure, found members to be split because the decision depended on the data and timing of the application. (A suggestion was made to leave that decision to the cochairs of the review committee, for the duration of the pilot term.)
- substitution of "may" for "shall" (page 2, line 17), found members to be in favor.

SECTION 2. (67-9409) would create a universal licensure process to allow individuals who possess a current, valid, and unrestricted license from another state to acquire a license in Idaho without additional qualifications, as long as the individual had practiced within two of the last five years.

- Sen. Den Hartog inquired whether a provisional license was warranted if an individual's scope of practice did not fully meet requirements. Chief Packer submitted that promulgation of rules within the professions could address that "provisional" need and would still be in-line with the proposed legislation of a universal license policy, which was similar to how compacts operated.

SECTION 3. (67-9410) would permit a person with a criminal background to submit a prequalification request to a licensing authority to ascertain whether the individual's criminal offense(s) would disqualify them from obtaining licensure within the desired occupation; the licensing authority was not bound by its decision if additional information about the applicant was discovered.

- Sen. Burgoyne wondered how a "withheld judgement" and how a felony reduced to a misdemeanor would affect a prequalification. He also noted that a criminal background check from the national database, operated by the FBI, would need to be authorized by statute. He submitted that, per his personal legislative experience, the Legislature had shown its reluctance to pass legislation authorizing additional background checks.
- Cochair Lakey inquired how a board determines "relevancy" of a crime in relation to the profession - some are obvious but others may not be. Chief Packer noted that most licensing boards currently do not have the authority to request background checks; and if the boards were able, she inquired who would pay the fee for the process. She was concerned about the creation of a list of disqualifying crimes; specifically, if a crime was erroneously omitted or added. Also, she was concerned about the who and how it being kept accurate in a timely manner. Sen. Martin asked whether a list of disqualifying crimes (page 3, lines 22-25) was currently posted anywhere. Chief Packer reported that it was not. She wondered if first addressing the issue of "moral turpitude" - one of the topics the committee is focused on - would allay the necessity of a list of disqualifying crimes. Chief Packer also reported that most boards had language in their rules to the effect of "all felonies" with an excepting clause of "however, the board may..." to provide for such instances.
- Sen. Martin asked about the benefits of permitting this process. Chief Packer proffered that it would give those serving time the potential to seek personal improvement and an opportunity once released from incarceration, and hopefully not revert to additional crime(s).
- Cochair DeMordaunt suggested having an "if then" statement added that would allow a fingerprint/background check to be submitted in addition to the required information (page 3, line 15). She added that she supported the idea of adding a time limit for which a decision was viable.
- Cochair Lakey suggested adding language such as "this is for informational purposes and should not be the only source" (i.e. does not create a liability) within section (4) of proposed 67-9410.

At 11:16 a.m., Mr. Drake presented proposed draft legislation [DRMDD021](#), which dealt with the removal and substitution of the term "moral turpitude" from Title 54. Mr. Drake reported that the replacement of such references was not a simple task, as the phrasing was not always the same. He noted that there also would be a need to comb through other titles for such references.

- Cochair Lakey proffered that the language should state "your criminal conviction is evaluated for criminal relevancy" and desired the term "relevancy" to be defined at the chapter level (detailing nature/severity of the crime, amount of time since conviction, age at time of crime, etc.). He also envisioned a list of disqualifying crimes per each profession.
- Sen. Burgoyne supported using the term "crime" as it would cover both felonies and misdemeanors and the boards would determine whether the severity of the offense was relevant. He also suggested referencing one's "fitness" to perform the duties of the profession, rather than one's ability.

Cochair Lakey requested that Mr. Drake attempt to fold in the suggested edits and proposed tweaks and have new drafts available by the next meeting.

Having selected the next meeting date, the meeting was adjourned at 11:39 a.m.