MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, March 04, 2019
TIME:	3:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Martin, Vice Chairman Souza, Senators Heider, Lee, Harris, Burtenshaw, Bayer, Jordan, and Nelson
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 and Welfare Committee (Committee) to order at 3:00 p.m.
H 151	**Pam Eaton**, CEO of the Idaho Retailers Association and the Idaho Lodging and Restaurant Association (Associations), presented **H 151** on behalf of Senator Guthrie. This bill addresses licensing and fees for food establishments by creating a more equitable system for temporary and intermittent licenses, gradually increasing the fees on all licenses. Further, it clarifies that the Public Health Districts (PHDs) cannot implement or charge any additional fees for this program outside of statute.
DISCUSSION:	**Vice Chairman Souza** requested clarification regarding mobile food establishments. **Ms. Eaton** explained that the majority of food trucks operate consistently and require licensing for mobile food establishments, with the exception of some that only support festivals and operate under a temporary license. **Vice Chairman Souza** inquired how often fees come due and how often these establishments are inspected. **Ms. Eaton** reported that fees are paid and inspections are conducted annually.

Senator Nelson had a question about fees for temporary establishments. **Ms. Eaton** explained that those operators are not members of the Associations, so she does not have that information.

Ms. Eaton reported that fee increases will go into effect on January 1, 2020, and implementation will be two-tiered: on January 1, 2020, with another increase in effect on January 1, 2022. The fees have not been increased in over a decade. The proposed increases were negotiated with the PHDs and industry: restaurants, convenience stores, and grocery stores, both independent and chains, in conversations that took place over the course of 18 months. The Associations will review fees and practices every three years to ensure cost stability. All fees must be in statute with legislative oversight. The seven PHDs voted unanimously to support this bill in its entirety. **Ms. Eaton** asked the Committee to send **H 151** to the floor with a do pass recommendation.

Senator Guthrie provided history on the issue. In 2017, the Office of Performance Evaluations (OPE) did a study relating to the PHDs. The PHDs have several programs that are regulatory and fee-based, offer licensing and permit inspection services, and entities seeking those services can be required to pay fees. The recommendation from OPE study was to move fee-based programs in the PHDs to a funding model that is more self- supporting. Because fees have not changed for 10 years, they only cover one third of the current costs to the PHDs. Further, Idaho has grown and so have the number of establishments that require inspection. Since 2011, the number of food establishments has increased by 18 percent. The PHDs are already upside-down by two thirds on their cost model, and are responding to 18 percent growth under that same problematic model. **Senator Guthrie** complimented those who have worked hard on this issue, acknowledging that it is not easy to bring fee bills. **H 151** has no fiscal impact to the General Fund.

TESTIMONY: **Maggie Mann**, Director, Southeastern Idaho Public Health, offered support on behalf of her district for this bill, which reflects a great deal of collaboration.

Melinda Merrill, representing the Idaho Grocer's Association and Idaho Public Health District's Environmental Health Directors, spoke in support of the bill. It recognizes legislative authority over the food licensing program and takes a reasonable phased-in approach to licensing fees not addressed in 10 years. The proposed changes allow General Fund dollars to be utilized to continue public health responsibilities such as communicable disease and outbreak investigations, preparedness, and lifesaving immunization programs.

DISCUSSION: **Senator Nelson** revisited his question regarding temporary food establishments. **Ms. Mann** provided an answer: a temporary food establishment is defined as one that operates for a period of not more than 14 consecutive days in conjunction with a single event or celebration.

Senator Lee stated she is less concerned with fee increases, rather whether or not the Legislature should occupy this field. There are many fees that the Legislature has given the PHDs discretion and authority to charge for services in relationship to their cost to provide those services. **Ms. Mann** stated that this program is unique in that there is legislative oversight; it is regulatory in nature, so it is different than fees the PHDs set for clinical services. The intent was not to have the Legislature set all PHD fees, but rather to take a look at this particular program because of its special relationship in code.

TESTIMONY: **Steve Pew**, Environmental Health Director, Southeastern Idaho Public Health, testified in favor of **H 151**. This has been a cooperative effort between the PHDs and industry. As previously stated, the number of food establishments has increased 18 percent from 2011 to 2018, but the fee that we are allowed to charge in code has remained the same for the last 10 years. Other costs to the PHDs continue to rise through changes in employee compensation and increasing insurance, but the amount of revenue does not. The PHDs spend a lot of time educating establishments on how to minimize the risk of food-borne disease. The PHDs also provide a point of contact to the public for complaints, questions, or concerns regarding food safety issues.

DISCUSSION: **Senator Lee** posed a question to Mr. Pew about why a change typically placed in rules is in statute, when PHDs have had the authority to charge fees at a local level. **Mr. Pew** replied that industry made it very clear that there were concerned that fees, if handled by individual PHDs, could potentially be widely inconsistent. In follow up, **Senator Lee** inquired if the individual PHDs have spending discretion without this bill. **Mr. Pew** reported that food fees have been in statute from their onset, negotiated with industry.

Senator Guthrie closed by reiterating that bringing this fee change under statute is a matter of consistency, that industry and the PHDs are in agreement, and he asked the Committee to send it to the floor with a do pass recommendation.

Senator Bayer expressed her plan to cautiously support this bill given widespread consensus, but added that a number of commissioners have expressed concern over loss of local control. **Vice Chairman Souza** also expressed reservations in supporting this bill.

Senator Jordan offered some assurance for those concerned by the loss of control at the local level, stating that services offered by the PHDs in food service at a local level are largely in safety code enforcement. She is appreciative that fees will be broken down by the number of days in operation. The growth in special events has become problematic for both the controlling agencies and program promoters.

MOTION: **Senator Harris** moved to send **H 151** to the floor with a do pass recommendation. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

H 109 **Susie Pouliot**, Chief Executive Officer, Idaho Medical Association (IMA), presented **H 109**, relating to maternal death and establishing a maternal mortality review committee (MRC). She explained that the MRC would exist under the Department of Health and Welfare (Department). While maternal death rates have gone down worldwide, they are on the rise in the United States. Maternal death is defined as the death of a woman during pregnancy or for up to a year beyond the completion of that pregnancy. The MRC would be multidisciplinary and include five physicians, a nurse midwife, a labor and delivery nurse, a medical examiner, a social worker, and others. The legislation includes provisions to establish peer review protections under state statute for the MRC, essential to allow fact-finding without hindering the ability to speak freely. The MRC data will be strictly confidential and protected from discovery or criminal proceedings. Per our current peer review statutes, case summaries under review will follow the Health Insurance Portability and Accountability Act (HIPAA) privacy standards. Cases under review will not include the name of the patient, physician, or the hospital. The MRC will review the merits of the case from an improvement standpoint, not a disciplinary standpoint.

Ms. Pouliot explained that this type of entity cannot be effective in the private sector. A private sector entity would not have peer review protections from lawsuits, and would not have access to death records and medical records to properly review cases. The Idaho Bureau of Vital Statistics already has death certificate information needed to identify cases of maternal mortality, there is just no mechanism for review. The Idaho Chapter of the American College of Obstetrics and Gynecology, the Idaho Hospital Association, the Midwifery Council, and the March of Dimes support this bill. There is grant funding available for four years from the Centers for Disease Control (CDC) and the bill includes a four-year sunset clause, so there would be no fiscal impact to the General Fund.

DISCUSSION: **Senator Heider** expressed dismay that the United States has a maternal death rate three to five times higher than less advanced countries. **Ms. Pouliot** agreed, given the higher level of medical care in the United States, stating that is why there is a need to allow health professionals to look for trends or specific circumstances and make recommendations. Statistics show that 50 to 80 percent of these deaths are preventable.

Senator Bayer wondered how Idaho rates compare to national rates. **Ms. Pouliot** reported that statistics for the United States are 26.4 deaths per 100,000 live births. Idaho's rate is 27 deaths per 100,000 live births. In follow up, **Senator Bayer** had questions about all deaths that occur while pregnant, including abortion deaths. **Ms. Pouliot** assured her the MCR would review data on all maternal deaths.

TESTIMONY: **Laurie Burelle**, representing the Southwest Idaho Chapter of the National Organization for Women, testified in support of the bill. **Ms. Burelle** reminded the Committee that **H 109** would cost Idaho nothing to study the reason why Idaho has a higher than average incidence of maternal mortality, in a nation that has a higher maternal mortality than 45 other nations. Idaho is one of only seven states that does not have a maternal mortality panel and one of only two without current legislation in progress. This is notable for a state where legislators spend a great deal of effort on pro-life legislation.

TESTIMONY: **Fred Birnbaum**, Vice President, Idaho Freedom Foundation, testified in opposition to the bill. **Mr. Birnbaum** stated that Idaho has about 22,000 live births per year, or an average of six maternity mortality cases and stated his opinion that the number of deaths were not statistically significant. He suggested that Idaho could employ the best practices put in place by other states and not form our own mortality review committee. He pointed to the CDC's national pregnancy-related mortality surveillance and other research efforts and preliminary findings. He expressed an over-arching concern that a committee formed to review a statistically insignificant difference in deaths in Idaho compared to other states, would drive more programs and more expenditures.

DISCUSSION: **Vice Chairman Souza** recapped that this bill would not cost Idahoans any money as it would be funded through a federal grant. The causes of maternal mortality in Idaho could be different than in other states. Idaho's medical community has come forward to ask for this review committee because they want to understand what the cause is in Idaho, and the bill includes a sunset clause to end the review in four years to coincide with the end of the grant funding. **Vice Chairman Souza** added that even though six deaths annually is a small number of women, it does not mean that we cannot learn something very valuable from that information.

Mr. Birnbaum while conceding that it could be a different reason that Idaho has an essentially statistically equivalent number of deaths (27 versus 26 per 100,000), typically t data a population size of six would not offer the best answers. He stated that his main point is that Idaho's medical community could review data from the 40 states that already have review boards, and the CDC, and implement best practices without setting up another committee.

Senator Jordan asked Mr. Birnbaum to consider the ability to analyze a situation that could be potentially unique to Idaho (for example, geographic barriers to healthcare access) rather than aggregating that data across the country to ensure a full analysis. **Mr. Birnbaum** replied that 40 states with review boards represents 80 percent of the United States. He recommended using data from Western states with an overlap in populations, geographies, and physician levels per patient, that are similar to Idaho. **Senator Jordan** then asked Mr. Birnbaum to explain why he supported spending for **H 29** on abortion reporting requirements, but would not support this initiative that is cost neutral for Idaho. **Mr. Birnbaum** responded that he did not have any recollection of **H 29**, but his concern with this current legislation is spending state dollars to track what can be accomplished without spending state dollars.

Senator Nelson shared that he is an engineer and statistical significance involves sampling. The death rates reported are actual measurements, not sampled. He stated that statistical significance is not involved and asked Mr. Birnbaum to explain his earlier comment. **Mr. Birnbaum** stated that the national rate is statistically significant because it is a big enough sample size. Idaho has 22,000 live births and six deaths. The 27.1 figure is not a statistically significant difference than 26, which is the national figure. That is not statistically significant enough to launch a study: there is a two percent difference in that rate and the sample size of six is too small to study. In follow up, **Senator Nelson** reiterated that those reported deaths are not a sample, rather a real measurement and a raw rate. **Mr. Birnbaum** responded that irrespective of whether it's a raw rate or not, 27 versus 26 per 100,000 is not mathematically very different. **Senator Nelson** concluded his comments by pointing out that whether the number of deaths is 26 or 27, that is a much higher rate then seven or eight deaths reported annually in the rest of the industrialized world.

TESTIMONY: **Dr. Martha Lund**, retired obstetrician and gynecologist, founding physician of St. Alphonsus Women's Health Group, and founding Medical Director for St. Alphonsus Hospital Group, testified on behalf of the American Association of University Women of Idaho (UW). **Dr. Lund** reported that UW stands firm on health and medical issues that affect the well-being of women and strongly supports **H 109**. The United States is the only industrialized nation with a rising maternal mortality rate: between the years 2000 and 2014, there was a 26 percent increase in the maternal mortality rate. Implementing a statewide MRC can be extremely effective in improving the statistics. After California established an MRC in 2006, they were able to bring their statewide maternal mortality down by 55 percent. MRCs can recommend solutions that are specific to a locality. Sometimes, MRCs identify unlikely patterns. The Nevada MRC found that many women were dying in car accidents and they recommended a seat belt law. MRCs cannot be used for litigation; privacy is strictly protected by HIPAA laws and there is no cost to Idaho due to the CDC grants already mentioned. The effort and resources put into problems by a state indicate how a state values those problems. Idaho should join the group of all but seven states and establish its own MRC.

DISCUSSION: **Senator Jordan** referenced Dr. Lund's earlier statement that most obstetricians will never encounter maternal death, and asked if there was value to be gleaned from reviews to inform their care and keep that statistic in place for them. **Dr. Lund** replied that it absolutely does. Most obstetricians don't have experience dealing with such serious complications. There are protocols and simulations that allow staff to practice deadly complication scenarios so if one does occur, physicians and nurses are prepared to respond and prevent maternal mortality.

TESTIMONY: **Dr. Amelia Huntsberger** testified that as a mother and obstetrician-gynecologist, she stood with fellow doctors, midwives, nurses, and safety experts in Idaho to advocate for a statewide MRC. Dr. Huntsberger is Treasurer for the Idaho Chapter of the American College of Obstetricians and Gynecologists and a board member of the Idaho Perinatal Project. **Dr. Huntsberger** expounded on earlier testimony: maternal mortality is on the rise in the U.S. is now the most dangerous developed country in the world to give birth; in stark contrast to the rest of the developed world where there has been a steady decline in maternal mortality. The U.S. has 26 maternal deaths per 100,000 live births; Canada has 7 per 100,000 live births, while Spain has 5 maternal deaths per 100,000 live births. Idaho has 27 maternal deaths per 100,000 live births. **Dr. Huntsberger** stated that this bill is not just about statistics: it is about mothers in our communities. She shared a story about a young woman with her first pregnancy. Near the end of her pregnancy, she developed eclampsia and her baby died before it could be delivered. She suffered severe brain damage and died as well. This family

that should have been celebrating a birth, was instead burying a young woman and her newborn. It's important to determine why maternal deaths occur. Lack of information prevents analysis to determine and address contributing factors in maternal deaths. A recent analysis of six states with maternal mortality review committees found 59 percent of maternal deaths were preventable. The death of the young woman that was described to you was preventable. We can save lives if we look carefully at each incident.

Dr. Huntsberger went on to state that for every one maternal death, there are 100 instances of severe maternal injury and she gave examples, including massive hemorrhage, intensive care, intubation, hysterectomy, and other life-threatening injuries. Maternal death and severe maternal injury parallel each other, so work to reduce maternal death will reduce severe maternal injury. MRCs highlight the need for state specific data: Michigan increased access to substance use disorder treatment for pregnant women and decreased the state's maternal mortality rate. An urgent message to providers on placental disorders saved lives in Ohio; Idaho's challenges may not be the same as other states. Legislation is necessary to set up a functional MRC with the authority to access data, to protect patient and practitioner privacy, and provide protection from litigation. The MRC is multidisciplinary, representing a variety of clinical backgrounds, social backgrounds and specializations, and members working in diverse communities and in different geographic areas of Idaho. Idaho is one of the few remaining states without an MRC.

TESTIMONY: **Eleanor Chehey**, representing the Sage District United Methodist Women (District), testified in support of the bill. The District raises money to help women and children in disadvantaged situations in our communities and overseas. The District's first project, 150 years ago, raised money to send a female physician to India, to care for women who were otherwise unable to receive care because the doctors were all men. She stated that it is discouraging that in a country as wealthy as the United States, women are dying in childbirth at rates several times higher than in other civilized countries.

Julia Miner, Registered Nurse (RN) in obstetrics and gynecology, testified in support of the bill. **Ms. Miner** reported that two mothers die every day in pregnancy in the United States. To better understand the issues that are contributing to maternal death in Idaho, she stated that we need an objective, confidential, review of maternal mortality cases to guide interventions and processes to improve outcomes. She shared her own postpartum medical crisis following the birth of her twins. An Idaho MRC would be a non-punitive way to objectively review cases and target interventions at the gaps identified in events happening in our own state. An intervention based on our own data, not someone else's data, is more meaningful.

Vice Chairman Souza thanked everyone who attended and testified, and shared her own high-risk pregnancy diagnosis and management. She stated that we need to know what we don't know, so that we can do our best work to learn from these experiences.

DISCUSSION: **Senator Bayer** asked Ms. Pouliot how the MRC would be able to obtain confidential information, given HIPAA laws. **Ms. Pouliot** explained that the information is already collected through Idaho death certificates, which details if the deceased is female, or pregnant at the time of death, was within 42 days of being pregnant, or was between 43 to 100 days of being pregnant. The Department of Health and Welfare has access to this data and their staff would go through a process to provide the information to the MRC. Other information that the MRC would have access to would come from medical records and any law enforcement record that pertains to a death. That information will be made anonymous by the Department, so the MRC would not see patient names, physician names, or hospital names. The MRC would look at cases to determine if they were preventable or not. **Senator Bayer** stated that she felt the information was available through other sources and did not see the need for another organization. In response, **Ms. Pouliot** reiterated the proposed MRC would look at deaths happening in Idaho. Our state's health system is very different than Colorado's or California's or another state, and we are very rural in nature. It is very important to have an Idaho group looking at Idaho data and presenting Idaho-based recommendations to improve the care that we're giving within our state.

Senator Lee spoke in support of the bill, stating that legislation is required in order to share information for review. Medical providers are not authorized under our statute to even get together over dinner and talk about these issues. She asked what number of deaths is high enough for us to be willing to authorize a review, at no cost to Idaho, that could potentially save lives. She added that there is incredible professional and liability risk if this information is shared without legislative approval.

MOTION: **Senator Heider** moved to send **H 109** to the floor with a do pass recommendation. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**. Senator Bayer asked to be recorded as voting nay.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Harris** moved to send the Gubernatorial reappointment of Dr. Linda Hatzenbuehler to the State Board of Health and Welfare to the floor with recommendation that she be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Vice Chairman Souza** moved to send the Gubernatorial appointment of Dr. Timothy Rarick to the State Board of Health and Welfare to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Jordan** moved to send the Gubernatorial reappointment of Darrell Kerby to the State Board of Health and Welfare to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Nelson** moved to send the Gubernatorial reappointment of Jim Giuffré to the State Board of Health and Welfare to the floor with recommendation that he be confirmed by the Senate. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Martin** adjourned the meeting at 4:40 p.m.

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Senator Martin
Chair

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Margaret Major
Secretary