

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 16, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Guthrie, Heider, Rice, Thayn, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Lakey

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: **Vice Chairman Martin** called the meeting to Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

S 1221 **Relating to Insurance Producer Licensing. Dean Cameron**, Director, Department of Insurance (DOI), remarked he wanted to address some of Senator Rice's concerns from the Committee's previous meeting. He pointed out this amendment streamlines the process for terminating the license of a nonresident producer who no longer meets a prerequisite to hold a license. The legislation in this bill amends Idaho Code § 41-1026(3) to provide that a former licensee whose license has been revoked may not reapply for a license until not less than one year and up to five years have passed, rather than the current one-year waiting period. This bill also amends Idaho Code § 41-1026 to provide a new subsection (4) where a person whose application for a producer license has been denied must wait one year before reapplying if judicial review of the license denial is sought one year from the date of a final court order or decree affirming the license denial.

Currently, there is no specific time period in which a person must wait before reapplying for a producer license. Individuals who reapply quickly following a denial or revocation waste their time and that of the DOI in processing and denying the application. **Director Cameron** said that when a license is revoked, in order to regain a license, the applicant has to reapply and show rehabilitation. It is not mandatory that the DOI reinstate a license.

MOTION: **Senator Guthrie** moved to send **S 1221** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. **Senator Rice** commented he appreciated Director Cameron, who worked to resolve all of his concerns. The motion carried by **voice vote**.

RS 24459C1 **Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Insurance Producer Licensing - Bail Bond Agents. Vice Chairman Martin** announced that **RS 24459C1** was removed from the agenda and held in Committee at the request of the sponsor.

S 1284

Relating to Plats and Surveys. Keith Simila, Executive Director, Idaho Professional Engineers and Land Surveyors (IPELS) Board, said the objective of the bill is to enable the IPELS Board to write rules to address changing technology.

Mr. Simila said the IPELS Board is currently working with the Idaho Association of Counties (IAC) and other stakeholders to evaluate the use of electronic filing of plats and records of survey. The use of electronic scanning is being used by counties. There are often legibility issues when mylar copies are posted to county websites. Some counties and the IPELS Board want to make electronic submittals an option in addition to the full-size mylar copies required by Idaho Code. For those counties who choose to adopt electronic submittals, rules are needed to address the technology and processes used. Since technology is continuously changing, the use of rule changes in lieu of statute changes is desired. The IPELS Board cannot anticipate all of the technological changes that may come in the future, which is why the rulemaking language is general and not specific to one issue. Future rulemaking will be negotiated and the IPELS will pursue consensus from the IAC and the IPELS Board.

Senator Schmidt said the county in his district does not have a website. He wanted to know if county clerks were able to transmit scans or would the scanning be shifted to another area. **Mr. Simila** remarked that if a county does not have a website, this change would not be of any use. For those counties that do have a website, copies can be uploaded into an electronic format. He said this is totally elective on the part of counties. The IPELS Board wants to make sure electronic filing is available to the counties.

TESTIMONY:

Bruce Mills said he is a licensed professional engineer in Idaho and the State of Washington and works for the Ada County Highway District (ACHD). He voiced a concern about this bill being too open-ended. He remarked that issues should be put into statute with the opportunity to be vetted. **Senator Schmidt** wanted to know if counties could choose not to participate. **Mr. Mills** said he did not see any language where counties could opt in or out.

Senator Thayne said he thought there was some language that would accomplish what the IPELS Board was trying to do so that the language in the bill would not be as open-ended. **Mr. Simila** said the changes were designed to be open-ended due to changes in technology. **Senator Rice** commented he was concerned that the authority exercised over the counties by the IPELS Board was too vague and inappropriate.

MOTION:

Senator Rice moved to table **S 1284**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

S 1285

Relating to Engineers and Surveyor Faculty Exams - Issue of License to Engineering Faculty. Mr. Simila said the objective of the bill is to authorize the IPELS Board to provide an alternative pathway to licensure for Ph.D. faculty who teach upper-division engineering courses at Idaho universities without a written technical examination. The amendment also clarifies the requirements of professional examinations and the conditions concerning reexamination for those failing on prior attempts. Fees for reexamination are also removed.

Faculty who teach upper-division engineering courses are required by law to be licensed professional engineers. At some universities, faculty may receive specialized education relating to technical fields for which no technical examinations are available. Also, some faculty practiced in exempt industries and did not previously obtain a Professional Engineering license. Obtaining a Professional Engineering license can sometimes be a barrier to recruitment and retention. The IPELS Board and the Deans of Engineering (Deans) want to find

a way to better address this concern and propose that a contingent license be available for this purpose. The contingent license process will allow a waiver of the technical examination in lieu of other requirements, such as a written examination on laws, rules and ethical responsibilities. The license would be contingent on certain requirements, such as remaining employed by the university. The exact process and requirements are proposed to be negotiated by rule with prospective stakeholders. The IPELS Board and the Deans believe this alternative pathway will assist in recruiting and retaining quality engineering faculty and provide a reasonable means for Ph.D. faculty in specialized technical engineering fields to obtain licensure without the requirement for technical testing.

TESTIMONY: **Mr. Mills** testified in opposition to Section 5 of this bill. He said he did not agree Ph.D. holders should have the exam waived, since they do not have the qualifications. **Senator Rice** stated the practical experience is not waived in this section of the bill. **Mr. Mills** remarked the Ph.D. holder should take the exam and have the practical experience required for the license.

DISCUSSION: **Senator Rice** and **Mr. Simila** had a conversation about whether or not the practical experience component had been waived. **Mr. Simila** remarked that teaching upper-division engineering classes counted toward the practical experience requirement, but the requirement was not waived.

Senator Schmidt wanted Mr. Simila to define the word "contingent" for purposes of this legislation. **Mr. Simila** stated "contingent" was defined in statute. If a Ph.D. holder leaves employment, the license is no longer valid. Statute says the contingency is employment at the university. **Senator Schmidt** referred to Idaho Code § 54-1215 and said there was a conflict. **Mr. Simila** replied he did not see a conflict because Section 5 of this bill says the license will be contingent as long as the professor is employed.

Senator Rice wanted to know what would prevent someone with a contingent license who works for a university from engaging in outside work. **Mr. Simila** said that nothing would prevent a professor from doing anything, but the IPELS Board was working to narrow the requirements. **Senator Rice** wanted more clarification.

Michael Kane, Attorney, representing the IPELS Board, summarized the history of this legislation. He stated the Deans approached the IPELS Board with the request to issue a license to Ph.D. professors who are teaching upper-division engineering courses. There are some courses that are so technical that there are no exams. The State has been forcing Ph.D. professors to take exams that do not apply to their specialty. He said the language cited by Senator Schmidt refers to using the engineering seal. He said doctoral professors are not expected to be stamping documents.

Senator Rice and **Mr. Simila** had a lengthy conversation about licensing professors who teach upper-division courses, what other states are doing, reciprocity and national exams.

Senator Schmidt remarked it seemed to him the goal is to allow doctoral professors to have a license so they can teach, but also so they can practice. He said if professors are going to practice they should have the same requirements as the rest of the profession. **Mr. Simila** said there needs to be a pathway for faculty to obtain a license so they can teach. If they are not going to practice, then a contingency license would be a restricted license. **Senator Schmidt** stated that the fact that there is no definition makes it difficult to understand. **Mr. Simila** said the IPELS Board is going to specify the type of exam the professors have to take. The exam will be on the laws of Idaho requirements, rules and ethics. He stated the

Deans like this proposal because the professors will have to follow the rules and will not have undue constraints placed on them from the technical exam standpoint. Bringing all of the faculty under the licensure umbrella puts them in the position of having to do continued professional development, abiding by the ethics clauses and rules in this State, and it sets an example to the undergraduates they are teaching. Professional licensure is a good thing.

Senator Rice wanted to know if the IPELS Board would think it appropriate to send this legislation to the amending order and to change the wording to a "restrictive" license. **Mr. Simila** said he thought the IPELS Board would support the change.

MOTION: **Senator Rice** moved that **S 1285** be referred to the 14th Order for amendment. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Rice** indicated he would be willing to help with the amendment.

S 1286 **Relating to Engineers and Surveyors - Definition of Terms - Retired.** **Mr. Simila** remarked the purpose of the bill is to ensure licensees clearly understand that retiring a license means they can no longer practice. The IPELS Board now allows licensees to retire their license regardless of age. There is an increase in the number of retired licensees in recent years. The temptation is to practice without reinstating a license to active practice, which puts the IPELS Board in a position to address the issue as a disciplinary action.

MOTION: **Senator Schmidt** moved to send **S 1286** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** will carry the bill on the floor.

S 1287 **Relating to Engineers and Surveyors - Licensing.** **Michael Kane**, Attorney, IPELS Board, reported that engineers and land surveyors licensed in other states and unlicensed individuals sometimes attempt to practice in Idaho without first obtaining a license. The IPELS Board's first action upon learning of these violations is to issue a "cease and desist" letter informing the individuals they are in violation and must obtain a license to legally practice in Idaho. Most of the time, the cease and desist letter is effective and the individuals will pursue obtaining a license or will cease to practice. There are occasions where the cease and desist letters are disregarded. In these cases, the only option the IPELS Board has is to pursue a criminal complaint through the Attorney General to enforce a misdemeanor charge, injunction and fine. The amendment will give the IPELS Board a better option than pursuing a criminal complaint by allowing a civil penalty. This is a less severe and less costly means of enforcing unlicensed practice and is expected to attain the same result. The amendment also clarifies what constitutes a violation of unlicensed practice by using the same language already described in Idaho Code § 54-1202. This change will remove ambiguity and ensure the enforceability of the law. The amendment clarifies that unlicensed practice of engineering or land surveying is a violation of the law. It adds a civil penalty of up to \$1,500 as another enforcement provision for a judge to consider, which is a lesser penalty than a criminal misdemeanor. There is no fiscal impact to the General Fund or the dedicated fund.

DISCUSSION: **Mr. Kane** and **Senator Rice** discussed the concern of a criminal action versus a civil action or misdemeanor. They talked about the costs involved and whether the fine of up to \$1,500 was appropriate. **Mr. Kane** said we can make sure this is civil and not criminal because it is not punitive. In this State the civil penalty ranges from \$10,000 to approximately \$50. A fine of \$1,500 falls more in the realm of a civil action. This bill decriminalizes the offense, which is a factor specifically referred to by the Supreme Court and a much better approach for the individual. **Senator Rice** asked that even though the State labels the violation as civil, what change would the court come up with? **Mr. Kane** said one question is would a jury trial be appropriate. According to his research, probably not. But there is nothing in this bill to prevent it. **Senator Rice** stated that if there is no jail time, no jury would be required. The most the court would say is that the infraction would have to be proven beyond a reasonable doubt. He thinks this discussion should always take place.

MOTION: **Senator Guthrie** moved to send **S 1287** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor.

PASSED THE GAVEL: Vice Chairman Martin passed the gavel to Chairman Patrick.

HONORING OF PAGE: **Chairman Patrick** honored Page Hayden Rogers. **Mr. Rogers** shared what he has learned while being a Senate Page and said it is not easy to pass a bill. There are so many points to remember. He said he learned the Senators are fantastic and they have invaluable ideas. He plans on going to the University of Utah and major in political science. His goal is to become involved in politics some day. He thanked Senator Martin for sponsoring him.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:40 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary