

MINUTES

HOUSE & SENATE INTERIM COMMITTEES ON PUBLIC HEALTH, WELFARE AND LABOR

July 21, 2011

The House and Senate Interim Committees on Public Health, Welfare and Labor met Thursday, July 21, 2011 at 10:00 a.m. in Room 130 at the State Capitol, Little Rock, Arkansas.

Public Health Senate members attending were: Senators Percy Malone, Chair; Randy Laverty, Vice Chair; and Jack Crumbly.

Public Health House members attending were: Representatives Jon Woods, Vice Chair; Billy Gaskill, Barry Hyde, Bryan King, Sheilla Lampkin, Andrea Lea, Greg Leding, Buddy Lovell, Stephanie Malone, Andy Mayberry, Gary Smith, and Jeff Wardlaw.

Non-Voting Public Health House members attending were: Representatives Mark Biviano, Debra Hobbs, Lane Jean, Uvalde Lindsey, James McLean, David Meeks, and Tommy Thompson.

Other legislators attending were: Senators Paul Bookout Mike Fletcher, Jimmy Jeffress, Bill Sample, and David Wyatt. Representatives Tommy Baker, Nate Bell, Lori Benedict, Jerry Brown, Jane English, Mary "Prissy" Hickerson, Homer Lenderman, James Nickels, Mike Patterson, and David Powers.

Senator Percy Malone called the meeting to order.

REVIEW OF MINUTES FROM THE JUNE 22 AND 27, 2011 MEETINGS (EXHIBITS B-1 & B-2)

Senator Percy Malone stated that without objection the minutes would be approved.

REPORT BY THE ARKANSAS COMMISSION ON EYE AND VISION CARE OF SCHOOL AGE CHILDREN FOR THE SCHOOL YEAR 2010-2011 (ACT 1438 OF 2005) (EXHIBIT C)

Paula Smith, MNSc, RNP, State School Nurse Consultant, Arkansas Department of Health and The Arkansas Department of Education, presented the interim report on the Eye and Vision Care of School Age Children for, school year 2010-2011. The report was basically the same as last year and the committees had no questions. Dr. Creighton Simmons, Optometrist, member of the Arkansas Optometric Association, testified the Association has not come up with a successful way of encouraging parents/guardians to follow through with eye exams and the treatment of eye problems for their children.

Senator Malone stated the Vision Report will stand as reviewed.

ARKANSAS DEPARTMENT OF EDUCATION ANNUAL REPORT ON AUTOMATED EXTERNAL DEFIBRILLATORS (EXHIBIT D)

Paula Smith, MNSc, RNP, State School Nurse Consultant, Arkansas Department of Health and The Arkansas Department of Education, presented the annual report on automated external defibrillators. Ms. Smith gave a brief synopsis on how and why it has become mandated for automated external defibrillators to be placed in schools. She also explained the distribution of the defibrillators among Arkansas schools.

Senator Malone stated the Automated External Defibrillator report will stand as reviewed.

REVIEW OF THE WORKERS' COMPENSATION COMMISSION QUARTERLY REPORTS FOR APRIL – JUNE, 2011 (AS REQUIRED BY ACT 1179 OF 1999) (EXHIBIT E)

James Daniel, Assistant Chief Executive Officer, Workers' Compensation Commission, presented the quarterly report for the Workers' Compensation Commission. There were no questions from the committees.

Senator Malone stated the Workers' Compensation Commission quarterly report will stand as reviewed.

ARKANSAS DEPARTMENT OF HEALTH, TRANSFER OF THE LEAD-BASED PAINT PROGRAM FROM THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ) TO THE DEPARTMENT OF HEALTH, EMERGENCY RULE BY THE ARKANSAS STATE BOARD OF HEALTH (EXHIBIT F)

Robert Brech, Deputy General Counsel, Arkansas Department of Health, stated that effective July 1, 2011, the Lead-Based Paint Program was transferred from the Arkansas Department of Environmental Quality to the Arkansas Department of Health (ADH). On July 7, 2011, this proposed rule was passed as an emergency rule to lessen any interruptions in the program. The ADH is promulgating this emergency rule to make it a permanent rule before the emergency rule expires in November, 2011.

Senator Malone stated the proposed change will stand as reviewed.

DEPARTMENT OF HUMAN SERVICES MEDICAL SERVICES, HOSPITAL 2-11, CORRECT BILLING PROTOCOL FOR PROCEDURE CODE 53620 IN REGARD TO NEWBORN SCREENINGS (EXHIBIT G)

Jeff Wood, Deputy Counsel, Office of Chief Counsel, Department of Human Services (DHS), and Marilyn Strickland, Chief Operating Officer, Division of Medical Services, DHS, presented the proposed change to Hospital 2-11, regarding proper billing procedures for newborn screenings.

Representative Jane English asked how many babies are born under Medicaid annually, and Ms. Strickland said she would get that information to her.

Senator Malone stated the proposed change will stand as reviewed.

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES, UPDATING VISUAL MANUAL 1-11, UPDATING VISUAL MANUAL TO REFLECT CURRENT PROCEDURES AND TO ADD PRIOR AUTHORIZATION TO HCPCS CODE S0592 (EXHIBIT H)

Jeff Wood, Deputy Counsel, Office of Chief Counsel, DHS, and Marilyn Strickland, Chief Operating Officer, Division of Medical Services, DHS, said the proposed change updates the visual care manual codes to reflect what is currently covered by the Division of Medical Services and adds prior authorization to HCPCS Code S0592.

Senator Malone stated the proposed change will stand as reviewed.

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES, 2.6% RATE INCREASE FOR INTERMEDIATE CARE FACILITY FOR MENTALLY RETARDED (ICF/MR) UNDER 16 BEDS, SPA 2011-006 (EXHIBIT I)

Jeff Wood, Deputy Counsel, Office of Chief Counsel, DHS, presented the proposed change, that will allow the base per diem rate for Under 16 Bed ICF/MR facilities to be increased 2.6% for dates of service beginning July 1, 2011.

Mr. Wood also assured the committees that the Department of Human Services is currently changing the language from 'mentally retarded' to 'individuals with developmental disabilities' in all DHS documents (Act 98 of 2011).

Senator Malone stated the proposed change will stand as reviewed.

COMMISSION ON LAW ENFORCEMENT STANDARDS AND TRAINING, STANDARDS DIVISION, MINIMUM STANDARDS FOR TRAINING (FULL TIME AND PART TIME 1 OFFICERS), REGULATION 1005 (EXHIBIT J)

Brian Marshall, Deputy Director, Law Enforcement Standards and Training Commission, said this proposed change would alter the minimum training requirements for any law enforcement officer that has been separated from law enforcement more than 7 years but less than 10 years.

Senator Malone stated the proposed change will stand as reviewed.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ), TRIENNIAL REVIEW PROCESS OF REGULATION NO. 2 CONCERNING WATER QUALITY STANDARDS (EXHIBIT K)

Senator Malone announced the committees will pass over Exhibit K, and it will be brought back at another time.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY, PROPOSED CHANGES TO REGULATION NO. 34, STATE WATER PERMIT REGULATION (EXHIBIT L)

Teresa Marks, Director, Arkansas Department of Environmental Quality (ADEQ), presented the proposed changes to Regulation No. 34, State Water Permit Regulation. The proposed changes will remove the definition of “land application”, and add the term “brine production and injection wells” to Chapter Two. Ms. Marks stated that Regulation No. 34 is a permit-by-rule and will replace the general permit, thus allowing ADEQ to enforce those issues that are on the pad. Although this is the first time the ‘permit-by-rule’ has been used in Arkansas, other states have used this type of rule and it has the same provisions as the general permit. The Arkansas Oil and Gas Commission will be updating Rule B-17 to include a similar provision.

Representative Tommy Thompson asked if there would be a change in the charge for this permit. Ms. Marks stated there would no longer be a permit fee.

Senator Malone stated the proposed change will stand as reviewed.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION (REGULATION NO. 2, WATER QUALITY STANDARDS, THIRD PARTY RULEMAKING BY UMETCO, INC.) (EXHIBIT M)

Teresa Marks, Director, Arkansas Department of Environmental Quality, stated that UMETCO proposes amending the site specific mineral quality criteria for chloride, sulfate, and total dissolved solids (TDS). Although Wilson Creek has never been used for drinking water, UMETCO withdrew their request to remove the domestic water supply use designation for Wilson Creek.

Steve Drown, Chief, Water Division, ADEQ, explained that the total dissolved solids (TDS) is a combination of all the dissolved minerals in the water.

Al Eckert, Attorney, representing UMETCO, said a reverse osmosis system would be one way to bring Wilson Creek into compliance with ECO Region standards, or to build a pipeline—both of which would be quite expensive. Mr. Eckert said that is the reason for the third party rulemaking, as it will show UMETCO is protective of the environment and the numbers can be raised to a level that is still protective and still meet permit compliance.

The following people testified against the Third Party Rulemaking by UMETCO:

Joe Nix, a chemist who has studied rivers and lakes in Arkansas for over 50 years (Handout #1)

Mr. Nix said that some of the data from this area and also other acid mine drainage areas indicate it is not uncommon for toxic heavy metals to increase when sulphates and chlorides increase. Mr. Nix stated that these lakes have to be sampled quite frequently at multiple places and depths; and under different circumstances (i.e. storms, etc). Sampling every 3 or 4 months is not enough to provide the necessary data to make the decision that is before the Pollution Control Commission. He recommended that a comprehensive water quality evaluation of Lake Catherine is needed to determine the exact mineral and chemical content of the water. He estimated the cost of a study would be \$300,000.

Denise Parkinson, representing ‘Save Our Streams’ (Handout #2)

Ms. Parkinson stated that Indian Springs Creek and Wilson Creek are hydrologically connected, according to ADEQ (maps included to show placements). This water is pumped from the landfill site under which Indian Springs bubbles out, carrying cancer causing heavy metals in it. Ms. Parkinson said she has been researching this site for the past year. She stated there is a children’s soccer field located between these two creeks. In addition, Ms. Parkinson said that most of the families living in this little area have been affected by cancer and/or numerous other health problems they had not experienced prior to living in this neighborhood.

Mary Bournival, Justice of the Peace, Garland County, District 4

On behalf of the people of Garland County, we implore you to vote no to any proposed change that would relax the existing state pollution standards. There is a very significant pollution problem of toxic chemicals and metals affecting this area (both the ground water and the land).

Allen Carter, resident of Hot Springs (Handout #3)

Mr. Carter stated that in ADEQ's report from the 2011 study of Lake Catherine, the vanadium content from top to bottom in Lake Catherine at the dam area was 152 – 180 parts per billion. The 1996 study by Oakridge National Laboratory, in Tennessee stated the amount of vanadium that would negatively affect the aquatic biota in lake water is 5 – 100 parts per billion.

Senator Malone asked Ms. Marks if the exact origin of vanadium was known. Ms. Marks said, "this would have to be proven through another study, and certainly one would think that UMETCO and Stratcor both are releasing vanadium". ADEQ has requested that Stratcor sample for vanadium.

Senator Malone requested that ADEQ do further testing in the Lake Catherine area. Ms. Marks stated that ADEQ does not have the resources to do the extensive research and conduct the study that Senator Malone is requesting. Senator Malone urged Ms. Marks to find a way to finance the study that Mr. Nix discussed and other studies as needed. He told Ms. Marks that the legislature will work with ADEQ on getting the resources necessary for this study. Director Marks said she would commit to finding the resources.

Dr. Nate Smith, State Epidemiologist, Deputy Director, Arkansas Department of Health, said he has looked into the issue of high incidences of cancer of residents surrounding the UMETCO site and found no evidence of it. Senator Malone urged Dr. Smith to revisit the site and study the issue closer.

Senator Malone asked for commitment of the Arkansas Department of Health and ADEQ to examine the health issues and concerns about cancer that were discussed today. Representatives from both agencies acknowledged to Senator Malone and the committees that they would examine the health issues raised.

Senator Malone stated the proposed change will stand as reviewed.

The meeting adjourned at 12:15 p.m.