

Regulatory Analysis

Notice of Intended Action to be published: 497—Chapter 2
“Complaint Investigation and Resolution Procedures”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 23

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 23 and Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

June 3, 2025
9 to 9:30 a.m.

Via virtual meeting/videoconference:
meet.google.com/hvc-wmba-kem
Or dial: 518.759.2454
Passcode: 264 086 811#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Iowa Public Information Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Iowa Public Information Board
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Des Moines, Iowa 50319
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Purpose and Summary

This proposed rulemaking includes revised administrative rules based on the requirements of Executive Order 10. Chapter 2 establishes the processes and procedures for the Board’s complaint process. Chapter 2 is proposed to be rescinded and readopted with revisions to align with Iowa Code chapter 23. The current Chapter 2 does not follow the process provided within the enabling statute.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**
 - **Classes of persons that will bear the costs of the proposed rulemaking:**
There is no expected additional cost to the State, government bodies, or individuals.
 - **Classes of persons that will benefit from the proposed rulemaking:**
Citizens of the State and government bodies subject to Iowa Code chapters 21 and 22 will benefit.
2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**
 - **Quantitative description of impact:**
No quantitative impact is expected. The Board will still operate consistent with Iowa Code chapter 17A and the scope of authority granted pursuant to Iowa Code chapter 23.
 - **Qualitative description of impact:**

No qualitative impact is expected.

3. Costs to the State:

• **Implementation and enforcement costs borne by the agency or any other agency:**

No costs will be borne by any agency. The Board will still operate consistent with Iowa Code chapters 17A and 23.

• **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Not applicable. The Board will still operate consistent with Iowa Code chapter 17A and the scope of authority granted pursuant to Iowa Code chapter 23.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Not applicable.

6. Alternative methods considered by the agency:

• **Description of any alternative methods that were seriously considered by the agency:**

Not applicable.

• **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 497—Chapter 2 and adopt the following new chapter in lieu thereof:

CHAPTER 2
COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

497—2.1(23) Scope and applicability. This chapter applies to complaints filed with the Iowa public information board.

497—2.2(23) Definitions. Except where otherwise specifically defined by law:

“Board” means the Iowa public information board created by Iowa Code section 23.3 and defined in Iowa Code section 23.2.

“Complainant” means a person who files a complaint with the board as defined by Iowa Code chapter 23.

“Complaint” means the same as defined in Iowa Code chapter 23.

“Meeting” means the same as defined in Iowa Code chapter 21.

“Probable cause” is evidence provided to demonstrate a reasonable belief that a violation of Iowa Code chapter 21 or 22 exists. Probable cause is more than a suspicion and is the presentation of facts that would establish a belief in a reasonable person that a violation occurred.

“Public records” means the same as defined in Iowa Code chapter 22.

“Reasonable diligence” is the degree of diligence expected from a person of ordinary prudence under the circumstances.

“Respondent” is any agency or other unit of state or local government, custodian, government official, or government employee who is the subject of a complaint as defined in Iowa Code chapter 23. “Respondent” does not include the judicial or legislative branches of state government; any entity, officer, or employee of those branches; or the governor or the office of the governor since the board does not have jurisdiction over these bodies pursuant to Iowa Code section 23.12.

497—2.3(23) Filing of complaint. Any complainant may file a complaint with the board alleging a violation of Iowa Code chapter 21 or 22.

497—2.4(23) Timing of complaint. A complaint will be filed within 60 calendar days from the time the alleged violation occurred or from the time the complainant could have become aware of the violation with reasonable diligence. Any dispute regarding timing, the complainant’s awareness of the violation, and whether the complaint meets statutory timing requirements will be resolved by the board at its discretion.

497—2.5(23) Form of complaint. A complaint will be submitted in writing and on a form designated by the board. A complaint may also be accepted without using a designated form if the complaint contains the elements of information contained within the form. The board may refuse to accept a complaint if it does not contain information consistent with this rule.

497—2.6(23) Content of complaint. The complaint will include in the body of the complaint or the attachments thereto any information, issues, and arguments supporting the complainant’s position. The complaint also may include any attachments, affidavits, certifications, or other documentation deemed relevant to or supportive of the allegations set forth in the complaint.

2.6(1) Amendments to complaint. Any amendments to the complaint received after filing will be reviewed by the board. The board, at its discretion, may allow an amendment after filing based on the facts and circumstances of the complaint.

2.6(2) Merging of complaints. The board, at its discretion, may merge complaints based on the facts and circumstances of each complaint.

497—2.7(23) Complaint process. Upon receipt of a complaint, the board will review the complaint and determine whether the complaint is accepted or dismissed.

2.7(1) Delegation of duties. In order to expedite proceedings, the executive director may delegate to designated employees of the board, at the executive director’s discretion, the task of developing and presenting acceptance and dismissal orders.

2.7(2) Not a contested case. The board’s review of a complaint for legal sufficiency is not a contested case proceeding and will be made solely on the facts alleged in the complaint and the results of the initial review conducted by employees of the board.

497—2.8(23) Complaint process—dismissal. The board will issue a dismissal order if the board determines that the complaint, on its face, is outside the board’s jurisdiction, is legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously

been finally disposed on its merits by the board or a court. A copy of the dismissal order will be provided to the complainant. The dismissal order will explain the reasons for the dismissal.

497—2.9(23) Complaint process—acceptance. If the board determines the complaint, on its face, is within the board's jurisdiction, appears legally sufficient, and could have merit, the board will accept the complaint. Upon acceptance, the board will do the following:

2.9(1) Provide notification of acceptance in writing to the complainant and respondent.

2.9(2) Provide all available information to the respondent, including the complaint and any supporting documentation provided by the complainant as part of the complaint.

2.9(3) Request a response to the complaint from the respondent.

497—2.10(23) Respondent's response to complaint. The respondent, upon request to respond to the complaint pursuant to subrule 2.9(3), will submit a written response to the complaint within 14 calendar days. The executive director, at the executive director's discretion, may grant an extension to the respondent for the respondent's response based on a justifiable reason and the facts and circumstances of the complaint. The respondent's response will include the details of the respondent's position for each element of the complaint and any information, defenses, and arguments that support the respondent's position. Failure to respond will result in a probable cause finding pursuant to rule 497—2.17(23).

497—2.11(23) Complainant's response to respondent. The complainant will be granted the opportunity to respond to the respondent's response.

497—2.12(23) Informal resolution process. Following acceptance of the complaint, the board, acting through the employees of the board, will work with the complainant and respondent to develop a resolution in response to the complaint.

2.12(1) Resolution. If the informal resolution process resolves the complaint, the complaint will be dismissed as resolved by the board. The complaint may also be withdrawn by the complainant.

2.12(2) Failure to resolve. If the complainant or respondent declines the informal resolution process, or if the informal resolution process fails to resolve the complaint, the board will initiate a formal investigation.

497—2.13(23) Formal investigation. If the complainant or respondent declines the informal resolution process, or if the information resolution process fails to resolve the complaint, the board will initiate a formal investigation to determine whether there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred.

2.13(1) Request for information. During the formal investigation process, the complainant and respondent may be asked to provide additional information. Failure to respond to requests for information may result in a finding of probable cause or dismissal of the complaint.

2.13(2) Actions taken. Formal investigation actions that may be taken by the board include but are not limited to the following actions:

- a. Reviewing applicable laws, rules, regulations, and policies.
- b. Requesting statements from the complainant and respondent.
- c. Submitting verbal or written requests for information to other persons and governmental bodies.
- d. Examining and copying relevant records.
- e. Issuing investigative subpoenas requiring the production of books, papers, records, electronic records, and other evidence, as well as requiring the attendance and testimony of witnesses.
- f. Holding hearings.
- g. Any other methods determined appropriate by the board.

2.13(3) Report to board. Following the formal investigation, board staff will make a report to the board and will provide a recommendation related to probable cause.

2.13(4) *Delegation of investigation.* The board, at its discretion, may delegate a formal investigation to an independent investigator. An independent investigator may be an alternative state agency, an attorney practicing outside of state government, or any other investigator that the board determines is qualified. Any alleged conflicts of interest regarding an independent investigator will be addressed at the discretion of the board.

497—2.14(23) Burden of proof—Iowa Code chapter 21 investigations. Once a complainant demonstrates to the board that the government body in question is subject to the requirements of Iowa Code chapter 21 and has held a meeting, the burden going forward will be on the government body to demonstrate compliance with the requirements of Iowa Code chapter 21.

497—2.15(23) Burden of proof—Iowa Code chapter 22 investigations. The burden of proof applied will be the same burden of proof applied to judicial enforcement as outlined in Iowa Code section 22.10(2).

497—2.16(23) Settlement of complaint. The parties to the complaint may reach an agreement during the formal investigation process that results in a settlement between the parties. Any settlement reached by the parties is solely between the parties and does not impact the formal investigation conducted by the board. If a settlement is reached, the board may dismiss the complaint as an exercise of administrative discretion pursuant to rule 497—2.17(23) and terminate the formal investigation.

497—2.17(23) Probable cause finding. Upon receipt and review of the formal investigative report completed by board staff and any recommendations from board staff, the board may take any of the following actions:

2.17(1) Redirect the complaint for further investigation.

2.17(2) Dismiss the complaint for lack of jurisdiction or lack of probable cause to believe there has been a violation of Iowa Code chapter 21 or 22.

2.17(3) Determine that probable cause exists to believe a violation has occurred but dismiss the matter as an exercise of administrative discretion. The dismissal order may contain actions the respondent will take to effectuate the dismissal.

2.17(4) Determine the complaint is within the board's jurisdiction and there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred and direct civil penalties or other appropriate remedies as provided in subrule 497—2.18(23). The respondent may decline the penalties or remedies and request that a contested case proceeding be initiated.

2.17(5) Determine that the complaint is within the board's jurisdiction and there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred and initiate a contested case proceeding.

a. The probable cause order will initiate a contested case proceeding pursuant to Iowa Code chapter 17A. The board will designate a prosecutor and direct the issuance of a statement of charges to initiate the contested case proceeding pursuant to Iowa Code section 23.10.

b. For any actions taken by the board pursuant to this subrule, the board will issue a written order and a copy of the order will be provided to the complainant and the respondent. The order will explain the reasons for the dismissal or the finding of probable cause.

497—2.18(23) Civil penalties and other appropriate remedies. If it is determined after appropriate board proceedings that a violation of statute or rules under the board's jurisdiction has occurred, the board may impose any of the remedies set out in Iowa Code section 23.6(8) or 23.10(3) "b."

497—2.19(23) Appeal. Any person or party who is aggrieved or adversely affected by agency action may utilize the remedies provided by Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A and 23.