



THE HONORABLE BRAD LITTLE
LIEUTENANT GOVERNOR

Licensing Freedom Act Report and Initial Recommendations

October 19, 2018

Background:

On May 19, 2017, as acting Governor of Idaho, Lieutenant Governor Brad Little issued Executive Order 2017-06, the Licensing Freedom Act (“LFA”). The act ordered a comprehensive review of all state occupational licensure laws and regulations to determine whether existing state licensure requirements are necessary and in the public interest. In addition, the LFA aimed to identify recommendations for improvement, modification, and/or elimination of licensing requirements or other regulatory burdens while still ensuring public protection.

The LFA initiated an unprecedented effort by executive branch agencies to systematically review applicable laws and solicit feedback from the general public. This is the first comprehensive review of occupational licensure in the state in more than 40 years. Agencies reviewed the LFA at regularly scheduled board meetings, conducted formal surveys of licensees, and developed other processes by which interested stakeholders and the public could provide input related to the act. Interested Idahoans were also invited to provide feedback directly to the Offices of the Governor and Lieutenant Governor.

All agencies that administer an occupational license were required to submit certain information to the Lieutenant Governor no later than July 1, 2018. Reports included the following information as requested by the LFA:

- The timeframe in which a license is either granted or denied.
- Prerequisites for a license.
- Renewal requirements.
- Requirements for accepting or denying an application and license renewal.
- Qualifications for suspension, revocation, or other disciplinary action.
- The cost to apply for an application or renewal of a license.
- The cost for administering the licensing and renewal process.

In requesting these items, the Lieutenant Governor’s Office was able to get a more comprehensive snapshot of the scope of occupational licensure in Idaho. The issuance of this executive order did not presuppose any specific policy changes with professional licensure nor the composition of boards and commissions. This information aims to give policymakers the tools to make informed decisions on occupational licensure in Idaho.

This report summarizes key information extracted from the agency reports and provides some initial recommendations based on that initial review. Additional work is necessary to implement all of these public policy recommendations provided, either through policy, rule, statute, or executive order. This report also lays out future follow-up steps.

Reports submitted by each agency can be found at <https://lgo.idaho.gov/licensing-freedom-act-results>.

Brief Overview of Occupational Licensing

An occupational license is a credential issued by a government agency based upon statutes and rules approved by the Legislature in which it finds that a credential is required for an

individual to work in a particular field in order to protect the public. State laws generally specify the minimum requirements necessary to obtain an occupational license. Barriers to entry may include, but are not limited to, age, specific education or training, exams or certifications, criminal background checks, and fees. To renew a license, many agencies require the completion of continuing education and/or other requirements.

In the 1950s, approximately 5 percent of the employed population held an occupational license. Presently, it is estimated that 20-30 percent of all employed Americans have an occupational license. Moreover, states vary in the number of licensed occupations, and the type and extent of requirements they impose on similar licenses.

When structured appropriately, occupational licenses serve the public interest by ensuring minimum competence prior to entry into a profession and protecting public safety. There is increased scrutiny, however, on occupational licensing laws, with critics contending that licensing laws have evolved from their original intent of protecting the public to enacting unnecessary burdens on employment. Studies have found that licensing laws may decrease overall employment, increase consumer costs, reduce innovation, and limit geographic mobility for workers. These impacts may be particularly troublesome for military spouses, applicants with past criminal history, and lower-income workers.

The LFA required agencies to review licensing laws in this context of both serving the public interest, while looking into ways to reduce overall burdens and refresh state government. This review occurred against a backdrop of advancements in technology as well as alternatives to licensure, including market competition, private accreditation, and certification, among others. In other words, agencies were asked to consider how to best protect citizens using the lightest possible hand of government.

Licensing in Idaho: A Statewide Snapshot

Overview of Occupational Licenses in Idaho

The Idaho Constitution limits the number of departments to 20 (see Appendix A— from Idaho Blue Book). In Idaho, occupational licensing is not centralized under any one agency.

Thirteen executive branch departments regulate occupational licensure. Executive branch agencies like the Department of Agriculture and Department of Insurance issue many different occupational licenses. Most occupational licensing boards and commissions are located within the Department of Self-Governing Agencies. Appendix B provides an overview of the 13 executive branch departments that conduct occupational licensure.

The last major state reorganization in 1974 resulted in the creation of the Department of Self-Governing Agencies. More than half of all occupational license types are within the Department of Self-Governing Agencies, which consists of nearly 50 independent boards and commissions that regulate many different professions and industries across Idaho.

The Idaho Bureau of Occupational Licenses (Bureau) was created within the Department of Self-Governing Agencies to serve boards and commissions. The Legislature created the

Bureau to serve the needs of many small regulatory boards. Over time, additional boards have chosen to contract with the Bureau in an effort to share resources. Currently, 29 boards and commissions contract with the Bureau for services.

By The Numbers

Number of Executive Branch Departments Overseeing Licenses	13
Number of Boards and Commissions	47
Number of Appointed Board Members	285
Number of License Types	440

In the course of this review, at least 440 occupational licensure types were identified at the time of this report. As stated, these licenses are administered by at least 13 executive branch departments (see Appendix B). The three departments that administer the most licensure types are 1) Department of Self-Governing Agencies; 2) Idaho State Police; and 3) Department of Agriculture.

As stated, the Department of Self-Governing Agencies is comprised of nearly 50 occupational boards and commissions that operate independently (Appendix C). These boards and commissions are governed by members of the licensed profession and public members appointed by the governor. These boards and commissions vary in the number of licensees administered, ranging from 26 licenses at the Board of Dentistry to 28,708 licenses at the Board of Nursing. Overall, the total number of licenses reported at this time is 204,714.

The powers and duties of each agency are specified in statute. Moreover, any rules promulgated by these agencies have been reviewed by the Idaho Legislature, according to the Idaho Constitution and the Administrative Procedures Act, and determined to be in compliance with legislative intent.

A full listing of these 440 licensure types, and the responsible agency, board, or commission, is provided at <https://lgo.idaho.gov/licensing-freedom-act-results>.

Licensing Fees and Operating Costs

Idaho’s licensing boards and commissions determine fees for initial licensure and renewal based on many factors. Across all license types, at the time of this report, the average fee is reported as \$161.

In addition to ensuring minimum competency before issuing licenses, boards and commissions respond to complaints from the public about licensees. After investigation of

complaints, boards and commissions may pursue disciplinary action against a license. Further, in order to protect the public, some boards and commissions conduct inspections. Across all license types, at this time, the average operating cost per license is reported as \$170.

Denial of License or Failure to Renew a License

Few licenses are denied upon application or during renewal. Agencies reported a total of 372 total license denials and 50 refusals to renew for the review period.

License Processing Time

Agencies used different methodologies to calculate license processing time. Some agencies combined initial applications and renewal applications into a single measure, and most agencies reported processing time from the date all completed materials were submitted by an applicant as opposed to the date of first submission. Thus, it is difficult to make cross-agency comparisons. Follow up efforts must clearly define how this metric should be reported.

Most agencies report a short processing time, however, with most renewals occurring on the same day the applicant completes a renewal application. Only 13.8 percent of license types reported an average license processing time that exceeded 10 days.

Disciplinary Actions

Agencies may pursue disciplinary actions against licenses when licensees are found to have violated the state's laws or rules. Disciplinary options vary by agency, but can range from corrective action plans to license revocation. Across all agencies, there was an average of 12.2 completed disciplinary actions per year.

Many disciplinary actions stem from complaints alleging direct harm, while others are matters that indirectly affect public safety. For example, one agency had 38 percent related to insufficient continuing education credits, 14 percent from failing to carry error and omission insurance, and 8.3 percent for late renewal of the license.

Agency Recommendations

Agencies made 241 total recommendations for improvement, modification, or elimination of licensing requirements or other regulatory burdens. A complete list of agency-specific recommendations is provided in a matrix at <https://lgo.idaho.gov/licensing-freedom-act-results>.

Recent Efforts to Reform Licensure in Idaho:

Each agency report identified specific ways boards and commissions have updated, modernized or eliminated barriers to entry in the past 5 years. In recent years, the Idaho Legislature has approved many of these reforms to licensure in the state. Additionally, in recent years, the Governor and the Idaho Legislature have made reforms to licensure.

In 2012, the Idaho Legislature passed S.B. 1299, creating opportunities for veterans to receive academic credit or apply military training documentation in obtaining an occupational license.

In 2015, the Idaho Legislature passed H.B. 189, the Idaho Telehealth Access Act. As stated in the Act, telehealth services enhance access to health care, make delivery of health care more cost-effective and distribute limited health care provider resources more efficiently.

In 2016, the Governor proposed and the Idaho Legislature passed H.B. 480 and H.B. 482. These laws were in response to the U.S. Supreme Court case *North Carolina v. Federal Trade Commission*. In response to this decision, the Legislature passed H.B. 482 which required boards to have political accountability and active supervision, by allowing the Governor to consider all qualified candidates for appointment. It also requires all board members to serve at the pleasure of the Governor, and requires a public member on every board. H.B. 480 amended existing laws for three boards that required their executive directors to be licensees (Board of Pharmacy/ Board of Nursing/Board of Professional Engineers and Professional Land Surveyors).

In 2017, the Idaho Legislature passed S.B. 1324, which combined the Board of Barber Examiners and the Board of Cosmetology. It also reduced some of the educational requirements for occupations regulated by this new board.

Initial Recommendations:

Establish Sunrise Review Process to Evaluate New Proposed Licenses: Establish an objective review process to determine the compelling public need for proposed licensure prior to enacting any new license types.

Create a Sunset Review Process for Existing Licenses: Create a formal process to review if boards or licensure types can be updated, modernized, or eliminated without affecting public safety.

Create an Internal Process for Boards to Regularly Review Polices, Rules, and Statutes: Boards, commissions, and agencies which administer licenses should regularly review polices, rules, and statutes which govern their actions, striking non-standard, outdated language, and consider updating the act using the model law and rules templates. These efforts would aim to refresh state government.

Improve Political Oversight of Occupational Licensure: In follow up to H.B. 480 and H.B. 482, review options that would improve political oversight. Determine if current structures within the Department of Self Governing Agencies make sense.

Centralize Data for all Occupational Licensure: Use key information from LFA to build database of all occupational licensure and information related to that license. Designate a central coordinating entity within the executive branch for the reporting of occupational licensing information from state agencies, boards, and commissions.

Implement Statewide Board and Commission Member Training: The majority of the Boards and Commissions are composed of Idahoans who volunteer their time. The state should provide

training to them on topics such as the Role of the Board, Open Meeting Law, Public Records and the *North Carolina State Board of Dental Examiners vs. Federal Trade Commission* case.

Increase License Mobility/Portability: Adopt language granting more flexibility for boards to consider licensure by endorsement, or pursue licensure by mutual recognition/reciprocity. This could enable easier practice across state lines and for Idaho's border cities, in particular.

Reduce Licensing Renewal and Reinstatement Burdens: Determine if some boards could transition to (at minimum) 2-year licensing renewal cycles, rather than annual renewals. Encourage boards to reduce reinstatement fees and requirements, if within 5 years of allowing a license to expire.

Streamline License Renewal Requirements: Increase opportunities for online continuing education. Review requirements for continuing education (e.g., attendance at a specific conference or live program) to ensure they are in place for public protection and not promotion of the profession. Specific requirements can make it difficult and cost-prohibitive for licensees in rural areas. Encourage the consideration of hardship waivers and carryover options.

Encourage the Adoption of Technology to Improve Customer Service: Encourage use of an online application, renewal, and payment process for agencies, boards, and commissions, when possible. Allow digital submission of supporting documents for applications. Ensure licensees and the public have access to online license verification.

Standardize Honoraria across Boards and Commissions: Those who serve on boards and commissions are important public servants. We should standardize this payment to those who serve the citizens of Idaho, and take vital time away from their businesses and families to do so.

Standardize Efforts to Reduce Burdens on Veterans and Military Spouses: Follow up efforts (H.B. 1299/I.C. § 67-2620) which allow state agencies to accept military education, training, or service toward meeting the qualification to receive a license, certification, or registration, and allow agencies to expedite the application of a military member or their spouses. The Legislature may want to consider adding military spouses to the provisions which exempt them from the payment of renewal fees while their spouse is on active duty.

Standardize the Process for Reviewing Felony Convictions: Several boards have adopted a rule for an exemption review. Review this rule to be used across agencies, boards, and commissions which conduct occupational licensure.

Improve Disciplinary Process for Businesses and Individuals: Enable all boards to pursue alternative pathways to discipline (e.g., corrective action plans vs. formal discipline). Establish statutes of limitations on administrative discipline.

Prohibit Enforcing Guidance Documents: Prohibit boards from denying a license based on guidance or other factors that are not in statute or rule.

Agencies, Boards, and Commissions Implementing Recommendations: Encourage agencies to move forward with agency bills and rulemaking for the areas they identified in their Executive Order Reports that align with the intent of the LFA.

Next Steps

As follow up to the LFA, Lieutenant Governor Brad Little will convene a working group to review the agency reports in greater depth, review specific recommendations from boards, commissions, and agencies, and begin implementing the initial recommendations from this report.

The Lieutenant Governor will convene a group representing many different stakeholders, with the intention to meet no later than November 1, 2018.

One key step moving forward is the categorization of these recommendations—determining if they can be enacted through policy, rule, legislation, or executive order. This will help with the division of efforts moving forward.

Each recommendation contained in this report would require greater research, discussion, and buy-in from affected stakeholders. Preliminarily, the working group could represent the following:

- Co-Chairs of the Legislature’s Interim Committee on Licensure
- Additional legislators
- 2-4 representatives from boards within the Department of Self Governing Agencies
- 1-2 representatives from other Departments which administer occupational licensure
- A representative designated by the Idaho Board of Correction
- A representative designated by Department of Commerce and/or Department of Labor
- A representative from the veterans’ community
- 3-5 members of the public

The Lieutenant Governor will designate a chairperson(s).

Sources:

<https://lgo.idaho.gov/freedomact/>

<https://lgo.idaho.gov/licensing-freedom-act-results>

http://www.ncsl.org/Portals/1/Documents/employ/Licensing/State_Occupational_Licensing.pdf

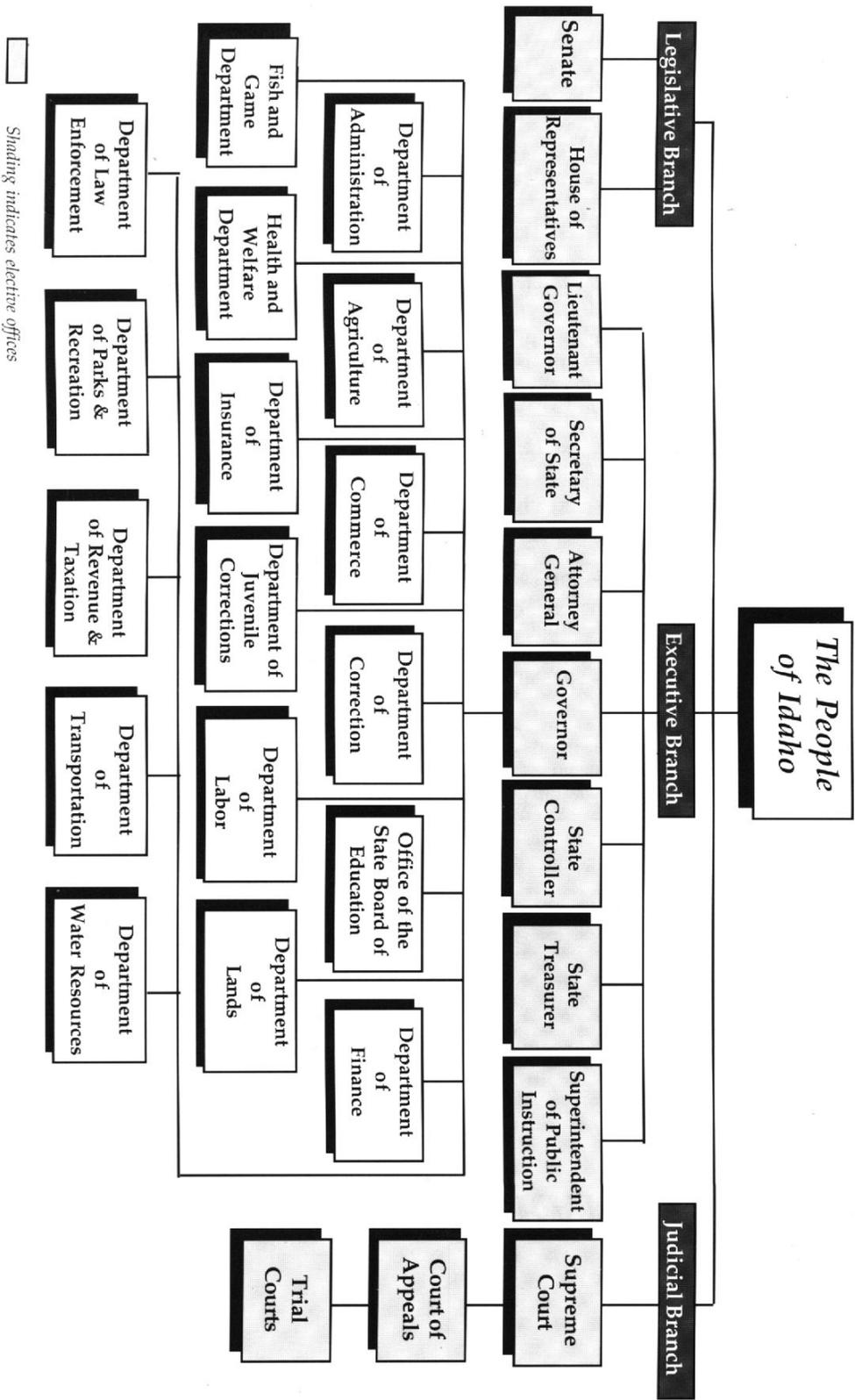
https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

<https://data.ok.gov/dataset/occupational-licensing-directory>

<https://www.ok.gov/odol/documents/FINAL%20Report.pdf>

<https://ij.org/wp-content/uploads/2015/04/licensetowork1.pdf>

Appendix A:



Appendix B:

