

MINUTES
Approved by the Committee
Occupational Licensing and Certification Laws Committee
Friday, October 19, 2018
10:00 A.M.
Room EW41
Boise, Idaho

Co-chair Lakey called the meeting to order at 10:03 a.m. and, after affirming that Rep. Smith was on the conference line, requested a silent roll call to be taken. Members present: Co-chair Senator Lakey and Senators Martin and Den Hartog; Co-chair Representative DeMordaunt and Representatives Monks, Manwaring, and Smith (by phone.) Absent and excused: Senator Burgoyne.

Others in attendance: Elizabeth Bowen, Matt Drake, Maggie Smith, and Jennifer Kish - Legislative Services Office (LSO) committee staff; Tana Cory, Julie Evenson, Lizzie Kukla - Idaho Bureau of Occupational Licensing (IBOL); Phil Hanschild - Idaho Freedom Foundation; Alex Adams - Board of Pharmacy; Michell Bird - Idaho Real Estate Commission; Sandy Sweesy - Profess. Counselors and Marriage and Family Therapists Board; Matt Bennett, Robert Feliciano - Idaho Dept. of Labor; Joan Cloonan - Board of Drinking Water and Wastewater Professionals; Anne Lawler - Board of Medicine; Marty Durand - Idaho Building Trades; Dennis Stevenson, Brad Hunt - Office of the Administrative Rules Coordinator; Kent Absec - Idaho Board of Accountancy; Teresa Harper - American Institute of Architects (Idaho); Lynn Tominaga - Idaho Rural Water Assoc.; Brody Aston - Westerberg Assoc.; Garth Jensen, Ranni Haight, Allison McClintock - Idaho Board of Architectural Examiners; Marv Hagedorn - Idaho Division of Veterans Services (IDVS); Greg Wilson - Office of the Lt. Governor; and Al Downs - National Conference of State Legislatures (NCSL).

NOTE: Copies of presentations, reference materials, and handouts provided by the speakers/presenters are posted to the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2018/interim/>; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Lakey solicited a motion to approve minutes: **Sen. Martin made a motion to approve the minutes of the June 22, 2018, meeting; it was seconded by Sen. Den Hartog; and passed by a voice vote.**

Co-chair Lakey called upon Elizabeth Bowen, LSO Principal Legislative Drafting Attorney, to present information requested earlier by the committee. Ms. Bowen provided a comparison on how the various sunset/sunrise methods operate ([Review and Oversight of Occupational Licensing Laws and Rules](#)) and the steps necessary to establish such a process in Idaho ([Model Framework for Review and Oversight of Occupational Licensing Laws and Rules](#)). She reported on the review methods established to provide the review or oversight as used by other states ([State Frameworks for Review of Occupational Licensing Laws and Rules](#)) .

- Sen. Martin questioned whether Ms. Bowen found one process to be better than others, while performing her research. Ms. Bowen could not identify a "best practice," as each state was trying to address different problems. She did note that Delaware's process was very well organized and clearly identified the purpose and processes for its joint legislative oversight and sunset committee.

Matt Drake, LSO Legislative Drafting Attorney, reported on recent efforts in other states to reduce licensing fees with legislation ([Reduction of Occupational Licensing Fees](#)), provided an overview of Idaho's recent licensing fee reductions ([Idaho Fee Reduction Summary](#)), and spoke to current processes in other states regarding the right to challenge occupational licensing issues ([Statutory Right to Challenge](#)) or the "Right to Earn a Living Act." Mr. Drake noted that most legislation for occupational licensing focused on the reduction of fees for (1) military members and spouses, and (2) individuals in low income designations. He suggested that states consider the adoption of new

technology to influence the reduction of fees (as evidenced by Colorado which, in 2015, reported a substantial reduction in licensing fees - \$2 million - due to the implementation of technology). Mr. Drake relayed that a model act for the right to challenge occupational licensing fees or restrictions existed; established by the Goldwater Institute, the "Right to Earn a Living Act" encourages the least restrictive means necessary to protect public health and safety. He noted that Arizona is the only state to have adopted the model act, while Nebraska and Tennessee have laws based on the model act, however, neither permits the challenge to be decided by the courts.

- Co-chair DeMordaunt asked whether the 2016 laws of Tennessee or the 2017 law of Arizona had been challenged. Mr. Drake was not aware of such, but he would research it further and report the findings to the committee at a later time.
- Co-chair Lakey asked whether any challenge had been filed by an individual and whether any court had made a determination. Mr. Drake noted that he was not aware of any, but that he would look into it further.
- Co-chair Lakey questioned whether the reductions that occurred for Idaho's boards occurred in a timely manner to maintain the recommended 100-150% of an entity's budget. Ms. Tana Cory, Chief of Idaho Bureau of Occupational Licensing, reported that the financial reports for the boards served by IBOL were updated and posted monthly to the website; additionally, IBOL reviews the revenue and expenditures with each board and reminds the boards of the recommended guideline for their fund balance. She noted that while, on average, it took a year to a year-and-a-half to promulgate a rule, it also took an amount of time to recognize the trending of funds before a rule is initiated. Co-chair Lakey inquired whether action to reduce fees was initiated at the next available opportunity, once that recognition is made. Ms. Cory replied that - yes, barring any related investigations - action generally would be initiated as soon as possible.
- Co-chair Lakey inquired what type of technology had been implemented by Colorado to produce such an impressive financial reduction. Mr. Drake explained that the technology led to better efficiencies, but that he was not sure of the specifics. Co-chair Lakey requested that Mr. Drake research the issue further to identify exactly what was implemented.
- Sen. Den Hartog asked whether the states that instituted reduced fees for first time licensees applied that policy to individuals who had moved into the state and were licensed in another state. Mr. Drake affirmed that the policies applied to individuals in just such a scenario.

Maggie Smith, LSO Budget and Policy Analyst, provided an extensive look at [Arizona's sunrise and sunset review process](#) and [Texas's sunset process](#).

- Co-chair DeMordaunt asked when each state's sunset policy had been established. Ms. Smith reported that Arizona put its policy into effect in 1985 and Texas had been in effect since 1977.
- Co-chair DeMordaunt inquired how many agencies or boards had sunset and were never reestablished. Ms. Smith noted that such data was tracked but that she could not state the exact number; she offered to review the data and report it to the committee at a later date.
- Co-chair Lakey inquired about the distribution among the states requiring a formal, affirmative action review versus a performance review. Ms. Smith explained that there were 36 states with a sunset process and six of those states used an affirmative action review.

Co-chair Lakey called upon Marv Hagedorn, Chief Administrator for the Idaho Division of Veterans Services, for his comments to the committee. Mr. Hagedorn explained that his mission for the Veterans Services is to provide economic opportunities for service members as they leave the military. He noted that a "veteran" was born the moment he or she leaves military service, whether that is for retirement after many years of service or simply finishing a service commitment. Mr. Hagedorn explained that the IDVS exists under the auspice of economic development, as federal funds exist for services to veterans within the state because certain criteria have been met by

the state; additionally, veterans are needed for their skills and employment experience in Idaho's workforce. His request to the board regarding occupational licensure and veterans was to keep the policies simple for veterans' transient nature and to recognize their military experience.

- Sen. Martin expressed concern that military experience was not easily recognized for occupational licensing requirements. Mr. Hagedorn testified that the IDVS does not participate in the lobbying of occupational licensure policies, but he did encourage licensure boards to better understand and recognize the experience and skills that service members bring from their military service. Rep. Smith echoed the importance of making licensing more convenient for military members, especially since so many military members are assigned to bases in Idaho.
- Rep. Smith queried how many retired veterans were in Idaho. Mr. Hagedorn submitted that there were approximately 39,000 veterans living in the state; but he conceded that he could not verify that number as there was no required tracking of military members upon their release from service. He hoped that current efforts by the new [U.S.] Secretary of Veterans Affairs, [Robert] Wilke, would assist veterans services, due to his experience with discharging service members as the Under Secretary of Defense for Personnel and Readiness.

Ms. Bowen presented an overview of other states' efforts related to licensing for military spouses ([Occupational Licensing for Military Spouses](#)). She noted that the largest barrier to military spouses was the lack of portability of licenses between states and summarized the various methods that each state employs to recognize an out-of-state license.

- Sen. Den Hartog asked, in relation to the licensure by endorsement, what was the best method to override the "similar or better" requirement; whether it should be accomplished by rule or by statute. Ms. Bowen advised that it would be easiest if addressed by statute because, if done by rule, each board/entity would have to promulgate the rule. She noted that doing this by statute would also override any requirement if already established in rule. Sen. Den Hartog encouraged the committee to support this idea in its report to the Legislature.

Co-chair Lakey called upon Greg Wilson, Chief of Staff for Lt. Governor Little, for his summary of the results from reports filed pursuant to [Executive Order 2017-06](#), which required all boards and entities providing licensure to review their processes. His presentation [Licensing Freedom Act Report and Recommendations](#) highlighted the following:

- The Idaho licensing process has not been reviewed comprehensively in over 40 years.
- Article IV, Section 20, Idaho Constitution, limits the executive branch to 20 departments - 13 of which provide some manner of licensure.
- Over 50% of licensing agencies/boards (245) reside within the Department of Self-Governing Agencies (DSGA).
- IBOL, also within DSGA, contracts with 29 of the other DSGA entities to provide services.
- 440 occupational licenses were identified within the state during this comprehensive review.
- The average fee (across all license types) was \$161.00.
- Boards may pursue disciplinary action towards licensees whose behavior falls short of standards - as such, an average of 12.2 completed disciplinary actions were issued per year.
- Agencies made 241 recommendations for improvements, modifications, or elimination of licensing requirements upon completing the reviews.
- Lt. Governor's Office identified 16 initial recommendations.
- Lt. Governor's Office to convene a working group to enact the initial recommendations.

A more in-depth version of the recommendations and data may be viewed in Mr. Wilson's [handout Licensing Freedom Act Report and Initial Recommendations](#) and on the Office of the Lt. Governor's

website at <https://LGO.idaho.gov/licensing-freedom-act-results>* [*this is not an active link within this document].

- Co-chair DeMordaunt noted that, in her review of the reports, most discipline revolved around the inability of licensees to continue necessary education; as such, were there any recommendations by boards to improve that issue. Mr. Wilson admitted that such information would best be learned with a more thorough look at the discipline types reported; probably a good topic for the working group.
- Co-chair Lakey inquired whether the recommendation for a sunset review would require formal affirmative action by the Legislature rather than a performance review. Mr. Wilson could not endorse one method over another and suggested that a review of other state's productivity/efficiency would be helpful in making that decision.
- Co-chair Lakey commented that the recommendation to create a working group in-state may be more beneficial if combined with the efforts of the NCSL's occupational licensing learning consortium.

Co-chair Lakey called Al Downs, Policy Specialist for NCSL, to provide his presentation [Overview of the National Occupational Licensing Learning Consortium](#). Mr. Downs reported that NCSL had been received approval for a second round of funding from the U.S. Department of Labor to further fund research and to bring an additional five states into its National Occupational Licensing Learning Consortium; funding will extend the project through December 2021. He spoke to the release of reports that had been completed since his last visit, briefly summarized the guidelines of the research process, and noted current trends on occupational licensing by other states. Mr. Downs reported that the research showed that most states were considering a move towards a centralized system; none were considering going to a decentralized system. He noted that while many spoke of adopting interstate agreements, none had actually moved forward on adopting one. He relayed that Vermont appeared to have the most clearly stated and strongly organized sunset program, which seems to be the reason for its ranking as the least licensed state.

- Co-chair Lakey asked whether Idaho was being invited to join the Consortium as one of the additional five states, and whether NCSL covered the costs related to the Consortium events. Mr. Downs affirmed that Idaho was being invited and that NCSL would indeed cover costs related to the Consortium.

Co-chair Lakey asked committee members for comments/opinions on the invitation to join the Consortium, noting that the participation would be a multi-year commitment.

- Co-chair DeMordaunt commented that Idaho needed a long-term action plan and that a combined effort of the interim committee's renewal, the Lt. Governor's working group, and participation in the Consortium would be very helpful in creating such a plan.
- Sen. Martin asked who had the authority to allow Idaho to join the Consortium and what were the steps once approval was secured. Co-chair Lakey surmised that concurrence by legislative leadership and the executive branch would be sufficient approval for participation; he noted that the President Pro Tempore of the Senate had clearly expressed support of the plan, as had the Chairman of the Senate Commerce [& Human Resources] Committee. Co-chair Lakey explained that the state would need to provide a team of individuals from varying areas (see [NCSL NOLC Membership brief](#)) related to occupational licensing to participate in meetings and to collect data for the Consortium. He anticipated that those members would be able to relay information to the interim committee - if it is renewed; as well as, to provide information to the Lt. Governor's working group. Co-chair DeMordaunt reported that approval to participate had been given also by the House of Representatives. Mr. Downs reaffirmed that NCSL would require approval from the leadership of both chambers and the executive branch. He summarized that the team would need seven members to be assigned (see brief) and a commitment to the Consortium for the duration of the grant.

- Rep. Smith voiced her support for participation in the Consortium and encouraged that the necessary steps be pursued.
- Sen. Den Hartog also voiced her support for accepting the invitation.
- **Rep. Manwaring made a motion that Idaho participate in NCSL's National Occupational Licensing Learning Consortium; Sen. Martin seconded; the motion was approved by voice vote.**

Co-chair DeMordaunt reminded committee members of an earlier desire for members to meet with various boards upon the summation of the reports from the Lt. Governor's office. She announced that she and Co-chair Lakey would submit points-of-contact, appropriate reports, and possibly a list of objectives to members for a more thorough conversation on the reports with the agencies.

Co-chair Lakey proposed another meeting to occur so that the committee could provide recommendations for the final report to the legislature, and he suggested that would be best to occur after members had spoken to the agencies and if any activity had occurred with either the Lt. Governor's working group and/or NCSL's Consortium. He also restated his desire to recommend that the interim committee be renewed.

Having established the next meeting date, the meeting was adjourned at 12:11 p.m.