

MINUTES OF THE SEPTEMBER 2012 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, September 11, 2012, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Jo Oldson, Rick Olson, and Guy Vander Linden were 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 a.m.

Fiscal overview Ken Ohms presented the LSA fiscal report.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD Bob Lampe, Bryan Myers, Craig Johnstone and Pam Griebel, assistant attorney general, represented the board.

ARC 0264C Proposed amendments to 8.2(6)"a" pertain to unethical or illegal conduct. Specifically, the amendments propose that a licensee shall not solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of the licensee's organization serves as an elected, appointed, voting or nonvoting member of that governmental body. Mr. Johnstone explained that the proposed amendments address conflict-of-interest issues that were reported in a May 6, 2009, auditor's re-audit of the City of Fort Dodge. Ms. Griebel added that the board is attempting to close loopholes in their own rules to address conflicts of interest.

Discussion pertained to the rationale for specifying elected, appointed, voting or nonvoting members, to the application of the rule to state-level governmental bodies, and to the definition of "member of a governmental body."

Mr. Johnstone stated that elected, appointed, voting, and nonvoting members are specified to prevent undue influence in the letting of contracts (e.g., a nonvoting member of a city council such as a mayor or an appointed member may have considerable influence in city government). Ms. Griebel stated that even the existing rule has been carefully constructed and interpreted to mean that a member of a particular governmental body is prohibited from soliciting or accepting a contract with the same governmental body.

Committee members raised questions about the application of the rule to members of various governmental bodies, including the general assembly and the executive branch. Mr. Royce inquired about the definition of "member of a governmental body" at the state level, i.e., whether the legislature is a governmental body separate from the state as a whole, and stated that perhaps the definition of "member of a governmental body" may need revision to clarify that, for example, a member of the legislature is not prohibited from bidding on a department of transportation project because the legislature and the executive branch are different governmental bodies.

In response, Ms. Griebel stated that factually the rule relates specifically to a city, county or other local governmental body of which the principal or officer of the licensee's organization is a member of the governmental body that is letting the contract. Sen. Bartz suggested that the committee's questions be addressed in the interim and requested that the attorney general's opinion to which Mr. Johnstone referred be made available to the committee and that the definition of "member of a governmental body" be reexamined. Ms. Griebel offered to provide the committee with a copy of the auditor's re-audit.

TRANSPORTATION DEPARTMENT Brooks Glasnapp represented the department.

ARC 0187C The committee reviewed this rule making at the August meeting and, following discussion, voted to impose a 70-day delay on 25.2(8) and chs 123 and 124, which pertain to rest area and highway helper sponsorship programs. The committee requested that the department reexamine the rules in regard to sponsor approval, the bidding process, and the appropriateness of sponsors and address these concerns at the September meeting.

Transportation Department (continued)

Mr. Glasnapp first addressed the committee's concern regarding the appropriateness of sponsors. He stated that the attorney general advised the department that the rules should proceed as written, noting that similar rules have served the adopt-a-highway program well and that additional language similar to that used in the rules regarding vanity plates will be incorporated into the RFP. Mr. Glasnapp added that if an advocacy group is the highest bidder, the group would be approved as long as it adheres to the guidelines, including the group's certification of nondiscrimination, and that questionable proposals would be reviewed by the attorney general. Mr. Glasnapp then described the plans for promotion of the programs to the public. Finally, Mr. Glasnapp addressed concern about commercialization of rest areas and the highway helper program. He stated that the department is restricted to highway-related activities by statute and rule and noted modifications of rest area building interior signage that have been made in light of those restrictions.

In response to Mr. Glasnapp, committee members expressed opposition to the rules regarding, in particular, commercialization of rest areas and the highway helper program, the potential role of the department as arbiter of advocacy groups' differing points of view, and what constitutes discrimination. In response to an inquiry from Sen. Bartz, Mr. Glasnapp stated that the sponsor's certification of nondiscrimination (123.5(4)) would be based on current state and federal law. In addition, he clarified the rules for selection of in-state and out-of-state sponsors. Sen. Bartz expressed concern about the department's determination of discrimination and stated that the legislature should examine the programs. Sen. Courtney noted the potential for signage to create a political advantage for a sponsor in elected office. In response to an inquiry from Sen. Kibbie, Mr. Glasnapp stated that the Federal Highway Administration (FHA) has approved the rules and must also approve the RFP and that the authority for FHA approval of state programs is the Manual on Uniform Traffic Control Devices (MUTCD). Sen. Kibbie moved an objection to the rule making. After discussion of the committee's options for action, Sen. Kibbie withdrew the motion to object in favor of a motion for a session delay.

Motion to delay

Sen. Kibbie moved a session delay on 25.2(8) and chs 123 and 124 and a referral to the legislature for further consideration.

Motion carried

On a unanimous roll call vote, the motion carried.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 0263C

The proposed amendment to 64.106(1) pertains to lowering the age at which a slaughtered Cervidae animal is subject to testing for chronic wasting disease (CWD). In response to committee members, Ms. Thomson confirmed that the first positive test for CWD in Iowa has occurred and that trace-backs have been conducted related to the outbreak. Ms. Thomson also noted that the presence of CWD in Cervidae cannot be confirmed unless the animal is dead and that exposure may not equal actual contagion.

CAPITAL INVESTMENT BOARD, IOWA Jim McNulty represented the board.

ARC 0290C

No action on amendments to 4.2 and 4.5 pertaining to verification of tax credits for investments in a fund of funds. Mr. McNulty reported that all parties involved had reached an agreement, the litigation has been dropped, and a change has been made to the rules to allow the provisions in the contingent or verified tax credit certificate to govern over the provisions in the rule.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 0248C

Proposed ch 23 pertains to the skilled workforce shortage tuition grant program. In response to an inquiry from Rep. Pettengill, Ms. Leeper stated that the commission is working with community college presidents to conduct statewide the regional skills analyses that are currently conducted by only some of the community colleges. Because the grant will be known as the Kibbie grant, Rep. Pettengill extended congratulations to Sen. Kibbie.

ARC 0249C

Proposed amendments to 27.1 concern the Iowa grant program. Ms. Leeper clarified for Rep. Pettengill that an expected family contribution is calculated whether the contribution is to be made only by the student or by the student and the family.

College Student Aid Commission (continued)

ARC 0246C

The proposed amendment to 36.1(4) relates to the Governor Terry E. Branstad Iowa state fair scholarship program. Ms. Leeper clarified for Sen. Kibbie that funds are specifically provided from Governor Branstad's prior inaugurals. Ms. Findley added that the charitable portion of the inaugural funds was raised from private donors for scholarships to be given at the state fair and that eventually the principal will also be distributed as scholarships. In response to an inquiry from Rep. Heaton, Ms. Leeper stated that two scholarships of \$1,000 each were given at the 2012 state fair and that currently there is less than \$100,000 in the fund.

EDUCATION DEPARTMENT Director Jason Glass, Mike Cormack, Phil Wise, and Nicole Proesch represented the department. Other interested parties included Barry Wilson on behalf of the Iowa Association of Colleges for Teacher Education (IACTE) and Rep. Cindy Winckler.

ARC 0297C

No questions on proposed amendments to 12.5(15) pertaining to high school credit based on demonstration of competency.

ARC 0302C

Proposed ch 15 concerns the use of online learning and telecommunications for instruction by schools. Discussion pertained to the use of online learning by school districts and for open enrollment and the restrictions imposed on each by 2012 Iowa Acts, Senate File 2284. Sen. Kibbie expressed the opinion that the rules may be broader than the legislation. Rep. Oldson suggested that the term "medically fragile" in 15.8(3)"a"(3) be defined.

ARC 0298C

No questions on proposed amendments to 22.2 relating to the proficiency requirements of the senior year plus program career and technical coursework.

ARC 0299C

Proposed amendments to 79.13 and 79.15 are intended to implement 2012 Iowa Acts, Senate File 2284, section 39, relating to the pretesting of candidates for admission to teacher preparation programs and to the testing of candidates upon completion of teacher preparation programs and prior to licensure.

Mr. Glass explained the rule making and the underlying statute. He noted that the effective date of the new testing requirements would be January 1, 2013, to allow current admission candidates an opportunity to conform to the new requirements and that the new requirements would not apply to licensees seeking license renewal.

Committee members commended the raising of standards for teaching excellence but expressed several concerns. Sen. Kibbie sought verification that the January 1 date means that the new requirements would not affect students who were already planning to test in fall 2012. Sen. Kibbie also expressed concern that the new testing requirement would negatively affect the current senior class of candidates who will be testing soon but after January 1, 2013, and that the change in requirements so close to the end of their programs would be unfair to these candidates. Sen. Horn concurred and expressed concern that the rule also directly affects the programs offered by teacher preparation institutions, which would need to make curriculum adjustments. In response, Mr. Glass indicated that the immediate effective date in the underlying legislation required that implementation not be delayed regardless of the fairness issue, and a student who does not pass the examination must take responsibility for determining how to meet the standard, including retaking the examination, taking courses, or studying independently. He stated that the teacher preparation institutions and the department are not in complete agreement but that discussion is ongoing and the department has been responsive to concerns.

Sen. Bartz asked how the 25th percentile specified in the legislation is calculated, and Mr. Glass explained that the percentile is based on a three-year national average. Rep. Olson expressed concern that the precise timeline for required testing was not clear in the rule making, to which Mr. Glass responded that the testing is not a graduation requirement but is required before a candidate may be licensed. Mr. Glass also stated that a test taken in another state could satisfy the requirement. Rep. Heaton asked whether school districts might use the percentile requirement to set hiring standards above the 25th percentile. In response, Mr. Glass explained that only the candidate will know the final score, and school districts will know only whether or not the candidate met the percentile requirement.

Education Department (continued)

Mr. Wilson stated that the regents institutions and private colleges have expressed concern about providing support for the success of students who are immediately affected by this rule; requested that the implementation of the rule be delayed until July 1, 2013; and stated that the suggested statutory alternatives, a standardized test of content or a performance-based assessment, need to be clarified in rule. Rep. Winckler expressed concern that the rule is silent on the performance-based assessment alternative that was, based on her understanding, provided in statute. She asked why a pilot project soon to be complete was not provided for in rule as an alternative for satisfying the testing requirement. In response, Mr. Glass stated that he would not consider the pilot project until it is actually complete. Rep. Winckler recommended that the performance-based assessment be provided in rule and suggested that if the filed rule is silent on the performance-based assessment, a session delay be imposed.

Sen. Kibbie requested that the timing of testing be clarified before the rule is filed and that Mr. Cormack provide the committee with a compilation of public comment.

ARC 0300C

No questions on proposed amendments to ch 83 concerning the frequency of performance reviews for teacher and administrator quality programs.

ARC 0301C

No questions on proposed amendments to ch 84 regarding financial incentives for national board certification.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple and Shawna Lode represented the authority.

ARC 0279C

No questions on proposed amendments to ch 1 pertaining to the organization of the authority.

ARC 0280C

No questions on proposed ch 38, regional sports authority districts.

ARC 0293C

The proposed rule making pertains to the high quality jobs program, application review, wage and benefit requirements, and contracting procedures. Discussion pertained to the determination of laborshed wages and the effect on wages in a laborshed area.

In response to an inquiry from Rep. Pettengill, Mr. Whipple stated that in general the use of laborshed areas to calculate wages does not disadvantage rural areas. In response to an inquiry from Sen. Kibbie, Mr. Whipple explained that the qualifying wage threshold is used to determine the amount of state incentives for which an eligible business qualifies. In response, Sen. Kibbie expressed concern that there would be inequity in the wage levels of adjacent counties even though the calculation of the qualifying wage threshold would not be based on one county's wages. In response to an inquiry from committee members, Mr. Whipple clarified that if a county meets either of the criteria in 174.6(3)"b," the county is considered an economically distressed area; that this status is calculated on a fiscal-year basis; and that by design, the status is determined by objective criteria rather than subjective decisions by the board and is subject to change. He stated that the purpose of the qualifying wage threshold is to ensure that state incentives are tied to high wages and noted that the department creates a level playing field by providing equal access for all projects and enforcing the rules in a consistent manner and stated that the presence of a high-paying employer may have a regional impact and raise wages for multiple laborsheds. Sen. Courtney pointed out that the use of taxpayer dollars is intended to raise wages. Mr. Whipple agreed to provide the committee with a list of the approximately 31 counties considered to be economically distressed areas.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Adam Schnieders, Courtney Cswencko and Joe Griffin represented the commission. Other interested parties included Jessica Harder on behalf of the Iowa League of Cities and the Iowa Association of Municipal Utilities.

ARC 0260C

No action on amendments to chs 20, 22 and 25 relating to air quality, specifically, emissions testing.

Environmental Protection Commission (continued)

ARC 0270C Proposed amendments to ch 64 pertain to wastewater and operation permits for disadvantaged communities. Mr. Schnieders stated that to ensure that no community is required to install a wastewater treatment system if that system is unaffordable and to ensure that pollutants are not discharged except as authorized by a permit, the proposed amendments allow a community or regulated entity that qualifies as disadvantaged more time to consider other treatment options and to seek additional funding. Entities to which the rule may apply are incorporated or unincorporated areas, cities, mobile home parks, subdivisions, and communities with and without sewers (500 communities in Iowa do not have sewers). Ms. Cswerko clarified for Sen. Bartz the categories of entities that submit disadvantaged community analyses (DCAs) in 64.7(4)"b."

Ms. Harder expressed support for the rules.

ARC 0261C No action on amendments to 64.15 pertaining to the reissuance of General Permit Nos. 1, 2 and 3, which authorize the discharge of storm water. Sen. Bartz expressed concern about the connection between the Iowa antidegradation implementation procedure and General Permit No. 1, 2, or 3 and about the topsoil requirement in General Permit No. 2.

HISTORICAL DIVISION Mary Cownie and Jerome Thompson represented the division. Other interested parties included Mark Landa on behalf of rural electric cooperatives and Jean Krewson.

ARC 0267C Amendments to 35.2 concern historic preservation program administration.

ARC 0268C Amendments to ch 42 relate to the review and compliance program.

Because ARCs 0267C and 0268C are directly related, Ms. Cownie addressed them concurrently. Ms. Cownie stated that the amendments to ch 35 further clarify administrative procedures of the state historic preservation office (SHPO) and that the amendments to ch 42 outline the procedures related to the review and compliance program for the SHPO. Specifically, the rule making addresses 2011 Iowa Acts, House File 267, which states that the SHPO shall only recommend that a rural electric cooperative (REC) constructing electric distribution and transmission facilities for which the REC is receiving federal funding conduct an archeological site survey of its proposed route of construction when the SHPO has determined that a historic property is likely to exist within the proposed route. Ms. Cownie noted that the division received comments on the rules, both in writing and at a public hearing, from key stakeholders, including the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS) and that the changes from the Notice comply with federal law.

In response to an inquiry from Sen. Kibbie, Mr. Thompson explained that the federal agencies, under the National Historic Preservation Act, consult with tribes, in this case, the Iowa Tribe of Kansas and Nebraska, which may have historical interest in a project area, such as interest in burial complexes in which their ancestors may be buried.

Mr. Landa expressed support for the rules and stated that based on comments from stakeholders, including the ACHP and the NPS, some of the rules may need to be revisited and a waiver provision considered. Ms. Krewson stated that there are no standards in the rules for director review of federal undertakings and suggested that standards for director review, similar to those for SHPO review in 42.5(2)"d" and "e," be added to 42.5(2)"i" and "j" and 42.7.

IOWA FINANCE AUTHORITY Mark Thompson and Lori Beary represented the authority.

ARC 0284C No questions on proposed amendments to ch 12 pertaining to the 2013 qualified allocation plan (QAP) for the low-income housing tax credit (LIHTC) program.

ARC 0287C No questions on amendments to 15.4 regarding the posting of solicitations for formal bids and requests for proposals.

ARC 0245C No action on the amendment to 26.5(2)"c" concerning the annual loan servicing fee related to the water pollution control and drinking water state revolving funds.

ARC 0296C No questions on proposed amendments to ch 39 pertaining to the HOME partnership program.

SECRETARY OF STATE Secretary of State Matt Schultz and Sarah Reisetter presented the rule makings.

Other interested parties included Rita Bettis on behalf of the ACLU of Iowa, the League of United Latin American Citizens (LULAC), the League of Women Voters of Iowa, the Interfaith Alliance of Iowa, the American Friends Service Committee, and the National Association of Social Workers (NASW), Iowa chapter; Joseph Enriquez Henry on behalf of LULAC; Della Arriaga; Marty Ryan of Foxley & Ryan; Mary E. Campos; Beatriz Sandoval; Dawn Suter; and Craig Wallace.

ARC 0266C

No action on amendments to ch 21 regarding the absentee ballot receipt deadline and the canvass date adjustment.

ARC 0272C

The secretary of state (secretary) promulgated two emergency rules. Rule 21.100 establishes a formal procedure for investigating and resolving complaints and information received by the secretary involving election administration, voter registration, absentee voting, fraudulent voting and electioneering. Rule 28.5 sets forth a process to determine whether noncitizens have improperly registered to vote. Under this process, the state registrar will periodically obtain, from a federal or state agency, lists of foreign nationals who are residing in Iowa. The list will be matched against voter registration records to determine likely matches based on predetermined search criteria.

Secretary Schultz explained, regarding rule 28.5, that through the use of existing driver's license information, it was determined that 3,582 foreign nationals had registered to vote, although more up-to-date information would be required before any action could be taken. The secretary applied to the federal government for access to the Systematic Alien Verification of Entitlements (SAVE) database, which may be used to match voter registration with citizenship status to verify whether persons on the list may have become citizens since their driver's licenses were issued. The secretary explained that when access was approved, reapplication for access to SAVE was required by the federal government to explain the process Iowa would follow and the secretary's statutory authority; the emergency rule was filed to provide that information. At present, negotiation of a memorandum of agreement with the federal government is in process. The secretary stated that the purpose of the rules is to maintain election integrity and voters' rights.

Ms. Reisetter stated that public comment has been received in opposition to the rules. Commenters assert that the complaint rule, 21.100, is in conflict with existing law. Regarding the voter registration rule, 28.5, commenters question the secretary's statutory authority, necessary policy guidance, the rule's vagueness, and whether due process is provided. Ms. Reisetter also explained the process by which the rules will be executed: When SAVE is operational, based on matches that are found, individuals will first be contacted with a simple inquiry concerning voter eligibility and a request for more information. If no response is received, a more forceful communication will follow. The secretary added that a due process hearing would precede any final action.

Committee members expressed concern that there is no real evidence that a problem with voter fraud exists and questioned whether foreign nationals would risk a felony in order to vote. Sen. Kibbie stated that a program to address noncitizen registered voter identification, if needed, should be enacted through the legislative process, not through rule making and that county auditors from both political parties have expressed concern about the rules. Sen. Courtney attested to fear of voting expressed by constituents who are naturalized citizens. Members questioned the need for an emergency filing since action could not now be taken regarding the 3,582 foreign nationals before the November elections since statute prohibits the removal of a voter from the rolls within 70 days of an election. Sen. Kibbie and Rep. Oldson emphasized the need for a statewide public hearing, perhaps via the Iowa communications network (ICN), and requested that the secretary schedule the hearing as soon as possible. Rep. Heaton expressed the hope that more reasonable fees for application for citizenship could be instituted by the federal government. The secretary confirmed for Sen. Courtney that Help America Vote Act (HAVA) funds are being used to pay a DCI investigator who has been given, for vetting, the names of the 3,582 foreign nationals.

Secretary of State (continued)

The secretary agreed, pending approval by the attorney general, to provide the committee with the names, by county, of the 3,582 foreign nationals. The secretary stated that a public hearing will be held in October to solicit further public comment.

Ms. Bettis expressed opposition to rules 21.100 and 28.5 and stated that both rules are unjustified and without a basis in fact or in law and are unacceptably vague, allow the secretary too much discretion, and provide inadequate due process.

Mr. Henry expressed concern that the rules are having an intimidating effect on the willingness of the Latino community to vote. Ms. Arriaga expressed concern that rule 28.5 focuses only on persons previously recorded as legal permanent residents who subsequently become citizens and does not take into account the many types of immigrant situations and the time required to verify citizenship and secure documents. Ms. Campos, who teaches citizenship classes, asserted the need for honesty and fairness in the voting process and questioned the number of names on the secretary's list. Ms. Sandoval requested that the state institute a different method for verification of citizenship that is fair to all. Mr. Ryan expressed concern about the integrity of the rule-making process, stating that each rule should have been promulgated separately through the normal rule-making process rather than by emergency. Ms. Suter expressed concern that rule 28.5 violates the rights of the persons on the list who are being investigated by the DCI without their knowledge and that rules must be carefully crafted so as not to prevent any person from voting. Mr. Wallace stated that the emergency rule making has not allowed sufficient time to implement the rules fairly.

ARC 0238C

Amendments to ch 22 pertain to the Unisyn OpenElect voting system. Ms. Reisetter stated that these amendments certify the system as required by statute. In response to an inquiry from Sen. Seymour, Ms. Reisetter stated that the new voting system has a ballot marking device from which a paper ballot is printed. In response to an inquiry from Sen. Kibbie, Ms. Reisetter stated that 11 counties have purchased the OpenElect system since the 2010 election and that the amendments were filed emergency because the rules governing a voting system must be in place before the system may be used in an actual election.

REVENUE DEPARTMENT Victoria Daniels represented the department. Other interested parties included Sen. Paul McKinley; Andy Kyner on behalf of Van Wall Powersports, Indianola; and Laverne Schroeder on behalf of the Iowa-Nebraska Farm Equipment Dealers Association.

ARCs 0251C, 0292C, 0253C, 0285C, 0286C, 0294C, 0281C and 0295C were excused from review at this meeting.

Special Review

Sen. McKinley requested a special review of 18.44 and 226.17, which pertain to the sale of farm machinery and equipment. At issue are the application of sales tax and the availability of a sales tax exemption on the sale of an all-terrain vehicle (ATV) for use in agricultural production. Sen. McKinley explained that the issue was brought to his attention by an ATV dealer who had been audited by the department and assessed sales tax that the dealer had not charged farmers who had purchased ATVs for agricultural use. Sen. McKinley stated that he applied for a sales tax exemption at the time of an ATV purchase for agricultural use and was denied the exemption. After further investigation, Sen. McKinley concluded that there is perceived unfairness and uneven application of the rules, that is, some buyers pay the sales tax and other do not; the policy among departments regarding whether or not sales tax is collected is not uniform; and appeal process is not clear. Sen. McKinley also stated that the letters from dealers, which he will submit to Mr. Royce, document these issues.

Ms. Daniels stated that the rules under review refer to farm machinery and equipment and implements of husbandry that are used "directly and primarily" in agricultural production. She explained that under Iowa law, the purchase of certain machinery or equipment is exempt from the collection of sales tax if the machinery or equipment is directly and primarily used in agricultural production.

Revenue Department (continued)

She noted that because there is no definition of “directly and primarily” in tax law, the department has implemented rules that define “directly” to mean that the use is an integral and essential part of production, not incidental or only convenient to or remote from production, and “primarily” to mean that the exempt use is greater than 50 percent of the total use. Ms. Daniels noted that the department’s interpretation of “directly and primarily” has frequently been upheld by the courts even as recently as 2006 in a case in which the department policy was upheld by the Iowa Supreme Court. She stated that the difficulty lies with the tax code itself in regard to taxation of ATVs and other items that have multiple uses and concluded that the tax code would need to be amended by the legislature in order for sales of ATVs to be exempt from sales tax when they are directly and primarily used in agricultural production. She assured the committee that the department has worked and will continue to work with the legislature to find a solution that ensures fair and consistent enforcement of the law but is not burdensome to taxpayers.

Sen. Kibbie expressed thanks to Sen. McKinley for requesting the review and acknowledged that the legislature needs to address the issue. He noted the importance of ATVs to modern agriculture and the need for the law to keep pace with changes in agricultural technology.

Mr. Kyner expressed the opinion that rules regarding the applicability of sales tax cause confusion for customers and stated that dealers in Iowa lose business to dealers in Missouri and Minnesota who do not charge sales tax on ATVs.

Mr. Schroeder expressed the opinion that a change in the law, which has been discussed in depth with the department, is needed in order for dealers to operate in a reasonable manner.

Motion to refer

Sen. Kibbie moved a general referral on 18.44 and 226.17.

Motion carried

On a voice vote of 8 to 0, the motion carried.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Richeson represented the board.

ARC 0262C

The proposed amendment to 1.8 pertains to fees for neutrals. The amendment raises from \$800 per day to \$1,200 per day the maximum rate that qualified arbitrators and teacher termination adjudicators are entitled to charge for hearings.

Ms. Richeson stated that the affected parties are public employers and bargaining units of organized employees that go to interest or grievance arbitration and noted that the cost of arbitration is split between the two parties. She stated that the current rate, which was set by the board pursuant to Iowa Code section 20.6(3) five years ago, is under market and has resulted in the loss of arbitrators to other states every year. She stated that the board believes the current rate is insufficient.

In response to an inquiry from Rep. Vander Linden, Ms. Richeson stated that though the board has set forth qualifications for arbitrators, the qualifications have not been set forth in the board’s rules but will be at a later date. She agreed to provide the committee with a list of qualifications for arbitrators. In response to an inquiry from Rep. Pettengill, Ms. Richeson noted that some states do not have maximum rates while others tend to have higher rates than those of Iowa and that the rates do not include expenses. Sen. Kibbie asserted that the use of arbitrators from Iowa is preferable over the use of out-of-state arbitrators regardless of the amount of the fee.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Rick Shults represented the department.

Other interested parties included Amy Campbell.

ARCs 0255C, 0259C, 0258C, 0240C and 0257C were excused from review at this meeting.

Special Review

In compliance with 2012 Iowa Acts, Senate File 2315, section 38, this rule making pertaining to the mental health and disability services redesign transition fund is under review by the committee prior to its emergency adoption. Ch 23 provides for the gathering of information and guides the development of recommendations to the governor and legislature regarding appropriations for transition funds to continue non-Medicaid-funded current core county mental health and disability services.

Human Services Department (continued)

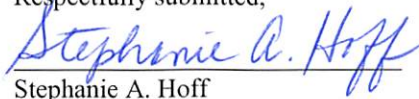
Rep. Heaton expressed appreciation that persons with developmental disabilities and autism are included among the priorities in the allocation of transition funds but expressed concern that these persons are the lowest priority group. He asked that the department work with the legislature to move toward statutory provision of services to these groups and also suggested that services for persons with developmental disabilities be addressed in a waiver request to CMS.

Ms. Campbell expressed appreciation to Mr. Shults and the department for considering interested parties' pre-Notice comments and commended the prioritizing of the allocation of transition funds. However, Ms. Campbell expressed concern that even with prioritization, the definition of "target population" and the defined purpose of the transition fund include only persons with mental illness and intellectual disabilities, thereby excluding persons with developmental disabilities. In response, Ms. Freudenberg explained that the definitions will be placed in force only if funding by the legislature is not sufficient to serve all current recipients of services.

Committee business The minutes of the August 14, 2012, meeting were approved.
The next meeting was scheduled for Tuesday, October 9, 2012, at 9 a.m.
Sens. Bartz, Kibbie and Horn recalled that on Tuesday, September 11, 2001, the committee decided to proceed with the meeting as scheduled.

Adjourned The meeting was adjourned at 4:15 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Wally Horn


Vice Chair Dawn Pettengill