

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 29, 2019

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Agenbroad, Senators Martin, Lakey, Guthrie, Thayne, Souza, Ward-Engelking, and Burgoyne

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 Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of January 17, 2019. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 26575 **Relating to Employment of Firefighters.** **Senator Burgoyne** stated this proposed legislation amends Idaho Code §§ 44-1806 and 44-1807 pertaining to firefighter collective bargaining. Under existing law, in the event that an impasse between the representative(s) of the employer and the firefighters is reached, the parties select neutral fact-finders. The proposed amendment affects how fact-finders are selected; institutes a process for how a final contract is produced using previously negotiated articles in conjunction with the fact-finders' recommendation; and makes the fact-finders' (Fact-Finding Commission) decision final and binding upon both parties, rather than merely advisory.

MOTION: **Senator Martin** moved to send **RS 26575** to print. **Senator Ward-Engelking** seconded the motion.

DISCUSSION: **Senators Martin** and **Lakey** remarked they had several questions. **Senator Burgoyne** asserted he would confer with both Senators to answer any questions.

VOICE VOTE: The motion carried by **voice vote**.

RS 26630 **Relating to Electrical Contractors and Journeymen.** **Colby Cameron**, Sullivan and Reberger, representing the City of Meridian, stated the proposed legislation addresses Idaho Code § 54-1019, and the need for alternative qualifying criteria for residential and commercial electrical inspectors, while maintaining the high level of competency and experience that the statute intends. Many Idaho communities that perform inspections are experiencing difficulty in hiring qualified inspectors due to current qualifying criteria, which may delay a community's ability to perform electrical inspections. This would result in a negative impact on local economies. The legislation adds necessary qualifying criteria for electrical inspectors to address this need.

Mr. Cameron remarked there is no impact to the General Fund because this legislation does nothing to change how the hiring process for inspectors is administered. Additional qualifications are added for persons that can be hired.

DISCUSSION: **Senator Ward-Engelking** asked if there would be a possible situation where inspectors would not be as qualified as the people actually doing the work. **Mr. Cameron** noted that was not his understanding.

MOTION: **Senator Thayne** moved to send **RS 26630** to print. **Vice Chairman Agenbroad** seconded the motion. The motion carried by **voice vote**.

RS 26449C1 **Relating to Underground Facilities Damage Prevention.** **Patrick Grace**, Regional Manager, Idaho Division of Building Safety (IDBS), explained that under Idaho Code § 55-2211(1), the administrator of the IDBS recommends and the Damage Prevention Board (DPB) imposes training or civil penalties for those who violate Idaho Code § 55-22. This process has proven to be inefficient for the alleged violator, complainant, and IDBS. This proposed legislation will give the administrator of the IDBS authority to impose training or civil penalties and the authority to hear appeals regarding training or civil penalties. These changes will streamline this process and align it with the process for other chapters administered by the IDBS.

Mr. Grace reported Idaho Code § 55-2211 provides authority for the IDBS to impose training or civil penalties and enhanced civil penalties for subsequent violations with facility damage. However, Idaho Code § 55-2211 does not allow passage of a certain amount of time to "reset" the violation record of a violator unless the violations involve facility damage. Further, Idaho Code § 55-2211 does not provide penalties for third, fourth, fifth, or more violations without facility damage. This legislative proposal will address both of these issues.

Mr. Grace advised Idaho Code § 55-2211(1) allows the IDBS to impose training for a first violation and civil penalties for other violations. However, this section of code only allows an alleged violator to contest the imposition of civil penalties. Because the imposition of training potentially affects an alleged violator's future liability under the statute, due process requires that alleged violators be given the ability to also contest the imposition of training. This legislative proposal will allow an alleged violator to contest both training and civil penalties.

There will be a positive fiscal impact to the DPB fund created by more efficient processing of civil penalties. There is no fiscal impact, positive or negative, to any other State funds, including the General Fund.

DISCUSSION: **Senator Guthrie** did not agree the language should be changed from "may" to "shall." He remarked sanctions should not be imposed immediately until there was the opportunity for an appeal. **Mr. Grace** stated many do not appeal and this was only a recommendation. He reported no one would ever be denied an appeal and could make the appeal without paying the fee or training. **Senator Guthrie** voiced he still disagreed.

MOTION: **Senator Souza** moved to send **RS 26449C1** to print. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

RS 26464C4 **Relating to Engineers and Surveyors.** **Tom Judge**, Deputy Director, Surveying, Idaho Professional Engineers and Land Surveyors (IPELS), reported this amendment expands the existing authorization to access private lands to include private land surveyors. Licensed professional land surveyors are the only persons authorized by Idaho statute to provide legal surveys of private property boundaries. The authorization to access and locate necessary property corners and evidence related to boundaries enables land surveyors to conduct a proper survey. Surveys supported by all of the required evidence protect real property rights.

Mr. Judge stated there is no fiscal impact to the General Fund or the dedicated fund of the agency, as the amendment addresses the manner in which private land surveyors conduct surveys. It does not adversely impact the regulation of professional land survey licenses.

DISCUSSION: **Senator Burgoyne** questioned the code sections relating to the right-of-entry for employee surveyors. **Mr. Judge** referred to two sections and explained the right-of-entry does not extend to contract surveyors. **Senator Burgoyne** noted that in subsection 3, permission still had to be obtained from the railroad in order to gain access to railroad property. **Mr. Judge** indicated the language in the rule was developed by the railroads and he noted it was his understanding that without that language, the railroads were going to object.

Senator Lakey questioned whether the trespass law made entry onto properties more difficult. **Mr. Judge** indicated that now, written permission is needed and many property owners object. **Senator Lakey** declared he would have questions for the bill hearing related to written and verbal permission.

MOTION: **Senator Guthrie** moved to send **RS 26464C4** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Agenbroad to introduce the rules.

DOCKET NO. 10-0102-1801 **Rules of Professional Responsibility. Tom Judge**, Deputy Director, Surveying, Idaho Professional Engineers and Land Surveyors (IPELS), reported the amendments will implement a requirement for professional land surveyors to notify affected adjacent landowners and the IPELS Board prior to setting a monument that represents a material discrepancy with another monument for the same property corner and potentially clouding the title of private land.

Mr. Judge stated there is no fiscal impact to the General Fund or the dedicated fund because the rule establishes obligations of licensed professional land surveyors to appropriately regard the public in their actions. The amendment does not increase the cost to the IPELS Board. Negotiated rulemaking was conducted. There is no incorporation by reference.

DISCUSSION: **Senator Burgoyne** remarked this seemed like a good rule. He queried when a monument is moved, as the first monument was placed incorrectly, if land surveyors were supposed to take note of adverse problems that occurred 75 years ago. **Mr. Judge** acknowledged surveyors should walk owners through the process.

Vice Chairman Agenbroad queried about the process for notifying property owners. **Mr. Judge** replied the IPELS Board must show there was an effort to contact the owners.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 10-0102-1801**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-2801-1802 **Rules of the Barber and Cosmetology Services Licensing Board (New Chapter).** **Joan Callahan**, Administrative Attorney, Idaho Bureau of Occupational Licenses (IBOL), stated S 1324, passed during the 2018 Legislative Session, combined the Boards of Barber Examiners and Cosmetology. The new Idaho Barber and Cosmetology Services Licensing Board (IBCSLB) is adopting rules to implement the new law. These rules are based upon public protection, portability of licenses, and eliminating barriers to employment. The pending rules implement S 1324 (2018), which reduced the minimum hours of instruction required for cosmetology, barber-stylist, and electrology licenses; created a new certificate for individuals who only want to practice make-up artistry; and created a registration for retail thermal styling equipment dealers to do limited demonstrations on potential customers. The rules also specify what services a licensee may perform outside a licensed establishment; provide for the transfer of instructional hours between professions; and modernize safety and disinfection requirements.

Ms. Callahan noted the changes to the pending rule specify that a licensed instructor may maintain a single license to practice and instruct; allow the IBCSLB to place an establishment or facility license out of business after a 30-day written notice to the owner(s) when the IBCSLB has documentation or evidence that the establishment is out of business; expressly allow a student to count a certain number of instructor-approved hours for outside of school activities toward instructional hour requirements; and clarify language that was unclear or determined to be unnecessary.

Ms. Callahan explained the text of the pending fee rule has been amended in accordance with Idaho Code § 67-5227. Only those sections which have changes that differ from the proposed text are printed in the rule.

Ms. Callahan related the IBCSLB operates on dedicated funds and must be self-supporting. The following fees are established in accordance with Idaho Code § 54-5822: original license fee for individual licenses: \$25; original license fee for instructors: \$30; original license fee for establishments: \$20; original license fee for schools: \$300; original license or registration fee for facilities: \$20; renewal fee for individual licenses: \$25; renewal fee for instructors: \$30; renewal fee for establishments: \$20; renewal fee for schools: \$85; renewal fee for facilities: \$20; registration fee for apprentice: \$25; certificate for makeup artist: \$25; and license by endorsement fee: \$35.

DISCUSSION:

A lengthy discussion ensued with the Committee members and Ms. Callahan about this docket. **Chairman Patrick** remarked he thought there was conflicting language in the rule regarding transcripts, admission to college, and the General Education Development (GED) test. **Ms. Callahan** stated the legal age requirement for the GED is 16 and one-half years. The law requires two years of high school or the equivalent. This rule shows the equivalent, which is guidance for licensees. Passage of the GED is not a requirement.

Senator Souza emphasized the rule appeared to be a blend of the cosmetology and barber rules. **Ms. Callahan** reported both former boards looked at the rules. The new IBCSLB tried to create as many options as possible. **Senator Souza** and **Ms. Callahan** discussed how the rule guides the IBCSLB and the applicant through what the IBCSLB considers when looking at criminal or disciplinary history. The IBCSLB also looks at additional activities that have occurred that the applicant has undertaken which shows rehabilitation, and that the applicant is not a current risk to public health, safety, and welfare.

Senator Souza expressed a concern about the disinfection of towels and other items. She remarked this is a professional organization and the IBCSLB is regulating that towels must be placed in a basket that has venting. **Ms. Callahan** reported the rules and regulations have been developed from different boards throughout the country. Specific details put the licensee on notice as to what is expected. **Senator Souza** remarked barriers to entry and government regulation should be decreased, not increased. Licensees are being told in rule, in great detail, what they must do and if they do not follow that method exactly, then they will be marked down by the inspector. **Ms. Callahan** replied the IBCSLB has concentrated on working with the client rather than disciplining them.

Senator Guthrie stated when the two (Barber and Cosmetology) boards merged into the IBCSLB, each board brought a fund balance with them. **Senator Guthrie** queried how the two boards maintained a fair balance. **Ms. Callahan** commented the IBCSLB considered a number of options for distribution costs among the licenses. The fees were reduced because the cost sharing was in a larger group.

Senator Burgoyne suggested the IBCSLB use the words "relevant information" and eliminate the remainder of the wording. He advised more flexibility should be built into the rule.

Senator Lakey and **Ms. Callahan** discussed why the IBCSLB did not conduct formal negotiated rulemaking. **Ms. Callahan** indicated due to the time situation and the publication schedule, the IBCSLB chose not to conduct negotiated rulemaking.

Senator Guthrie asked if merged rules represented what was already in place or were the rules an expansion. **Ms. Callahan** explained many of the rules were a combination of Cosmetology and Barber rules. The disinfection portion was updated and given a more scientifically-based standard.

Senator Souza and **Ms. Callahan** discussed identifying the rule changes, the level of detail, and the addition of new sections for makeup artists.

Senator Burgoyne asked for an explanation of how the IBCSLB made the licensees and the public aware of the rule changes. **Ms. Callahan** stated at the end of 2018, both the Cosmetology and Barber Boards sent letters to licensees that rulemaking was going to be conducted. Another letter was sent outlining the temporary rules and the process of outlining some of the contents, including disinfection and safety. The IBCSLB sent out emails to all licensees inviting them to join subcommittees. Further, once the rules were proposed, the IBCSLB sent out an additional notice pointing out rules, dates, and contact information and posted all of the rules on the website.

Vice Chairman Agenbroad and **Ms. Callahan** discussed the ambiguity in the rules that were not Idaho-specific issues. They also discussed the idea that Boards across the country were working on uniformity.

- MOTION:** **Senator Souza** moved to approve **Docket No. 24-2801-1802** with the deletion of section 851, subsections 05, 06, and 07. **Senator Lakey** seconded the motion.
- DISCUSSION:** **Senator Souza** remarked she wanted those sections deleted because of the detail about safety and disinfection which are impediments to business operations. If the sections are removed, the IBCSLB can re-examine these sections.
- TESTIMONY:** **Kris Ellis**, representing Northwest Career College of Idaho, testified in support of the docket. She reported Idaho is aligned with other states and thanked the Committee. **Ms. Ellis** stated that with any law, the work is not done. She specified that sanitation is part of the training for cosmetologists and barbers.
- DISCUSSION:** **Senator Souza** reiterated the basics are still in place, but the rule goes into extreme detail and she requested the IBCSLB reduce the detail.
- SUBSTITUTE MOTION:** **Senator Martin** moved to approve **Docket No. 24-2801-1802**. The motion failed due to lack of a second.
- DISCUSSION:** **Senator Lakey** agreed with Senator Souza and her original motion.
- ORIGINAL MOTION:** The motion to approve **Docket No. 24-2801-1802** with the deletion of section 851, subsections 05, 06, and 07, carried by **voice vote**.
- PASSED THE GAVEL:** Vice Chairman Agenbroad passed the gavel back to Chairman Patrick.
- ADJOURNED:** There being no further business, **Chairman Patrick** adjourned the meeting at 2:58 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary