

**MINUTES OF THE DECEMBER 2011 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, December 13, 2011, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Merlin Bartz, John P. Kibbie, and James Seymour; Representatives David Heaton, Jo Oldson, Rick Olson, and Guy Vander Linden were present. Sen. Thomas Courtney was not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Horn convened the meeting at 9:35 a.m.

Fiscal overview Aaron Todd presented the LSA fiscal report. In response to inquiries from committee members, Mr. Todd will clarify whether the source of funding for the community housing and services for persons with disabilities revolving loan fund is FY 2010 decategorization funds or funds from the Medicaid fraud account. In response to an inquiry from Rep. Pettengill, Mr. Todd agreed to provide information about the calculation of the military active duty income tax exemption, retroactive to January 1, 2010.

TRANSPORTATION DEPARTMENT Paul Steier represented the department. Other interested parties included Bill Brauch of the consumer protection division, attorney general's office; Bruce Anderson of the Iowa Automobile Dealers Association; and Rusty Peck of Lake Delhi Marina & RV.

Special Review Ch 425 provides for the licensing of motor vehicle and travel trailer dealers. A licensee must maintain a principal place of business that is staffed during regular business hours, not less than 32 hours per week between Monday and Friday, inclusive, and must have facilities for the display and repair or reconditioning of vehicles.

Rep. Pettengill and Sen. Bartz requested a special review of the necessity to specify in rule the business days and hours for motor vehicle and travel trailer dealers. Mr. Peck had requested permission from the department to cancel regular business hours through the winter months. The rule does not allow an exemption from maintaining regular business hours, but the department discussed with Mr. Peck a waiver of regular business hours through March, and Mr. Peck requested and was granted a waiver by the director.

In response to an inquiry from Rep. Pettengill about business hours and possible changes to the rule and the statute, Mr. Steier explained that possession of a dealer license requires that dealers assure customers of timely warranty and service work after the sale and that dealers assure lending institutions, insurance companies and other entities of timely conduct of business. Mr. Steier pointed out that motorcycle dealers are not bound by statute to observe the same required hours and days and that the department would consider the removal of motor homes and travel trailers from the rule as long as the availability of warranty and service work to the customer would be assured. Mr. Steier stated that, if the statute were changed, the definition of motor vehicle would need to clearly distinguish motor homes from other motor vehicles, such as automobiles and trucks.

Sen. Bartz requested that the department, in a review of the rule, propose the removal of travel trailers and motor homes from the definition in lieu of continuing to grant waivers to dealers.

Mr. Brauch, expressing support for the rule, stated that the department has broad rule-making authority pursuant to Iowa Code section 322.13 and that the rule, which requires a dealer to maintain a regular place of business as a condition of licensure, is both reasonable and flexible in its expectation of access for and service to a customer. In response to an inquiry from Sen. Bartz, Mr. Brauch stated that in the interest of customers, motorcycle dealers should be governed by the rule.

Transportation Department (continued)

Mr. Anderson expressed support for a minimum number of required weekly business hours in order to ensure accessibility and safety for consumers; to allow dealers to meet the days and hours requirements of franchise agreements; and to maintain the benefits of a state motor vehicle dealer's license, including subsidized dealer plate privileges and protection from unfair competition from weekend-only sales events. Mr. Anderson also encouraged the development of electronic registration for licensees.

Mr. Peck stated that the required days and hours apply to larger dealerships, but in order to stay in business, a small business dealer should be afforded the discretion to determine the appropriate business hours and days based on seasonal fluctuations in business activity. He emphasized that, as a small business owner, he is always available to provide service to customers at any time on any day in any season.

Sen. Bartz stated that the result of the special review would be to continue the conversation with the director to address the issue. Rep. Pettengill noted that the concern about the rule relates only to the recreational vehicle industry and that the special review was requested to solve the problem faced by dealers such as Mr. Peck.

AGING, DEPARTMENT ON Kim Murphy and Donna Harvey represented the department.

ARC 9863B

Ch 4 pertains to department planning responsibilities. 2011 Iowa Acts, House File 45, section 20, directs the department to develop a plan for reducing the number of area agencies on aging in the state (currently 13) effective July 1, 2012. Ms. Harvey stated that a bill to amend Iowa Code chapter 231 will be introduced in the next legislative session to implement the plan and to stipulate that the state must establish the number of area agencies on aging.

Ms. Murphy highlighted the changes set forth in new ch 4 pursuant to the Older Americans Act: department responsibility for three primary processes, including the designation of planning and service areas, the designation of area agencies on aging, and the dedesignation of area agencies on aging; clear due process requirements; and the reduction in the number of area agencies on aging.

Addressing inquiries from Sens. Kibbie and Seymour about the ability of larger area agencies on aging to continue providing adequate service, Ms. Harvey stated that local staff will be responsive to and maintain contact with seniors through options such as regional offices, the aging and disability resource network, and co-locations with other human service organizations. She added that most services are received in the home, and the recipients of services at the local level will continue to be at the center of decision making. In response to inquiries from Rep. Heaton and Sen. Horn, Ms. Harvey addressed the modification of the funding formula for area agencies on aging, the equity of the reallocation of funds, and the prospect of sharing services.

Rep. Pettengill commended the department for its work and observed that the well-established local service delivery will not be affected even with the regionalization of senior services. Sen. Seymour commended the home-delivered and congregate meals program and stated that quality has been maintained despite changes in delivery.

ARC 9841B

No action on ch 10, senior internship program (SIP). Ms. Murphy reported that the public comments received were positive.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple and Kristin Hanks represented the authority.

ARC 9845B

Proposed chs 115 and 116 relate to tax credits for investments in qualifying businesses and community-based seed capital funds and in certified innovation funds. Mr. Whipple stated that public comment addressed time lines and equity investments and included a suggestion to define equity.

ARC 9846B

No action on ch 117, SSBCI demonstration fund.

ARC 9851B

No action on the rescission of ch 400, generation Iowa commission, and the adoption of chs 400 to 402 pertaining to energy development programs.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority. Other interested parties included Lewis Weinberg and Matt Eide on behalf of Weinberg Investments and Robert Burns of Burns Housing.

Iowa Finance Authority (continued)
ARC 9837B

Proposed amendments to ch 12 pertain to the 2012 qualified allocation plan (QAP) for the low-income housing tax credit program. Mr. Thompson explained the process by which the 2012 QAP was developed by staff and by the board after compilation and incorporation of substantial public comment.

Mr. Weinberg stated that in the interest of full disclosure, Weinberg Investments has five active, ongoing appeals with the authority that have been heard before an administrative law judge.

Mr. Weinberg addressed two issues related to the 2012 QAP. First, Mr. Weinberg expressed opposition to the exclusion of a tax exemption as eligible local government contribution. Mr. Weinberg contended that 2009 change in the criteria for local government contribution specified that tax abatement, but not tax exemptions, would be considered, though Iowa Code section 16.4(3) provides no basis for the distinction between tax abatement and tax exemption, both of which, in his view, are applicable for purposes of localized tax credits. Mr. Eide added that the 2012 QAP includes the words "tax abatement (not tax exemption)" and sought an explanation for this change in the QAP, noting that Iowa Code section 16.4(3) is silent on tax exemption. Mr. Weinberg expressed the opinion that by excluding a tax exemption, the authority is legislating by rule. Second, Mr. Weinberg stated that, though perhaps inadvertent, tax credits have increasingly been allocated to projects in major metropolitan areas rather than in rural areas, and even under the noncompetitive rural housing preservation set-aside, no projects have been initiated.

In response, Mr. Thompson explained that the introduction to Iowa Code section 16.4(3) states that the authority shall be guided by precatory (i.e., expressing a wish but nonbinding) principles: thus, all QAP criteria need not be found in statute. Further, he asserted that a tax exemption is not local in nature but is granted by the legislature; the local governmental entity is not contributing any resources and therefore is not entitled to that revenue. By contrast, Mr. Thompson continued, a local governmental entity contributes to a project by foregoing tax revenue in granting tax abatement. Mr. Thompson disagreed with the assertion that the authority had gone beyond the scope of the statute and stated that the authority has clarified that tax abatement is consistent with the concept of a local government contribution, whereas a tax exemption is not. Mr. Thompson noted that the criteria in the QAP are not tied to any particular state statute but are adopted pursuant to federal law and that the authority, in stating that tax abatement does not mean tax exemption, clarified the definition but did not change it. Mr. Thompson agreed that the tax credits have increasingly been allocated to projects in urban areas but that the rural preservation set-aside program with one or two projects underway attempts to address that issue.

Mr. Weinberg disagreed with the statement that tax exemptions are not local in nature, observing that the local assessor relinquishes real estate tax revenue when signing off on the exemption, just as with tax abatement, which is included in the QAP criteria. Mr. Thompson, in response, stated that tax exemptions result from decisions by the legislature, not by local entities, despite who signs off on the exemptions.

In response to an inquiry from Sen. Bartz, Mr. Thompson emphasized that, if all criteria are met, an assessor approves the tax exemption already granted by the legislature, whereas a local governmental entity contributes to the project by foregoing tax revenue through tax abatement. Mr. Thompson added that prior to 2008, local government contribution was a threshold item, and, as such, was absolutely mandatory, but in the 2012 QAP, based on local government contribution, a project is not excluded from the program but is assessed based on points earned. Mr. Thompson concurred with Rep. Heaton, who pointed out that a for-profit entity and a nonprofit entity must maintain positive cash flows to remain in business but that a for-profit entity would be at a disadvantage if a nonprofit entity were to receive a tax exemption.

Iowa Finance Authority (continued)

In response to an inquiry from Sen. Kibbie regarding this rule making, Mr. Thompson stated that the notice had been adopted by the board at its most recent meeting, and Ms. Findley stated that the rule making had been pre-cleared as a notice and that several options for action on the adopted and filed document are available to the committee and to the governor. Sen. Kibbie observed that the legislature would have sufficient time to address the issues under discussion early in the session given that the rule making had already been adopted.

At the request of Rep. Pettengill, Mr. Thompson agreed to provide the committee with information about the delay in granting tax credits to projects under the rural preservation set-aside program. Mr. Burns added that in the 2012 QAP, the authority has opened up applications for this program to any developer and observed that the result will be greater use of the set-aside.

ARC 9828B No action on amendments to ch 41 concerning the shelter assistance fund.

ARC 9830B No action on amendments to ch 42 regarding the emergency shelter grants program.

ARC 9878B No action on ch 43, community housing and services for persons with disabilities revolving loan program. Mr. Thompson agreed to provide the committee with further information about the source of the funding for this program.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 9853B No questions on the termination of proposed amendments to ch 76 that relate to external review.

ARC 9854B No questions on proposed ch 76, external review.

NURSING BOARD Lorinda Inman and Theresa Weeg, assistant attorney general, represented the division. Other interested parties included Therese Murphy of the Iowa Staff Nurses Association.

ARC 9868B No questions on the termination of proposed amendments to 1.3(2) pertaining to the organization and procedures of the board.

ARC 9866B Proposed amendments to 1.3(2) relate to the organization and procedures of the board. Ms. Inman reported that the board had been advised by Ms. Weeg to eliminate the reference to Robert's Rules of Order from the board's procedural rules and to insert instead "conduct its proceedings to ensure that all members have equal rights, privileges and obligations." Ms. Weeg noted that other licensing boards have eliminated Robert's Rules of Order from their procedural rules and stated that this change would prevent a board action from being challenged and possibly invalidated for a procedural error and would ensure that any disputed board action is litigated on its merits. In addition, Ms. Weeg asserted that Iowa Code chapters 21, 147 and 272 set forth procedural requirements that protect the public. In response to an inquiry from Rep. Vander Linden, Ms. Inman stated that the use of Robert's Rules of Order had created no legal problem.

Committee members expressed concern about the proposed language and observed that Robert's Rules of Order is an objective, reliable, user-friendly standard for conducting the business of the board, provides a defense against procedural challenges, and ensures fairness to all parties.

Sen. Bartz requested that, if Robert's Rules of Order is eliminated, applicable references to procedures pursuant to the Iowa Code be specified in the rule. Rep. Heaton requested that Ms. Findley note the discussion of this issue.

Ms. Murphy commended the board for seeking a fair process but asserted that formal procedures are needed to ensure fairness.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Cindy Houlson represented the department.

ARC 9847B No action on amendments to ch 28 pertaining to fees for licensure of plumbing and mechanical systems professionals.

ARC 9849B Amendments to ch 29 concern application, licensure and examination of plumbing and mechanical systems professionals. Ms. Nervig stated that the department received one public comment in support of the amendments and two public comments that objected to the definition of "hydronic" and to the regulation of industry that uses process piping. She reported that the department has hosted three discussion sessions with interested parties in the industry to discuss definitions, but no consensus has been reached. She added that, because the definitions are statutory, the parties are interested in seeking legislative changes in the next session.

Public Health Department (continued)

Ms. Findley inquired about the possibility of a change in the rule to address the overlap in licensure in the plumbing and boiler industries. In response, Ms. Houlson stated that industrial partners are seeking consensus to address the licensure issue in legislation, especially as the issue affects process piping. In response to an inquiry from Sen. Bartz, Ms. Houlson addressed the use of geothermal systems in food processing and preservation and discussed licensure under hydronics since no geothermal licensure has been promulgated by rule. Sen. Seymour inquired about the jurisdiction over steamfitters. Rep. Pettengill commended the board and noted that proposed legislation will address the unintended consequences of the definition of "hydronic."

ARC 9850B No action on amendments to ch 30 regarding continuing education for plumbing and mechanical systems professionals.

ARC 9880B No action on amendments to 126.3(1) concerning consideration of fees as repayment receipts by the state medical examiner.

REGENTS BOARD Marcia Brunson and Keith Saunders represented the board.

ARC 9869B Proposed amendments to chs 1, 2, and 9 relate to admission, fees and telecommunications at the state universities. Sen. Bartz inquired about GPA requirements, editorial comment in the rules, apparent duplication of rules regarding student misconduct, and telecommunications policies and procedures. Mr. Saunders agreed to provide information about the deletion of the specific GPA requirement in 2.7(2)"a."

ARC 9823B No questions on proposed ch 12 and amendments to chs 5, 14 and 16 pertaining to the state hygienic laboratory, the university of Iowa, the university of northern Iowa and the Iowa school for the deaf.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 9892B No action on amendments to ch 36 relating to quality assurance assessment.

ARC 9881B No action on 75.4(1) pertaining to recovery of Medicaid expenditures in case of malpractice.

ARC 9884B No action on amendments to chs 78 and 79 relating to reimbursement for HCBS waiver service providers.

ARC 9882B No action on amendments to 78.2 concerning elimination of Medicaid coverage for lipase inhibitors and certain cough and cold products.

ARC 9834B No action on the rescission of 78.2(4)"b"(4) regarding Medicaid coverage of all smoking cessation products.

ARC 9883B No action on amendments to ch 78 that change the Medicaid criterion for the medical necessity of orthodontia for children.

ARC 9886B No action on amendments to ch 79 that eliminate graduate medical education payments for out-of-state hospitals.

ARC 9887B No action on 79.1(5)"ab," which eliminates payment for treatment of a hospital-acquired condition.

ARC 9889B No action on 80.2(2)"h," which requires new forms for paper billing of Medicare crossover claims.

ARC 9888B No action on amendments to ch 81 pertaining to changes in department procedures for implementation of the federal preadmission screening and annual resident review (PASRR) requirements for nursing facilities.

ARC 9842B No questions on the proposed amendment to 92.3(1) pertaining to the IowaCare application.

ARC 9895B Proposed amendments to ch 92 pertain to a procedural change for the IowaCare hardship exemption. In response to a request from Sen. Bartz, Ms. Freudenberg agreed to provide the committee with information about the correctness of the percentage of the poverty level in 92.3(1) and about the monthly number of, patterns in, and rate of repeated requests for hardship exemptions.

ARC 9890B No action on amendments to ch 92, IowaCare.

ARC 9829B No action on amendments to ch 105 regarding the addition of record checks on volunteers as a requirement for approval of juvenile shelter care and detention facilities.

Human Services Department (continued)

Special Review The rule making pertains to the annual adjustments to eligibility and payment levels in the state supplementary assistance program that are necessary to meet the federal maintenance-of-effort or "pass-along" requirements. In compliance with 2011 Iowa Acts, House File 649, sections 11(3) and 29, this rule making was reviewed by the committee prior to emergency adoption of the rule making with an effective date of January 1, 2012.

Committee business The minutes of the November 1, 2011, meeting were approved.
The next meeting was scheduled for Wednesday, January 4, 2012, at 9:30 a.m.
Glen Dickinson, director of LSA, discussed and demonstrated a prototype of a new search engine to be added to the legislature's Web site. The search engine, which enables a user to compile a collection of data that correlates a statute(s) with the administrative rule(s) that implements the statute, will be available to legislators during the next session. Mr. Dickinson stated that the search engine might be available to the public by next session.

At the September 13, 2011, meeting, the committee voted to proceed on a joint senate/house resolution nullifying 571 IAC, rule 97.6, fifth sentence, prohibiting the use of lead shot for hunting mourning doves and providing an effective date. Mr. Ewing presented the committee with a draft of the resolution.

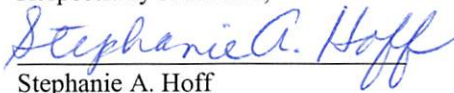
Motion Sen. Bartz moved to place the review of the resolution on the January agenda.

Motion carried On a voice vote of 9 to 0, the motion carried.

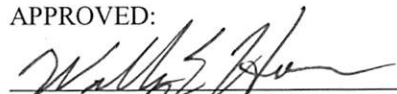
Committee members were reminded of the retirement reception that evening in honor of Sue Lerdal, Senior Legislative Analyst, Legislative Services Agency, who staffed the committee for many years.

Adjourned The meeting was adjourned at 1:05 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Wally Horn


Vice Chair Dawn Pettengill