

Plumbing and Mechanical Systems Board Meeting Tuesday, March 15, 2011

Iowa Department of Public Safety Building, Conference Room 125
215 East 7th Street, Des Moines, IA 50319.

Board Members Present: Thomas Day, Mick Gage, Jane Hagedorn, Ron Masters, Dennis Molden, Susan Salsman, Ken Sharp, Chuck Thomas, Brita Van Horne

Board Member Absent: Stuart Crine

Staff Members Present: Cindy Houlson, September Lau, Matt Oetker and Mary Swinehart.

Chair Jane Hagedorn called the meeting to order.

Minutes dated February 15, 2011

Ron Masters made a motion to approve the February 15, 2011 minutes.

Brita Van Horne seconded

No further discussion was held

Vote: All ayes

Waiver of Administrative Rules

Joseph Murphy from Murphy's Plumbing & Heating

Mr. Murphy has met Number 1 *Identify the specific rule from which a waiver is requested, including the chapter number, chapter title, and rule number.*

Matt: Mr. Murphy is requesting a waiver from the CEUs. Pursuit to Iowa Code 105.20(6) the legislature imposed certain CEU requirements from the board including the board shall require at least eight classroom hours of instruction for each licensing term. It appears to me that he is asking the board to waive a statute, which the board does not have the authority to do. The board has CEU rules that provide a means by which he could request a permissive exemption; however he did not do that. The board should deny this waiver. The board is within its discretion to put in the ruling that the individual has the opportunity to apply for permissive exemption. If that is the board's wish I can include in the citation. The board's permissive exemption rules are pretty strenuous – he would have to demonstrate that his case involves exceptional hardship or extenuating circumstances.

Ron Masters made a motion for the board to deny this waiver and include in the ruling that Mr. Murphy has the option of applying for permissive exemption pursuant to the board's CEU rules.

Tom Day seconded the motion.

No further discussion was held

Vote: All ayes

Jane: The following waivers are the result of that loophole we had in the original rules that if you did not have a license before and was not a part of an apprentice program, then you could be in the industry for x number of years and you still had to start over as an apprentice. There was a time frame in which we said if you can meet the qualifications for the waiver you could apply for and have a chance to take the master exam regardless whether you were working as a master in the field before or journey in the field. If you met those waiver requirements and applied by Sept. 30th you had until November 15th to take and pass your test. There were candidates that met those requirements, made application and passed and received their master license.

Roger Church from Keokuk IA, requesting a waiver of rule Chapter 29 Application, Licensure and Examination rules 29.8 (1) & 29.8(2)a, 29.8(2)b. This rule allowed individuals to sit for the master's exam within that window of opportunity that ended November 15th. Mr. Church received approval for examination in October, 2010. He tested on November 15, 2010 claiming he did not have enough time to study and prepare. He is requesting an extension of time to allow him to take the Master HVAC and Master Refrigeration exams.

Jane expressed concern that we do not know if there are extenuating circumstances that would dictated that he could not have taken that test sooner.

Ken: Is this much different than the previous two we have issued a waiver for in terms of the circumstances and the facts around it?

Mick: The only thing I can see is the one I remember that Prometric was down and could not schedule him and the other one had the wrong books and he had to get the right books. We don't have any of that from this guy at all.

Matt: The options are to go through the four waiver elements or request additional information. The board could schedule a telephonic or in person meeting with Mr. Church. That meeting could occur with the board's administrator or a quorum of the board.

Following a lengthy discussion the board agreed that additional information such as:

- were there circumstances that prevented him from taking the exam sooner
- which test did he actually take and fail
- when did he first see the advertisement
- when did he apply
- when he received approval to take the exam
- when he took a test if he has taken a test
- is he licensed as a journey now
- how many days was it before Prometric could scheduled he to take the test

Brita Van Horn made a motion to delegate Cindy, as administrator to acquire additional information from Mr. Church and report back to the board.

Chuck Thomas seconded the motion.

No further discussion was held

Vote: All ayes

Kenneth Litchfield This waiver is similar to the one above. It is from the same company in Illinois and a similar request. The board agreed to process this waiver the same as the previous one.

Brita Van Horn made a motion to delegate Cindy, as administrator to acquire additional information from Mr. Litchfield and report back to the board.

Ron Masters seconded the motion.

No further discussion was held

Vote: All ayes

John Hobart This waiver is from the same company. He was a bit more detailed in when he received exam approval and exactly when he took each test.

Brita Van Horn made a motion to delegate Cindy, as administrator to acquire addition information from Mr. Hobart and report back to the board.

Tom Day seconded the motion.

No further discussion was held

Vote: All ayes

Kent Church This waiver is from the same company, similar request. This person doesn't tell us if he had even taken the test.

Brita Van Horn made a motion to delegate Cindy, as administrator to acquire addition information from Mr. Church and report back to the board.

Tom Day seconded the motion.

No further discussion was held

Vote: All ayes

Christopher Schlatter This waiver is from the same company. He did give us dates; it is basically the same in Jane's opinion.

Brita Van Horn made a motion to delegate Cindy, as administrator to acquire addition information from Mr. Schlatter and report back to the board.

Tom Day seconded the motion.

No further discussion was held

Vote: All ayes

Ron Speckmann

John Kelly: Mr. Speckmann is an Architect working on the design for Fonda community School District. As he was working on that design, it sounds like he had some initial discussions with Mike Magnant. An addition of a weight room is being proposed. We can look at this in two ways, one we could concentrate on the addition and the other is the entire school. They chose to look at just the addition, as the school may not be up to code. This architect is requesting a variance from the requirement to provide separate facilities for men and women. There are a few exceptions but they do not meet the requirements for the exceptions. They are proposing adding a unisex toilet room that includes one water closet and one lavatory.

We have in the past approved waivers based on actual occupancy vs. calculated building code occupancy. That is when they are using the required fixtures. If there were enough fixtures in the school itself to support this addition, it would seem logical. The existing school does not have enough fixtures to comply with code.

Jane reviewed results of the criteria listed under number 3 of the petition for waiver:

- a. *Why would applying the rule result in an undue hardship on you?* List is the cost. The added cost quoted was questionable.
- b. *Would waiving the rule prejudice or harm the rights of any other person?* I believe it would
- c. *How will the public health, safety and welfare be protected if the waiver request is granted?* I believe it will not because adequate facilities would not be provided. If we were to grant the waiver we would be depending on an existing building that is not up to code.

Denny Molden made a motion to deny this waiver request due to the existing school does not have adequate fixtures to comply with the plumbing code. Unisex restrooms would not accommodate this weight room according to the plumbing code.

Tom Day seconded the motion.

No further discussion was held

Vote: All ayes

There was a discussion about how these types of waivers will be handled going forward. John is supporting this board, he reviews waivers and presents the request and makes a recommendation to the board. Until we see a lot of these coming in Ken would prefer from an administrative standpoint that John take the lead, review the material and present to the board with recommendations. The

board would then make the final decision. Depending on volume and timing this can be revisited at a later date.

Licensing Application Review – John Clasen

Jane, chair requested this be referred to a sub-committee for review and recommendation to the board. Ken: This is a new one for us, as you know each applicant is required to complete Screening Questions on the application. This individual had some sex related crimes that he was convicted of and he is on the sex offender registry. Given the sensitivity of this issue it would be wise for a committee to take a look at this and provide a recommendation to the board and determine if there are some parameters the committee can recommend to the board for the department to use for staff in the future. Given the information we have here it seems to me that it would be most appropriately handled by the Discipline Committee, simply because that committee is accustomed to looking at some of the criminal backgrounds.

Jane, as chair will assign this to the Discipline Committee to bring back to the board with a recommendation.

Cindy has had a brief conversation with this individual and did indicate that this is the route that this will be going. This may be an opportunity to invite this individual to respond to questions via conference call or in person as appropriate.

Legislative Report – Ken Sharp

We sent out an email about a week ago summarizing House file 392 and Amendment 1264 (amendment to House file 392). This bill will have the following key impacts:

- Modifies the definitions of hydronics and HVAC.
- Establishes a fee for master and journey licenses for two years.
- Waives the license renewal fee for licenses renewed between 1/1/11 and 12/31/12.
- Refunds will be issued to those that have renewed or purchased a license since January 1, 2011.
- Changes the license term from two years to three.
- Requires the annual submission of a budget report to the legislature and establish fee revenue that is no more than 10% above 3-year expense average.
- Provides a 30-day grace period for all licensees to renew without penalty, regardless of the reason.

The next funnel deadline is April 1st. To meet that deadline, it must be out of the House and through the Committee, ready for the senate by April 1st.

Mick: How did they come up with hydronics and refrigeration as one instead of HVAC and refrigeration?

Ken: It is the HVAC and refrigeration definition that they are modifying. All three trades, HVAC, refrigeration and hydronics are being affected.

Mick: If they keep us down to 10% this state will never see inspections. Then there is no need for a license.

Transition Planning from 2011 Session - Ken Sharp

Rule Changes and Licensing Software: We are seeing that this bill is being drafted such that the bill will be effective upon enactment. The rules we have that will contradict what is in the proposed bill will be null and void.

Some of the things we are looking at are what to do with the licensing renewal website if the bill is passed for anyone renewing a license will get a free renewal. We are looking at adding a message

to the licensing software to bring that software down the day the bill is signed and have provisions in there that would allow individuals to continue to work with their 2009 license until the software can be up and able to handle the change.

In terms of rules, most of the rules will be changed or affected by this statute will be things we don't have much room for negotiations on in terms of the board having an influence in how those rules read. I will meet with Matt and Cindy to take a look at the final bill and begin to make amendments to the rules to bring those to the committee or the board for appropriate action.

In addition, there is a new administrative rules step, prior to us filing administrative rules with the Administrative Rules Committee, there is a state-wide requirement that all the rules go to the Governor's office for review to determine the impact on economic development and business job recovery types of issues. I don't know what this new step means to our emergency rules process.

Budgeting: Anticipating how to manage the annual report that will be required by the statute. They are requiring at the close of the fiscal year what is in essence a six year report, the previous three years and the trending and forecasting for the next three years in regard to revenue and expenses. We will need to project what the fee structure needs to be and then the following year establish that fee structure in the rule.

Jane: Does determining fees go before the legislature?

Ken: There is nothing in the statute that says the legislature has to approve the fees. A report to the legislature justifying our fees at the rate that we set them and demonstrating our fees and the revenue generated from them do not exceed 10% more than the cost of operating the program. If the board comes with a proposal of a three year budget that shows a 20 or 30% increase in the cost of fees and we can't clearly articulate why we need that increase in the cost of the fees, relative to the proposed budget we have, I'm sure the legislature will be asking questions during that subsequent legislative session.

Denny: We can't even anticipate inspections down the road in our budget? Do we assume there are no inspections?

Ken: Until the legislature gives us some direction on that, the best we could try to do is work with the legislature in some fashion in preparing that annual report to see if we can get some commitment from the leadership in the respective house and senate about looking at getting inspection legislation.

Denny: The budget will be set assuming there will not be inspections?

Ken: The first few years that is safe to assume.

Mick: Where I come from, everyone calls rural America; the people went along with the licensing because they thought they were going to get inspections. This is what was sold to the people in our area.

Ken: My challenge is that this board and the department was told by previous legislatures that state-wide inspection requirements would be coming and legislation hasn't occurred. The changes we are seeing from this legislative session stem from a very vocal party. That should tell us something about what results in changes to support what the constituents want. If the industry and rural Iowa feel strongly about the need for statewide inspections, they are the ones who will make it happen.

Jane: This board is not going to have the funds to do a startup. Those funds are going to be gone.

Ken: That is correct. In a matter of three years we will have a near zero balance.

Contractor License Ken Sharp

The fee that is established in our rules currently is \$250. If this board moves forward with a \$250 fee for contractor licensing that fee, we will hear a significant backlash from the next legislative session. We have had a few discussions about the need to revisit this issue and monitor this as the legislative session goes forward. Following are some estimates to work from, although nothing definitive is available regarding potential number of licensees.

Currently, there are over 6700 individuals that hold a master license either active or inactive level. Half or 3,500 of those individuals may be contractors as a rough estimate. Starting with one FTE to manage contractor licensing and the renewal requirements around licensing, bonding and insurance documentation, the top end would be \$100,000 a year at the very most. Most likely that would be a clerk level position and would probably equal \$50,000-\$60,000 a year, for rough estimates lets figure \$100,000 a year. That would get us one to one and a half FTEs. Assuming we are going to be a 3 year licensing period. That would be \$300,000 added to that budget. Looking at 3500 contractors as a revenue source, it would out to \$81.75 per contractor for those one to one and a half FTEs for a three year period. The PMB would be well advised to revisit that rule around the contractor licensing fees and look at reducing that fee from \$250 to something less based upon these very rough projections.

Denny: How long do you think the change in fees for journey and master will occur?

Ken: I think you will see a bill out of the legislature and passed by May 1st.

Denny: When will the software be ready for contractor licensing?

Ken: That is dependent on what changes need to be made.

Ron: With that new steps in the rule making process will that slow our process down?

Matt: The deputy from the governor's office, Larry Johnson, is the contact for information. There are two steps: one is all administrative rules have to receive preclearance or approval from the governor before they can engage in the formal rule making process. The second change is through executive order that the governor's office issued last week that places an obligation on all agencies to engage in a cost benefit analysis for their rules for determining how a set of rules will affect job creation and business development in the state of Iowa. Further a requirement in that executive order was with the administrative rules and the preamble section all boards are going to have to create a job impact statement on how the rules would affect either add to or decrease jobs throughout the state of Iowa. The boards are obligated to accept public comment on that job impact statement from industry partners and others.

Brita: You said the board would take public comments when would that fall in?

Matt: The executive order is a bit unclear as to when a board is to solicit public comment. Whether the board would take public comment on that impact statement and at the same time they are taking public comments on their rules. Whether the board would be willing to amend the rules to accommodate public comments.

Tom Day: I have a problem looking at the Master license and basing the cost on the master license. We know that at one time, out of the total licenses, half were masters. What I would like to see is based on is the Iowa Workforce Development- for mechanical, plumbing and heating/cooling contractors. That is going to hit how many licenses you have.

Ken: We will research those numbers and share that with the board.

Extensive discussion followed with the recognition that it will be best to wait and see what comes out of the legislative process this year before making final decisions regarding the contractor license.

Committee Reports and Recommendations for Actions:

Administrative Rules Committee Sue Salsman reported this Committee met on February 23rd we got to a point where we needed to know what happens with House File 45. It is possible by the next board meeting we could have Chapter X ready and thus waiting legislation to complete.

CEU Committee Jane Hagedorn reported there has been a total of 1,233 applications received

386 instructors approved
 688 courses approved
 41 E courses approved
 7 applications waiting for approval
 111 applications returned because no information was received
 within a 30 day period

This committee continues to meet now once a month in that we have seen a bit of a lull in terms of the courses and instructors that are applying. We only meet as a committee once a month or we do twice a month with a phone conference. Each week by Friday, a list of applications for both instructors and courses are sent to committee members. We try to turn those around by the first part of the following week with our comments via email and any of those that the committee is in agreement on for approval, those courses and instructors can be approved by staff and processed. We work on this on a weekly basis and we have considerably diminished the amount of time it takes to get approved via the weekly email process.

Reminder, as of March 1st there is no post approval for courses. We are in the preapproval process.

Renewals: As of March 14th we have had a total of 856 license renewals:

693 masters	215 journey
2 apprentices	8 active journey/inactive master
17 med gas	

As of March 13th there has been 193 licenses that lapsed (beyond the 30 day time period).

Medical Gas Committee Chuck Thomas reported this committee has not met. We have had a proposal from Medical Gas Training and Consultation to be considered as an equivalent to NITC. Materials have been sent to committee members and a phone conference will be scheduled to discuss this company's qualification and make a recommendation to the board.

Testing & Exam Committee Chuck Thomas reported Rick Coffman, inspector from Waterloo as well as a CEU instructor made a request to take the exam. Previously in his area instructors were allowed to take a free test to see what they need to teach. Prometric is not anxious to give the test away and don't want teaching the test, teaching materials should allow passing of the test. Cindy will respond to Rick Coffman.

Other Business

Notice Election of Officers Cindy Houlson reminded the board that we are coming up to that time of year again for the election of officers for board. Pursuit to 105.3 5. *The board shall organize annually and shall select a chairperson, vice chair and a secretary from its membership.* If interested in filling one of these positions please let Cindy know.

DIA Hearing Schedule Cindy Houlson reported that DIA provided a schedule on public hearings (in the handouts). Several options were provided for the opportunity for board members to attend. Please let Cindy know if you would like to attend a hearing, on an individual basis. These are open public hearings and some are call ins and some may be settled before getting to a hearing. Attendance could provide some insight to board members of the process.

Public Comment

Chuck Thomas read two emails received via "contact us" regarding Continuing Education for board consideration. The first was from Joe Tollari dated 2/18/2011 and the second one was Nicholas Cress dated 2/13/2011.

Jerry Hintz I asked before about the possibility of expanding the time for apprentices to take the exam. I have an apprentice that applied to take the exam three weeks ago and he has not received a response as yet. What is going to happen before this can be changed in the rules? Could they start the process prior to the 60 days by putting their application in and getting their exam scheduled with Prometric? I'm just trying to get this individual who has been working for three and a half years an opportunity to get that journey scale as soon as possible. [after staff checking this gentleman's application was processed within the 15 day response time]

Ken: I don't think there is anything in our rules that state an apprentice could not apply prior to that 60 days, however they are not allowed to sit for the exam prior.

Rick Becker's concerns were already answered

John Barber If a person signs up to take a six hour course and is unable to complete. Can he get credit for the hours he did attend?

Ken recommends submitting a waiver request, with very clear documentation and justification.

What if someone signs up for an 8 hr course but only needs 4 hours to meet requirements?

Ken feels that is a matter of working with that training provider to breakdown that class to provide 4 hour segments.

Bill Schweitzer *I've had this question from several individuals, person has many years experience in another state do they still have to take the exam?*

Ken: Yes, that is required.

Majority of masters today are already contractors right? To be able to justify the numbers an email could be sent to each contractor registered with Workforce Development asking if they are a contractor or do they plan on being a contractor. That may give you the numbers to justify requirements.

Ken commented that there are good public sources of information available. .

Bill responded to individuals who commented that they would have to take a day off work to obtain continuing education. PHCC holds courses on Saturday so people would not have to take time off work. If an emergency came up we have sign in and sign out sheets, that way if you get there and are not there to sign out you will not get credit. Depending on how many attending, I have had classes of 130 and I can't keep track of each individual.

Greg Ploeger

Regarding the five waivers from one company, one question that may be important is how many are employed by the company. If there are five and all five of them missed the exam, that is one thing, but if there are 50 and five of them didn't feel there was a need that is another. If you have five master level people not paying attention to the market they are working in that is a different question.

The other item I have is what needs to happen, what can contractors do, to help move things forward for inspections? It has to come through the legislature and it is too late this year unless it can be hooked to a budget item; at least I have seen things go that way.

Ken commented it is never too late. You'd be amazed what happens during the closing hours of the session.

Greg: Do we need someone to draft something. I understand it is kind of hurry but I have a meeting tomorrow with twenty some contractors and I also work with an organization that has contractors across the state. Sometimes when there is something really important they will contact their peers, not the guy down the street because he is a little more competition but a peer across the state. If there is something we can do.

Ken: It is all part of the legislative process. .

Kevin Kruse has been getting some calls from people needing two hours of code and I know there are the online courses available, but how do I find those courses?

Ken: E courses are listed on the first Sunday of each month on the training calendar. We have not done a very good job of advertising these courses. We will make sure it is noted on the calendar, so it they will be easier to locate.

Break at 11:17 a.m. for lunch.

Closed Session Discipline Review

Chuck Thomas made a motion that the Board go into closed session for the purpose of reviewing and discussing records required or authorized by state or federal law to be kept confidential and discussing whether to initiate licensee disciplinary proceedings, pursuant to Iowa Code section 21.5(1)(a) and 21.5(1)(d)."

Brita Van Horne seconded the motion

Roll call vote all ayes: Susan Salesman, Thomas Day, Mick Gage, Jane Hagedorn,
Dennis Molden, Ken Sharp, Chuck Thomas and Brita Van Horne

Motion: Carried at 12:07 p.m.

Closed session commenced at 12:07p.m.

1:20 p.m. Return to open session

Jane made a motion to close Case Number PM20090011 for lack of probable cause

Second: Chuck Thomas

No further discussion was held

Vote: All ayes

Motion: Carried

Chuck made a motion to close Case Number PM20100054 close for lack of probable cause

Second: Tom Day

No further discussion was held

Vote: All ayes

Motion: Carried

Chuck made a motion to close Case Number PM20100056 close for lack of probable cause

Second: Tom Day

No further discussion was held

Vote: All ayes

Motion: Carried

Chuck made a motion to adopt as drafted PM20090010.

Second: Tom Day

No further discussion was held

Vote: All ayes

Motion: Carried

Chuck made a motion to adopt as drafted PM20100062

Second: Tom Day

No further discussion was held

Vote: All ayes

Motion: Carried

Chuck made a motion to adopt as drafted PM20100059

Second: Tom Day

No further discussion was held

Vote: All ayes

Motion: Carried

Next Meeting: April 19, 2011 in Lucas Rooms 517 & 518

Adjournment at 1:26 p.m.