

MINUTES
Approved by the Committee
Occupational Licensing and Certification Laws Committee
Tuesday, November 12, 2019
3:30 P.M.
Room EW41
Boise, Idaho

Co-chair Lakey called the meeting to order at 3:30 p.m.; a silent roll call was requested. Members present: Co-chair Todd Lakey and Senators Fred Martin, Lori Den Hartog, and Grant Burgoyne; Co-chair Representative Gayann DeMordaunt and Representative Robert Anderst; Legislative Services Offices (LSO) staff Matt Drake, Maggie Smith, Christine Otto, Jennifer Kish. Absent/excused: Representatives Elaine Smith and Randy Armstrong.

Other attendees: Thomas Judge, Keith Simila - Board of Licensure for Professional Engineers and Professional Land Surveyors (IPELS); Joe Canning - B&A Engineers; Jason Kreizenbeck - Lobby Idaho, LLC; Laura Lantz - Idaho Society of Certified Public Accountants (ISCPA); Kelley Packer, Rob McQuade - Idaho Bureau of Occupational Licensing (IBOL); Shasta K. Hadley - Idaho Bureau of Medicine (IBOM); Molly Steckel - Idaho Medical Association; Jeremy Chou - GivensPursley, LLP.

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.

Co-chair Lakey solicited a motion to approve the minutes from the October 29 meeting. Rep. Anderst moved to approve the minutes; Sen. Den Hartog seconded the motion; motion carried by a unanimous voice vote.

Co-chair Lakey called upon Matt Drake, Legislative Drafting Attorney for LSO, to present proposed legislation [DRMDD036](#), a new draft incorporating suggested edits from the previous committee meeting, related to sunrise review (mandatory use of committee), universal licensure, prequalification requests, and evaluation of criminal convictions. Mr. Drake began with SECTION 1. 67-9408. OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE. Overview of the changes: removed "pilot" from "pilot committee," (subsection (1)); clarified the committee's task (subsection (3)); added subparagraphs (iv) and (v) under (5)(c)); added the requirement for a public hearing and permitted that recommendations be provided to the applicant by the committee (paragraph (5)(e)); and reworded language on the term of the committee (subsection (8)). Mr. Drake noted that [DRMDD039](#) was an alternate version of 67-9408, where the pilot committee would *not* be required but rather would be an optional route for an application (subsection (3)).

- Sen. Den Hartog asked whether the committee's two-year term should be made more clear (subsection (8)). Mr. Drake explained that the committee should consider the effective date of the section. He theorized that, even with an immediate effective date (i.e., upon signature), the required June 1, 2020 deadline may not allow an applicant enough time for submission or organization of the review committee. Therefore, he proposed having the section be effective January 1, 2021, which would give everyone the next interim to be up-to-speed. He noted that the January 1, 2021 effective date may require the interim committee to request to be continued for an additional year (i.e., summer 2020), but would allow time for the establishment of the review committee, which would continue for two years after the January 1, 2021 date.
- Sen. Martin asked for clarification that the committee needed to approve either the DRMDD036 or DRMDD039 version of 67-9408. Mr. Drake agreed.
- Sen. Burgoyne had these suggestions: DRMDD036 (p. 2, lines 30-35) should also consider the effect on wages or compensation; insert language such as "prior to offering the legislation for introduction in the next legislative session" (p. 3, line 6); preferred three years over two years

and suggested adding an effective date to the legislation - either the January 1 date or upon passage (subsection (8)).

- Co-chair DeMordaunt preferred the mandatory language of DRMDD036, and inquired whether the language on page 3, lines 1-7, was clear enough. Sen. Den Hartog suggested additional language be added to in those lines to clarify that the committee's recommendation(s) was to be submitted to the Pro Tempore and Speaker with the intent of being forwarded to the appropriate germane committee.
- Co-chair Lakey supported the January 1, 2021 effective date, as well as a three year duration over two.
- Co-chair DeMordaunt suggested that the proposed legislation state that the committee may meet prior to the January 1, 2021 date to make preparations.
- Rep. Anderst inquired whether there was any additional response from standing committee chairs about the proposed legislation. Co-chair Lakey stated that he would like to have this committee's opinion of the review committee being required or not required before he showed the legislation to other committee chairs. Sen. Martin reported that he continued to be in touch with other committee chairs and would convey the new developments to them.
- Sen. Den Hartog inquired whether the use of "certificate" (DRMDD036 - p. 1, line 38 [etc.]) was inaccurate being that the term was often reserved for private entities. Co-chair Lakey noted that there were other levels of verification below licensing and to be wary of those terms.
- Co-chair Lakey summarized that the committee was in favor of a January 1, 2021 effective date for the legislation, a three-year duration for the committee to operate, and other edits as suggested. He proposed that there should be a qualifier on the term "unreasonable" (DRMDD036 - p. 2, line 32), whether positive or negative.

Mr. Drake then spoke on SECTION 2. 67-9409. UNIVERSAL LICENSURE. The edits here: to better define the term "practised" or proof of one's experience (subparagraph (1)(b)); and to better define the term "provisional" or "limited" license (subsection (5)).

- Sen. Burgoyne inquired (subparagraph (1)(b)) about restrictions that required individuals to have education or regional training within the state - desired a more clear statement that such restrictions were not necessary or to be enforced. He also suggested adding the stylistic "(2)" and "(5)" where appropriate in line 29; proffered creating a subparagraph (c) at the beginning of line 31; and wondered about restructuring the wording of the clause "including....under this section." (line 27-30) for better clarity. Co-chair Lakey echoed the need for clarity on lines 27-30; possibly ending the first sentence and then beginning the second with "Competency means/includes...."
- Co-chair DeMordaunt supported the need for more clarity in subparagraph (1)(b) regarding continuing education not being required by Idaho; possibly even removing the language. Co-chair Lakey provided that any requirement of continuing education should be for maintaining a license rather than obtaining licensure.
- Sen. Burgoyne commented that "unrestricted license" (subparagraph (1)(a)) may incur some gray area since the possibility of a letter of censure or a letter of reprimand may exist. Additionally, in subparagraph (1)(b), regarding "two of the last five years", he suggested editing the sentence to end "...determined by the licensing ~~board or commission~~ authority." and delete the remainder of the sentence. Co-chair Lakey supported that edit. Rep. Anderst supported having examples that the board could use to determine relevancy, without it being exhaustive.
- Sen. Den Hartog agreed with the edit to end the sentence as suggested by Sen. Burgoyne and Co-chair Lakey (subparagraph (1)(b)) and wanted the language to be clear that the continuing education reference was in relation to the original state not Idaho.

Mr. Drake then discussed SECTION 3. 67-9410. PREQUALIFICATION REQUESTS. He noted the edits here were: to increase the time allowed for a hearing/response to occur 60 days rather than 30

days (subsection (2)); and to allow a licensing authority to look at other facts and circumstances (subsection (3)).

- Sen. Burgoyne raised the question whether there existed a crime that would automatically disqualify an individual from a profession. He remarked that no such crime could be identified and hence shouldn't all crimes be considered for relevancy and that there could not be an exhaustive list published. He suggested to replace "would likely" (p. 5, line 5) with either "might," "may," or "should." Co-chair Lakey and Sen. Martin felt that there did exist some crimes that should be enumerated but did not proffer examples at the time. Co-chair DeMordaunt expressed concern that, without such guidance, how was the proposed legislation helpful to the licensing authorities; and, there should be a process to assist the licensing authorities and applicants.
- Rep. Anderst inquired how realistic or helpful a list of disqualifying crimes would be. Ms. Kelley Packer, Bureau Chief of IBOL, noted that most licensing authorities already deal with those situations. A process existed where individuals disclosed their history, which the licensing authorities investigated. Her concerns with a list were that it might discourage individuals from even attempting to apply.
- Co-chair DeMordaunt inquired whether the change to 60 days for a response was realistic. Chief Packer reported that it seemed reasonable, possibly to word it "sixty (60) days or the next meeting," which would be helpful to those that meet only once a year, biannually, or quarterly.
- Sen. Martin asked whether Chief Packer had reviewed the proposed language and was she in favor of it. Chief Packer reported that she had been able to review it and was in support of it as presented.
- Sen. Den Hartog remarked that a list of crimes that precluded one from licensure was contradictory to the intent of the committee trying to encourage individuals to seek approval. She requested that legislative language to encourage individuals to apply be added rather than having subsection (4) included. Co-chair DeMordaunt encourage having a statement of intent that a prequalification must be done.
- Co-chair Lakey supported adding a statement on the intent and summarized that the committee was in favor of removing subsection (4). Sen. Den Hartog agreed with the removal of subsection (4), in consideration that the licensing authorities were already making judgements without such a list.
- Rep. Anderst raised the concern that licensing authorities needed to be comfortable with the process and any liability they may incur. Mr. Drake shared information about a program created in Ohio that addressed the issue of liability for licensing authorities known as a [CQE](#) (certificate of qualification for employment.) He noted that employers were always going to be concerned about negligence even if safety-net programs were implemented.

The last item for this draft was SECTION 4. 67-9411. EVALUATION OF CRIMINAL CONVICTIONS. Mr. Drake noted that the language changes were mainly about leaving discretion with the licensing authorities to determine whether the crime was relevant to the profession.

- Co-chair Lakey preferred to have markers of relevancy within the proposed language (e.g., nature of the conviction, time elapsed since crime, conduct since crime, etc.)
- Sen. Burgoyne suggested to strike (line 17) "~~unless the crime for which the applicant was convicted is~~" and insert "unless such conviction is currently" and then insert after "relevant to the" "applicant's fitness to perform the"; to insert applicant's fitness to perform the after "relevant to the" (line 22). He also noted that the concept should be worked into line 32.
- Rep. Anderst queried the use of "automatically deny" (line 14) rather than a normal deny. Mr. Drake suggested to remove "automatically" and it would be just as effective.

- Co-chair DeMordaunt suggested the use of "solely" for "automatically"; and wondered whether the phrase "public safety" should be included in the language to reinforce the intent of the legislation.

Mr. Drake's final discussion was [DRMDD042](#), which related to removal of the language "moral turpitude" from the Idaho Code. Mr. Drake noted that earlier attempts to remove phrasing dealt only with Title 54, whereas this version included all titles. He noted that the phrasing "moral character" (appears 65x in Idaho Code) and would need to be addressed likewise.

- Sen. Burgoyne raised concern about amending language in Section 3-301, Idaho Code, cautioning to review that section with the courts before doing so.
- Sen. Martin addressed the complexity of comprehending each section/topic where the changes were proposed and being comfortable that accepting that change would not cause unknown affects. Sen. Burgoyne requested that a list be provided to explain what profession was being discussed for each section of DRMDD042. Mr. Drake made a note to provide such list.

At 5:00 p.m., Co-chair Lakey noted that there were individuals signed-in for public testimony. He requested that Mr. Joe Canning be the first to approach the podium and share his comments. Mr. Canning identified himself as the president of *B&A Engineers*, a consulting company, and was also president of the Idaho Society of Professional Engineers, though he was not here on ISPE's directive. He noted that his experience and training allowed him to share that it was important to know that Idaho dirt was different than in other states, and that the training to know such things varied from state to state. While he supported efforts to provide a larger employee pool, he feared lowering any training standards of the profession. He felt that one's competency was paramount.

- Co-chair DeMordaunt asked whether there were other manners of training to ensure that such knowledge was transferred or gained. Mr. Canning noted that there were state specific exams available to test for such knowledge, though Idaho did not have an exam. He felt that experience learned during a mentoring opportunity was very beneficial. Co-chair DeMordaunt inquired whether one's scope of practice was relevant and whether it was an employer's responsibility to ensure that its employees received the appropriate training. Mr. Canning noted that he was not part of the licensing board and so could not speak to how one's scope of practice would be evaluated. He felt it was important for an employer to assure that local mentoring was occurring and yet feared that such was not happening with sole-proprietor or mega-sized firms.
- Rep. Anderst inquired whether the addition of language requiring the demonstration "of competency relevant to local experience" was needed [67-9409 (1)(b)]. Mr. Canning agreed that such was the case; possibly even requiring a residency before licensing. Sen. Burgoyne suggested language be added in subsection (5) [67-9409] to require supervision for those receiving a limited license. Mr. Canning noted that provisional licensing might not work for his profession; one could not place a "provisional" stamp on plans, or provide "provisional" plans, and that he was concerned with the public's perspective.

Ms. Molly Steckel was called next and identified herself as a member of the Idaho Medical Association. She noted that the association was most concerned with how a limited license would play-out for providers within the medical field. She explained that there were multiple types of licensure within the various fields of medicine. She noted that the licensing boards were concerned about members' time and additional costs that might occur with possible required supervision or mentor. There was also the inability of the public to understand who was or who was not on a limited license.

- Sen. Martin inquired how the current process would be altered if the draft language was adopted. Ms. Steckel remarked that she could not really speak to that aspect and would rather have other more knowledgeable members answer that. Sen. Martin commented that he would like to have that information - as well as from other professions - before he could make a vote.

- Rep. Anderst inquired how many different state licenses existed within the health care field. Ms. Steckel reported that there existed a license for nearly every type of provider or practitioner within the many layers of health care and she shared a multitude of examples.
- Sen. Den Hartog asked about the IMA's efforts to encourage individuals to apply or to expedite licenses in order to fill the shortage of health care providers. Ms. Steckel explained that Idaho was a member of the medical compact, believing that it was mostly nursing and physicians that were members of that compact. She reported that the Idaho Board of Medicine (IBOM) had recently adopted a new process intended to expedite the licensing time of physician assistants, which was reportedly taking 6-9 months currently.
- Sen. Burgoyne encouraged Ms. Steckel to have the IMA follow-up with the committee on questions about the proposed language. He wondered if IBOM could explain the differences between Idaho's training requirements and the qualifications of other states; what were the differences for regionally accredited doctors - who go out of state to practice - that come to take an exam, whether there were functional differences between the states that would cause IBOM to hesitate in licensing an individual; and, finally, compacts - what professions were we really talking about when compacts are mentioned. Ms. Steckel noted that IBOM represented the physicians and did not actually deal with the licensure. She reported that there were national exams for physicians, rather than state exams, and the exams must be repeated every ten years - in addition to annual trainings. Sen. Burgoyne inquired how Idaho treated individuals who trained at off-shore medical schools in regards to licensure. Ms. Steckel reported that states did have different guidelines/requirements for such situations. Sen. Burgoyne then questioned whether IBOM was concerned about the amount of time it would take to supervise an individual with a limited license. Ms. Steckel observed that there was already proactive supervision occurring for the PAs but that a limited license may require additional expectations of that supervision.

Lastly, the committee called upon Jeremy Chou, who identified he was with GivensPursley and represented the American Council of Engineering Companies (ACEC). Mr. Chou expressed concern about phrasing from an earlier example of proposed language on universal licensure that allowed an individual to be licensed by the state of Idaho even if the individual's scope of practice was limited, which therefore warranted a limited license. He noted that there were other methods that allowed for licensing reciprocity in addition to compacts.

- Sen. Den Hartog inquired whether Idaho engineers had an existing reciprocity agreement with other states and, if so, how many existed. Mr. Chou reported that there were such agreements. Mr. Keith Simila, Executive Director of the Board of Licensure for Professional Engineers and Professional Land Surveyors (IPELS), commented that there existed a comity licensure, which was similar to reciprocity licensure, specifically that if your state board would license an engineer without additional exams the same as Idaho would, then Idaho will issue a license. He noted that this was recognized by all 50 states and 5 territories on the condition that the engineer also met the national standards. Sen. Den Hartog asked for more clarity about the difference of sitting for an exam to receive a license and applying for licensure by comity. Mr. Simila explained that licensure by exam was awarded when an individual passed the exam - with no caveats; a comity license was issued when an individual did not pass the national exam, did not satisfactorily complete a 4-year training, had a complaint on their record, or was attempting to transfer a license to a different state where standards were not comparable. He remarked that Jeremy's mention of the Pennsylvania law [HB 1172 (2019); P.L. 292, 2019-41] allowed for when a state already had a provision or reciprocity in play.
- Sen. Burgoyne remarked that it appeared that IPEL already had a process for universal licensure and inquired how the proposed language would affect IPEL's current process in a negative manner or would endanger the public. Mr. Simila shared that the concern was on the 10% that was already being reviewed by the board, and the hope was that the committee would consider the Pennsylvania law's provision as a model.

- Sen. Martin asked, in light of the current discussion, whether the currently proposed 67-9409 allowed a licensing authority to establish a procedure (lines 22-23). Mr. Drake explained that subsection (1) did give discretion to the licensing authority. He added that in regard to one's scope of practice, the term was changed to "may" in this version, again to give the licensing authority discretion. Sen. Martin encouraged Mr. Chou and Mr. Simila to review the most recent draft of the proposed language and provide feedback to the members if there were still any concerns.

The committee expressed the desire to have the presented drafts edited and available for review before the next meeting, with the intent of approving the language and voting on recommendations. Sen. Burgoyne shared that he had been approached about scheduling public testimony at the next meeting, and requested that LSO staff provide the referenced Pennsylvania statute to the committee members for review. Sen. Martin, Co-chair Lakey, and Co-chair DeMordaunt remarked that each would reach out to current standing committee chairs and discuss the proposed language in order to provide feedback at the next meeting.

The meeting was adjourned at 6:02 p.m.