

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, January 19, 2021

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Riggs, Senators Heider, Lee, Harris, Agenbroad, Zito, Stennett, and Wintrow

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 Martin** called the meeting of the Senate Health & Welfare Committee (Committee) to order at 3:00 p.m.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Jess Byrne, Director, Idaho Department of Environmental Quality (DEQ)**, of Meridian, Idaho, to serve a term commencing September 1, 2020, at the pleasure of the Governor. **Mr. Byrne** introduced himself to the Committee and gave a brief overview of his background and job history. **Mr. Byrne** commented he feels blessed to raise a family and make a living in Idaho, and he wants to protect and preserve the features that make Idaho great. **Mr. Byrne** stated that Idaho has a history of taking a balanced approach toward environmental protection. He believes in DEQ's mission but recognizes the responsibility to minimize the burden of regulations on citizens and businesses, and he is committed to emphasizing customer service and compliance.

DISCUSSION: **Senator Lee** asked Mr. Byrne to specify his top concerns going into the director role. **Mr. Byrne** replied the biggest internal issue is agency staffing, particularly engineers, because it is difficult to compete with the private sector. **Mr. Byrne** added there is a statewide issue with aging drinking water and wastewater infrastructure.

Senator Harris stated his district has a lot of mining activity. He inquired about DEQ's role and involvement in the mining industry. **Mr. Byrne** responded that DEQ has a regulatory role along with the Idaho Department of Lands. He commented DEQ has a good working relationship with the mines, specially in Senator Harris' district. **Mr. Byrne** described the role of the regional DEQ office as a resource for the mines to ensure compliance and to coordinate with other federal and state agencies.

Senator Stennett commended Mr. Byrne for his work. She advised there are communities in her district with antiquated water systems that need replacement. DEQ and the Environmental Protection Agency have provided resources and expertise but the smaller communities don't often have sufficient revenue to replace the systems, she said. **Senator Stennett** mentioned DEQ staff's report on oversight of the Triumph Mine included information that last summer's earthquake may have compromised the mine. She asked about the latest efforts to protect the East Fork River. **Mr. Byrne** commented DEQ can provide flexibility in the timeline to resolve issues because the state implements the programs rather than the federal government. He gave a brief history of the Triumph Mine and the tunnel's collapses. **Mr. Byrne** reported DEQ is developing a long-term plan for the tunnel and has requested budget line items to accomplish that goal.

He remarked the State will have costs in perpetuity to manage water flow from the mine.

Chairman Martin asked Mr. Byrne what he anticipates from the new presidential administration with regard to state primacy. **Mr. Byrne** responded the state has primacy for everything it is allowed by the federal government. He described DEQ's implementation of a federal program and advised DEQ is often commended for its operation of programs. **Mr. Byrne** remarked he is not concerned with any state programs losing primacy with the new administration.

Chairman Martin thanked Mr. Byrne and stated the Committee will vote on the appointment at its next meeting.

Chairman Martin recognized Rick Soderquist, who is doing an internship this session and Priscilla Heaton, who is assisting with Committee secretary duties.

RS 28073

Relating to Domestic Water. Jerri Henry, Division Administrator, DEQ, introduced herself to the Committee. **Ms. Henry** explained the proposed legislation would repeal Idaho Code § 37-2102 to remove outdated regulations. **Ms. Henry** reported the history of the statute and advised it is not used in rule or guidance because it largely predates the 1974 Safe Drinking Water Act and Idaho Administrative Procedures Act (IDAPA) 58.01.08. She added some of the language in Section 2102 conflicts with public notification requirements in the Idaho Rules for Public Water Systems. **Ms. Henry** stated the proposed legislation would not change Idaho Code §§ 2101 or 37-2103.

MOTION:

Senator Harris moved to send **RS 28073** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 28139

Relating to the Respiratory Care Practices Act. Anne Lawler, Executive Director, Idaho State Board of Medicine (BOM), introduced herself to the Committee and described the duties of the BOM. **Ms. Lawler** gave a brief overview of the proposed legislation, which reflects current practice and aligns the Respiratory Therapy Practice Act (Act) with the practice acts of other allied health boards. **Ms. Lawler** reported the legislation was drafted collaboratively by BOM staff and the Respiratory Therapy Board, together with the Idaho Society for Respiratory Care. **RS 28139** repeals and replaces the entire Act due to the extensive reworking of the Act, and there is no fiscal impact to the general fund or the BOM dedicated fund, she said.

MOTION:

Senator Riggs moved to send **RS 28139** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

RS 28135

Relating to Controlled Substances. Tim Frost, Regulatory Affairs Manager, Idaho Division of Occupational and Professional Licenses (IDOPL), introduced himself to the Committee. **Mr. Frost** described the function of the Board of Pharmacy (BOP) and explained when the U.S. Drug Enforcement Administration (DEA) makes changes to its scheduled controlled substances, the BOP typically presents an annual conformity bill. **Mr. Frost** reviewed the proposed changes to Idaho Code relating to scheduled controlled substances. He advised there is no fiscal impact to the general fund or the BOP dedicated fund.

DISCUSSION:

Senator Lee stated she is interested in the definition and changes on page 5. She asked for information about the effect of the change on communities and how the definition would differ from Cannabidiol. **Mr. Frost** explained the change applies only to Epidiolex by specifying the chemical structure of Epidiolex and stating the drug must be taken orally. This will allow access to a drug currently being used by 130 Idaho patients for seizures and does not create any additional products, he said. **Senator Lee** thanked Mr. Frost and commented Epidiolex was previously approved by the Committee and she wanted public clarification of the change.

Senator Harris asked whether the changes on page 20 of the RS were similar to the changes Senator Lee inquired about. **Mr. Frost** responded that the DEA originally scheduled Epidiolex as a Schedule V controlled substance but determined it has no potential for abuse and should be descheduled. Page 20 of the RS removes the chemical structure of Epidiolex from Schedule V, and the definition of marijuana must also be amended to complete the change, he said.

Senator Lee asked if the changes on pages 5 and 20 were proposed to bring Idaho into conformity with the DEA or if they represent a policy change from the BOP. **Mr. Frost** replied it is only a conformity bill.

MOTION: **Senator Harris** moved to send **RS 28135** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 28101 **Relating to Medicaid.** **Matt Wimmer**, Administrator, Division of Medicaid, Idaho Department of Health and Welfare (DHW), introduced himself to the Committee. **Mr. Wimmer** explained the proposed legislation would allow for a limited exception to legislative approval for changes to provider rates, allowing DHW to lower rates in order to balance its budget.

DISCUSSION: **Senator Lee** expressed her discomfort with the legislation and her concern that DHW will rely on the statute to balance the budget rather than develop an appropriate budget. She asked about progress on stabilizing provider rates. **Mr. Wimmer** replied DHW is working on a new proposal but due to economic conditions and COVID-19, DHW did not request any provider rate increases for this year.

Senator Lee stated her belief that DHW would request \$90 million to address the current known costs of Medicaid and asked if DHW submitted that request this year. **Mr. Wimmer** requested clarification of the question. **Senator Lee** mentioned the costs of Medicaid expansion were higher than expected and asked if DHW requested the entire amount of known costs for this year. **Mr. Wimmer** responded DHW originally budgeted for \$40 million, less than the previously-anticipated cost, but saw a lot of pent-up demand for Medicaid. He added the current request is approximately \$90 million.

Senator Harris expressed his fear that providers will opt out if rates are reduced. **Mr. Wimmer** agreed with the concern. He mentioned the language in the proposed legislation is permissive, and DHW intended to be careful to avoid problems for Idahoans or compliance with federal programs.

Vice Chairman Riggs commented the language is vague and he asked if there are any limitations on the decreases and how the potential decreases would be controlled if budget projections were incorrect. **Mr. Wimmer** responded that the RS does not include any limitations on the decreases. However, there would be problems with providers if the decreases were too aggressive, and it would be difficult to increase provider rates in the future.

Senator Agenbroad stated his approval of controlling health care costs but disagreed with the proposed legislation due to the negative fiscal impact on the providers. He asked about any other Idaho Code that targets a specific expense to balance the budget. **Mr. Wimmer** replied Title 67 allows the Governor to reduce state agency expenditures if there are budget shortfalls. He added this legislation is specific to provider rates rather than executive branch authority. **Senator Agenbroad** reported he is not aware of anything similar in Idaho Code other than the Governor's authority, and he has concerns about how broadly the legislation is written and the potential for circumventing the Joint Finance and Appropriations Committee (JFAC) budgeting process. **Senator Agenbroad** advised he will not support printing **RS 28101**.

Senator Wintrow expressed agreement with the previous comments from Committee members.

Chairman Martin requested Mr. Wimmer work with the providers to find a solution. He mentioned receiving many calls about the proposed legislation.

MOTION:

Senator Lee moved that **RS 28101** be returned to the sponsor. **Senator Agenbroad** seconded the motion.

DISCUSSION:

Senator Lee commented the providers need to be involved and stated her belief the proposed legislation would circumvent JFAC. She opined a systematic review of provider rates and services could still be done this session.

Vice Chairman Riggs remarked the silver lining in the events of 2020 is an opportunity to review current processes and find better ways to address challenges. He suggested finding a solution that will work for everyone in the long term.

Senator Heider stated his agreement with the entire Committee discussion on the RS.

VOICE VOTE:

The motion to return **RS 28101** to the sponsor carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Martin** adjourned the meeting at 3:55 p.m.

Senator Martin
Chair

Jeanne Jackson-Heim
Secretary