



WYOMING LEGISLATIVE SERVICE OFFICE
DAVE GRUVER, *Director*

DATE: January 8, 2016
TO: Management Council
FROM: Legal Services Division
SUBJECT: 2015 Annual Report

**GOVERNOR'S RESPONSE TO
MANAGEMENT COUNCIL'S ACTIONS ON ADMINISTRATIVE RULES.**

Following each meeting of the Management Council, and after completion of each e-mail ballot, the LSO is to notify the Governor of the Council's action on administrative rules.

Pursuant to W.S. 28-9-106(b), the Governor is required, within fifteen days after notification, to file his written objections to the Council's recommendations or to direct the agency to amend or rescind the rules objected to by the Council.

Annually, the LSO reports to the Council concerning the Governor's response to the rules objected to during the course of the year. The list does not include any rule reports completed during this past year upon which the Council has not yet acted. The report does not include rules which the Council discussed at a meeting, by requesting that it be removed from the consent list, if the Council took no formal action regarding the rule.

If the Council is not satisfied with the Governor's response regarding a rule and determines the issue is significant and should be pursued, the Council may:

1. Sponsor legislation in the form of a Legislative Order to prohibit the implementation of the rule; or
2. Introduce a bill to amend or clarify the agency's authorizing statute or supersede the controversial provision adopted by the agency.

2015 ANNUAL RULE REVIEW REPORT

A. Rules objected to by Management Council due to procedural issues.

1. ARR15-041 – Fire Prevention and Electrical Safety – Chapter 1 – General Provisions

These rules amend the rules of the Council on Fire Prevention and Electrical Safety by updating codes incorporated by reference. LSO noted the agency failed to state in the amended rules where the incorporated material can be found on the internet, as required by W.S. 16-3-103(h)(iv) ("The incorporating agency maintains and makes available for public inspection a copy of the incorporated matter at cost from the agency and the rules of the incorporating agency state where the incorporated matter is available on the internet as defined in W.S. 9-2-1035(a)(iii)").

The Council recommended the Governor direct the agency to amend the rules in compliance with W.S. 16-3-103(h)(iv).

Governor's response:

The rules were filed on December 2, 2015 without the change. The agency's Attorney General advised the rules incorporated various international codes and it is was not feasible to include an internet website due to financial and proprietary concerns. The Attorney General representative further advised the rules provide a physical address where the incorporated matter is available.

2. ARR15-047A – Livestock Board – Chapter 2 – Vaccination Against and Surveillance for Brucellosis

These rules amend rules of the Livestock Board related to vaccinations. In particular, the proposed changes to the rules strike the designation of the year of material adopted by reference and also strike the phrase "These rules do not include any later amendments . . ." LSO noted these changes violate W.S. 16-3-103(h)(ii) which requires an incorporating agency to fully identify the incorporated matter by location, date and otherwise, and state that the rule does not include any later amendments or editions of the incorporated matter.

The Council recommended the Governor exercise his authority pursuant to W.S. 16-3-103(d) and disapprove the offending portions of the rules.

Governor's response:

The LSO has not received a response from the Governor yet.

B. Rules objected to by Management Council for substantive issues.

1. ARR15-008 – Department of Health – Chapter 1 – General Provisions; Chapter 2 – Provider Certification; Chapter 3 – Application for Funds and Selection of Providers; Chapter 4 – Substance Abuse Treatment

Standards; Chapter 5 – Complaints; Chapter 6 – Professional Standards for Personnel and Service Quality; Chapter 7 – Court Supervised Treatment Programs; Chapter 8 – Prevention Services

These rules condense and combine rules on mental health and substance abuse programs. The LSO noted the agency may have exceeded its statutory authority in the amended rules by referring to requirements not specified in the rules but which the agency reserves the power to later specify. The LSO also noted the agency may not have complied with statutory requirements by failing to promulgate rules specifying a funding formula for recommendations from the court supervised funding account.

The Council recommended the Governor direct the agency to modify the language of the rules consistent with the LSO's concerns.

Governor's response:

By letter dated May 28, 2015, the agency advised that it had withdrawn the rules.

2. ARR15-022 – Retirement System – Chapter 1 – General Provisions; Chapter 3 – Contested Case Proceedings (Repealed)

These rules incorporate by reference the Office of Administrative Hearings' Uniform Rules for Contested Case Practice and Procedure "to the extent they are not inconsistent with the specific and distinct requirements of the [agency] or state or federal law governing or applicable to the [agency]." The LSO found the incorporation by reference language did not appear to be within the scope of statutory authority and legislative intent as it could be interpreted to mean that the Uniform Rules govern contested case proceedings unless inconsistent with any policy, procedure or guideline adopted by the agency.

The Council recommended the Governor not approve the rules. The LSO advised the Governor that a line-item veto of the above quoted language effectuates Management Council's recommendation.

Governor's response:

By letter dated September 15, 2015, the Governor advised that he had line-item vetoed the above quoted language.

3. ARR15-025 – Secretary of State – Chapter 26 – Special District Elections

These rules detail the requirements for special district elections. The LSO noted the amended rules did not clearly identify the type of election to which each provision of the rules applied, incorrectly defined "absentee voting" to include voters at regular polling places and incorrectly restated statutory requirements regarding publication of proclamations.

The Council recommended the Governor advise the agency to amend the rules to address the LSO's concerns.

Governor's response:

On the Certification Page signed August 18, 2015, the Governor requested the agency make the changes identified in the LSO's rule review.

4. ARR15-026 – Chapter 38 – Hathaway Scholarship Program

These rules were amended in an effort to comply with legislation enacted in 2014 and 2015 concerning the Hathaway Scholarship. The LSO noted the amended rules, in conflict with W.S. 21-16-1308(b)(iv)(A), restricted early scholarship application to those who earn a high school equivalency certificate after emancipation.

The Council recommended the Governor exercise his authority pursuant to W.S. 16-3-103(d) and disapprove the offending language in the rules.

Governor's response:

By letter dated August 19, 2015, the Governor advised he had line-item vetoed the offending language in the rules.

5. ARR15-038 – Miners' Hospital Board – Chapter 1 – General Provisions; Chapter 2 – Services for Miners

These rules govern services and benefits provided to eligible miners. The amended rules removed references to the annual maximum benefits allowed per miner for medical assistance and hearing aids and stated the amounts will now be found in the agency's administrative policies and procedures. The LSO noted the use of policies and procedures in place of properly promulgated rules for setting the annual maximum benefits likely deprived a miner of the substantive rights of notice and the opportunity to be heard.

The Council recommended the Governor exercise his authority pursuant to W.S. 16-3-103(d) and not approve the offending portions of the rules or in the alternative, direct the agency to rescind the rules and propose new rules which address the LSO's concerns.

Governor's response:

By letter dated August 28, 2015, the agency advised it had withdrawn the rules.

6. ARR15-040 – Office of Homeland Security – Chapter 1 – Lifesaver Program Grant Administration Rules

Pursuant to legislation enacted in 2015, these rules establish the application for and administration of grants for the Lifesaver Program. The LSO noted the amended rules limited the class of applicants that may apply for funding of a lifesaver program in conflict with the enabling legislation which merely placed stipulations on the use of grant funds.

The Council recommended the Governor exercise his authority pursuant to W.S. 16-3-103(d) and disapprove the limitation on the class of applicants that may apply for the funding.

Governor's response:

By letter dated October 9, 2015, the Governor advised he had line-item vetoed the offending portion of the rules.

7. ARR15-058 – Professional Teaching Standards Board – Chapter 2 – General Provisions for Educator Licenses, Endorsements, Permits, and Authorizations; Chapter 3 – Terms and Conditions for Educator License Endorsements

These rules amend rules of the Professional Teaching Standards Board related to educator licenses. These rules require reinstatement applicants to meet renewal requirements listed on the back of the license or permit. The LSO noted the requirements listed on the back of the license or permit are not incorporated into the rules by reference and as a result, no notice is provided of what the renewal requirements are or whether those requirements are uniform across all licenses and permits.

The Council recommended the Governor exercise his authority pursuant to W.S. 16-3-103(d) and disapprove the language requiring compliance with renewal requirements listed on the back of a license or permit.

Governor's response:

On the Certification Page signed December 9, 2015, the Governor disapproved the language "listed on the back of the License or Permit".

8. ARR15-061 – Midwifery Licensing Board – Chapter 1 - General Provisions; Chapter 2 - Organization and Procedures of the Board (Repealed); Chapter 3 - Requirements for Licensure and Application; Chapter 4 - Application Procedure (Repealed); Chapter 5 - Fees; Chapter 6 - Renewal; Chapter 7 - Professional Responsibility; Chapter 8 - Practice and Procedures for Disciplinary, Application and Licensure Matters; Chapter 9 - Complaints: Practice and Procedure (Repealed); Appendix B - National Association of Certified Professional Midwives Standards of Practice (Repealed)

These rules seek to clarify the licensure requirements to practice midwifery. The LSO noted the amended rules failed to specify an applicant seeking licensure through practical experience still must satisfy all of the statutory requirements for licensure.

The Council recommended the Governor direct the agency to amend the rules to ensure compliance with the statutory requirements for licensure.

Governor's response:

On the Certification Page signed December 9, 2015, the Governor requested the agency include a cross reference to the statutory requirements in future rulemaking.

C. Technical issues raised

The LSO noted technical issues in a number of rule reviews. The issues, however, did not rise to a reason to recommend nonconsent.

D. Rules removed from the Consent List by Management Council and discussed, but which were not ultimately objected to.

No rules met this criteria in 2015.

E. Rules reviewed by the LSO without objection, but objected to by the Governor

No rules met this criteria in 2015.