

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Wednesday, January 26, 2022
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The January 26, 2022 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:06 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 John J. Soroko, Esq.

Telephone: Murray Ufberg, Esq.
 Dennis A. Watson, Esq.

II. APPROVAL OF THE DECEMBER 9, 2021 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the December 9, 2021 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Chairman Bedwick seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No. 3326 Department of Labor and Industry #12-116: Uniform Construction Code

Michelle Elliott, Regulatory Analyst, explained the regulation updates the Uniform Construction Code (UCC) by adopting almost all of the 2018 International Code Council (ICC) regulations.

Robert C. Schramm, Deputy Chief Counsel, Office of Chief Counsel, and Matthew W. Kegg, Director, Bureau of Occupational and Industrial Safety, Department of Labor and Industry (L&I), were present to answer any questions.

Mr. Schramm explained that the regulation follows ICC regulations that are updated every three years. He noted mechanical, plumbing, electrical and energy requirements are considered within the regulations. He stated the UCC Review and Advisory Council (RAC) has offered their input for the regulations regarding construction codes. L&I is required to accept

RAC's regulations without change. He urged the Commission to adopt the regulation for the safety of Pennsylvanians.

Chairman Bedwick asked if there are constitutional issues with the regulation left over from the last Commission meeting. Mr. Schramm replied the "process is a little different" compared to the last meeting. He explained RAC can "pick and choose" parts of the regulations and has updated them.

Vice Chairman Mizner made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.

2. No. 3266 Environmental Quality Board #7-525: Control of VOC Emissions from Gasoline Dispensing Facilities (Stage I and Stage II)

Ms. Elliott explained the regulation originates with the Environmental Quality Board. She stated air quality regulations offer amendments relating to control of volatile organic compound emissions at gasoline dispensing facilities during loading of underground gasoline storage tanks, filling of motor vehicles at the pump, and during and after decommissioning of Stage II vapor recovery equipment. She noted Wawa has commented in opposition to the requirement of Enhanced Conventional (ECO) nozzles.

Krishnan Ramamurthy, Deputy Secretary, Office of Waste, Air, Radiation and Remediation, and Jesse Walker, Assistant Counsel, Bureau of Regulatory Counsel, Department of Environmental Protection, were present to answer any questions.

Mr. Ramamurthy outlined the regulation's requirement to decommission Stage II vapor recovery equipment. He explained current gas nozzles found in gas stations negatively impact air quality across the state, particularly in high-population areas like Pittsburgh and Philadelphia. Mr. Ramamurthy highlighted some of the issues with ECO nozzles, including that they can get stuck in the car and require more pressure. He stated there may be "a learning curve" for the ECO nozzles. Mr. Ramamurthy cited New Jersey, Delaware and Maryland as states that allow gas station operators to decommission their Stage II vapor recovery equipment. He pointed out the Pennsylvania Petroleum Association supports the proposed regulation.

Chairman Bedwick inquired when the ECO nozzle requirements "kick in." Mr. Ramamurthy answered the regulations require the ECO nozzles, but if current nozzles qualify as an ECO nozzle, they can remain. He cited issues with Dodge Ram size specifications but stated there is a class-action lawsuit against Dodge aiming to make their cars follow size specifications. Chairman Bedwick wondered if the ECO nozzle requirements, if meeting all other criteria, take effect immediately. Mr. Ramamurthy replied two years after the effective date of the regulation the requirement must be met.

Commissioner Ufberg made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

3. No. 3295 Unemployment Compensation Board of Review #12-112: Appeals from Determinations of Department

Laura Campbell, Regulatory Analyst, explained the regulation clarifies the filing date of Unemployment Compensation appeals filed by email and differentiates those appeals filed through a new electronic system. She added the regulation incorporates recent amendments to the Unemployment Compensation Law related to appealing terminations. Ms. Campbell noted one comment was offered that suggested a change to the system.

Paul Jordan, Assistant Counsel, L&I, and Brian Parr, Unemployment Compensation Appeals System Administrator, Unemployment Compensation Board of Review, were present to answer any questions.

Mr. Parr detailed the implementation of L&I's Unemployment Compensation system in June 2021. He stated the proposed regulation increases the time to file an appeal from 15 days to 20 days and allows L&I to issue determinations and decisions electronically or by mail to the party's last known address.

Commissioner Watson noted comments from organizations suggested a person filing an appeal may not receive notice if their appeal is not found in the electronic system. He wondered if this concern is based on concrete evidence. Mr. Parr answered he is not aware of a party not receiving notice, either electronically or by mail. He asked if this is related to an issue raised by Philadelphia Legal Assistance. Commissioner Watson reiterated he wanted to be sure if a party not receiving notice was based on a real experience or just a hypothetical concern. Mr. Parr stated the current situation is there was "substantial" filing of claims during the COVID-19 pandemic that created a backlog of claims as newer claims were filed with the system. He detailed the system's functions when claims are filed may have made it appear as if claims were being lost. Mr. Parr described the five methods to offer an appeal and noted information on the Unemployment Compensation website that can be studied to find the best way an individual can file a claim. He said the regulation should be passed to update the system rather than remove or replace the system entirely.

Chairman Bedwick noted it "is nice to know" there are several methods to file an appeal, but if a party cannot find what the determination is on the appeal then there is no point. He added the regulation's adoption would change the timeframe of the determination's posting on the system. Mr. Parr stated he is unaware of any determination not being visible and the party is notified of the determination by electronic transmission. Chairman Bedwick explained a letter to the Commission that stated a determination could not be found. Mr. Jordan detailed the party received a message through "internal email" and the determination would not appear on the claims page, but the determination is still communicated. Chairman Bedwick inquired if this was because the party chose to file an appeal by email or if the notification will occur in all instances. Mr. Jordan answered it is because the party chose to receive notification by electronic means.

Chairman Bedwick asked if the party chose another method to receive notification, then would the date when the determination is "available" not be the same date as when the party

receives the notification. Mr. Jordan replied if the notification is chosen to be sent through mail, then he is unsure of the language.

Mr. Parr stated the party will receive notification of the determination electronically no matter what method they chose to file the appeal. He asserted the system must provide prompt notification of the determination and he agreed the system should have its "integrity" to send notifications to claimants intact. "To my knowledge, receiving the determination initially is not a problem," he said. Mr. Parr continued by adding the problem lies with going back into the system to find the determination on the active or inactive claim. Chairman Bedwick stated instructions to file an appeal online exist, but some cannot file an appeal online. Mr. Parr responded the regulation will amend the instructions to include additional instructions for filing an appeal through methods other than online. He asserted all the methods to file an appeal that existed before the implementation of the online system are still available. Mr. Parr added this is an "isolated situation" due to the pandemic creating a high volume of claims and it will not be an issue outside of the pandemic. Chairman Bedwick agreed with Mr. Parr's sentiment but noted he must consider the pandemic as well. Mr. Parr reiterated the best way to address the current issue is through the regulation and communication with the party experiencing the problem. "I truly don't feel that this is an issue with regard to the final-form regulation," he declared. Chairman Bedwick repeated his concern regarding online filing.

Commissioner Watson asked if the system has been functional since its implementation. Mr. Parr replied affirmatively. Commissioner Watson inquired if there were any issues with the system's function. Mr. Parr answered he is not aware of any issues.

Commissioner Watson made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.

4. No. 3281 State Board of Social Workers, Marriage/Family Therapists and Professional Counselors #16A-6919: Child Abuse Reporting Requirements

Chairman Bedwick noted four regulations regarding child abuse are similar in nature. He suggested the Commission have a "general discussion" of the regulations then vote on each regulation individually.

Ms. Campbell explained the proposed regulations amend child abuse reporting regulations to better coincide with the Child Protective Services Law. She detailed individuals working in any of the occupations found within the proposed regulations are considered mandated reporters who are required to immediately report suspected child abuse. She noted there were no comments received on the final-form regulations.

Cynthia Montgomery, Deputy Chief Counsel, Department of State (DOS), stated she represents the four state boards. She described the regulations' intent to provide at least five hours of training to employees considered mandated reporters.

Chairman Bedwick commented he found confusing language in the regulations stating that nothing in the provisions should be interpreted as requiring the mandated reporter to identify

the abuser, but other language requires naming the perpetrator if possible. He cited a legislative document from 2014 that found there is no obligation on a mandated reporter to identify the abuser. Chairman Bedwick stated it is important to provide more clarity to this language. Ms. Montgomery asserted the intent is that the abuser should be identified if possible, but it is more important that a child abuse report be filed even if information is missing. Chairman Bedwick expressed his belief the language should be made clearer for the future. Ms. Montgomery stated there are ten more child abuse regulations headed to the Commission.

Commissioner Watson asked if all continuing education requirements in the regulations were from the 2014 legislation or more recently. Ms. Montgomery responded the requirements were from the 2014 legislation and were implemented in 2015. Commissioner Watson wondered why requirements from 2014 are just now being added. Ms. Montgomery stated the requirements are added in the regulations to better conform to the Child Protective Services Law.

Chairman Bedwick made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

5. No. 3287 State Board of Medicine #16A-4941: Child Abuse Reporting Requirements

Commissioner Soroko made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

6. No. 3288 State Board of Nursing #16A-5140: Child Abuse Reporting Requirements

Vice Chairman Mizner made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.

7. No. 3293 State Board of Funeral Directors #16A-4824: Child Abuse Reporting Requirements

Commissioner Watson made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.

8. No. 3306 State Board of Barber Examiners #16A-4211: Fees

Ms. Campbell explained the regulation provides for graduated application fee increases and graduated biennial renewal fee increases related to barber examiners. She stated no comment have been offered on the regulation.

Ronald K. Rouse, Assistant Counsel, DOS, was present to answer any questions.

Mr. Rouse cited a deficit of \$579,905.90 for fiscal year 2020-2021, with the deficit to increase the next fiscal year. He asserted the license fees are insufficient to cover the State

Board of Barber Examiners' (Board) costs and the fees have not risen since 2014. He urged the Commission to approve the regulation in aid of the Board's financial wellbeing.

Commissioner Ufberg asked why a prior regulation has not been offered with such a large deficit. Mr. Rouse responded he has worked with the Board since 2019 and noticed there were quorum issues in the past. He stated he advocated for the regulation since he started working with the Board, but the quorum issues delayed its development.

Commissioner Ufberg inquired if the issues still exist or if there are issues with establishing a quorum in a procedural sense. Mr. Rouse explained it is a "statutory matter" that dictates the number of members needed to establish a quorum, though the Board may still present regulations. Commissioner Ufberg wondered if the quorum requires members to be present or just to vote. Mr. Rouse answered physical presence is not required and added there were not enough members on the Board.

Commissioner Ufberg noted there is a projection of a decline in barber applications by 12 percent. He asked if there will be less business to finance the Board. Mr. Rouse detailed the projection included past biennial license renewal fees as increases in the fees caused some barbers to "drop out." He added these barbers are usually closer to retirement age. Mr. Rouse claimed the projection used an "appropriate amount" to present to the Commission. Commissioner Ufberg clarified his question and asked if the Board anticipates a "substantially reduced cost of doing business." Mr. Rouse responded the Board does not see a reduction in the number of barber applications since license fees are so low. He conceded those close to retirement age will opt to not pay for renewing their licenses.

Chairman Bedwick inquired if a potential decrease in the Board's workload due to fewer applications will result in smaller operation costs for the Board itself. Mr. Rouse stated applications are reviewed in a different way. Chairman Bedwick asked to focus instead on the workload of the Board rather than renewals. Mr. Rouse explained biennial license renewals are not based on the price of processing the application.

Vice Chairman Mizner asked if the costs of processing biennial license registrations have increased. Mr. Rouse replied affirmatively. Vice Chairman Mizner wondered if the cost is related to the cost "incurred by the Commonwealth." Mr. Rouse stated the cost is related to the cost for the Board's operation. He added when determining the fee increase, the costs of other Board duties, such as collecting fees, cover its operation costs. Mr. Rouse explained the Board examined if the initial application fees are "reflective of the cost to process the initial and miscellaneous applications." He continued that the Board combines this fee with fees collected from other Board duties, and the sum is compared to the deficit. Mr. Rouse stated after this sum was not found to overcome the deficit, then biennial registration fees are considered for an increase.

Vice Chairman Mizner wondered if the fees will be lowered once the debt is paid off. He agreed the deficit should be addressed but asserted if the total number of applicants is decreasing, then a corresponding decrease in fee amounts would follow. Mr. Rouse stated the Board has an annual report they reference to find out if there is a surplus to meet the Board's needs. He

explained the Board has continued operating "for so long" that the deficit should have been addressed. Vice Chairman Mizner stated he sees the regulation's fee increase as a "surcharge" to help the Board get out of debt and suggested the board reconsider its costs once the debt has been cleared. Mr. Rouse affirmed the Board will reexamine its fees upon publication of the annual report.

Commissioner Ufberg stated the "easiest" way to operate after the deficit is cleared is to examine the Board's needs and consider having less staff for operation costs. Chairman Bedwick supported this suggestion.

Vice Chairman Mizner expressed his appreciation for the focus on the deficit and urged the Board to consider selecting members for their participation rates to avoid increased costs and provide for members of the barber industry.

Mr. Rouse stated some quorum issues were due to a member's term ending. He added it can be difficult to find members who want to do "Board work." Vice Chairman Mizner agreed with this sentiment.

Commissioner Soroko inquired if surrounding states' application license fees would be followed in Pennsylvania with the proposed regulation. Mr. Rouse replied affirmatively. Commissioner Soroko asked if Pennsylvania is on the lower scale of license fees. Mr. Rouse replied affirmatively and stated the initial application fees are lower and, due to its size, Pennsylvania is competitive in the market.

Commissioner Soroko commented "we have a regulated community" and there are constant probes into whether markets should be regulated. He stated this problem does not only affect Pennsylvania. Commissioner Soroko stated increased fees do not make the Commonwealth worse to work in. He noted there is a need to balance profitability against operating costs.

Commissioner Ufberg noted the other Commissioners helped clarify the proposed regulation and he supported the others' sentiments.

Chairman Bedwick and Commissioner Watson expressed their gratitude for Mr. Rouse's defense of his "unenviable position."

Commissioner Ufberg made a motion for approval. Commissioner Chairman Bedwick seconded, and the motion passed 5-0.

IV. OTHER BUSINESS

1. Approval of Vouchers

Vice Chairman Mizner made motions to approve vouchers and expenses for the period October 22, 2021 through December 9, 2021. Chairman Bedwick seconded, and the motions passed 5-0.

2. Election of Officers

Vice Chairman Mizner made a motion to nominate Commissioner Bedwick as Chairman. Commissioner Ufberg seconded, and the motion passed 5-0.

Chairman Bedwick made a motion to nominate Commissioner Mizner as Vice Chairman. Commissioner Ufberg seconded, and the motion passed 5-0.

3. Consideration of Purchase Order No. 2100028

Chairman Bedwick made a motion to approve Purchase Order No. 2100028. Vice Chairman seconded, and the motion passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, March 10, 2022, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 11:31 a.m.