

**MINUTES OF THE OCTOBER 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, October 9, 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, and James Seymour; Representatives David Heaton, Jo Oldson, Rick Olson, and Guy Vander Linden were present. Sen. John P. Kibbie was not present.
- Also present:** Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; Larry Johnson, Deputy Legal Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.
- Convened** Sen. Horn convened the meeting at 9:07 a.m.
- Fiscal overview** Aaron Todd presented the LSA fiscal report.

**SECRETARY OF STATE** Geri Huser of the title guaranty division of the Iowa finance authority represented the secretary of state. Other interested parties included Chad Kleppe on behalf of Master Builders of Iowa.

**ARC 0339C** Proposed ch 45 pertains to the mechanics' notice and lien registry. Ms. Huser summarized the joint effort of the title guaranty division and the secretary of state in the development of the rules that implement 2012 Iowa Acts, House Files 675 and 2465. She noted that the secretary worked with industry groups and other organizations to develop the rules and that public hearings will be held at 13 locations. She stated that it is the intention of the secretary to incorporate changes in the rules based on comments by constituent groups and the public and from additional meetings with these groups before the rules are filed. She noted that the rules have been criticized for their strict adherence to statutory language deemed necessary because of some statutory ambiguity and that both technical and substantive statutory changes are anticipated during the 2013 legislative session.

Ms. Huser confirmed for Sen. Bartz that the rules are representative of the legislation. Sen. Bartz expressed concern that the legislation, which he opposed, addresses a situation specific to Polk County and that the proposed registry may not be the appropriate place for the recording of mechanics' liens. He then moved a general referral. Sen. Courtney suggested that the committee await the review of the filed rules before taking any action since according to Ms. Huser, changes may be incorporated into the adopted rules based on further input from interested parties. Sen. Bartz concurred and withdrew his motion for a general referral.

Mr. Kleppe stated that the Builders, in working with the secretary on the rules, will continue to ensure a clear distinction between commercial and residential contractors and requested that subcontractors be included in the finalizing of the adopted rules.

**ATTORNEY GENERAL** Bill Brauch represented the attorney general.

**ARC 0328C** No action on ch 37 pertaining to required disclosures for philanthropic contributions made by certain student loan lenders to certain educational institutions. Mr. Brauch explained the changes from the Notice of Intended Action, including the removal of disclosure requirements for lending institutions. Mr. Brauch clarified for Sen. Horn the impetus for the statute and clarified for Rep. Olson the hearing process for a lending institution that violates the rules.

**ECONOMIC DEVELOPMENT AUTHORITY** Tim Whipple represented the authority.

**ARC 0344C** No questions on proposed amendments to 47.3(3) relating to amounts of available endow Iowa tax credits in 2012.

**EDUCATION DEPARTMENT** Mike Cormack, Jeff Berger and David Tilly represented the department.

**ARC 0384C** No questions on proposed amendments to 17.10(8) pertaining to supplementary weighting for project lead the way courses for students under open enrollment.

**ARC 0386C** No questions on proposed 22.32 concerning project lead the way courses for students in the senior year plus program.

Education Department (continued)

ARC 0388C No questions on proposed amendments to 43.21 and 43.24 regarding background checks for school bus drivers and driver applicants.

ARC 0389C Proposed ch 61 relates to the Iowa reading research center. Mr. Tilly stated that the purpose for the center is to provide for the development and distribution of effective, evidence-based reading curriculum and instruction practices to all Iowa schools and that the initial focus of the center will be the creation of strategies and products for kindergarten through grade 3 and eventually for the PK-12 system. He noted that the rules were formulated with extensive input from the educational community, including the department, the regents institutions and private colleges, area education agencies (AEAs), public and nonpublic schools, and professional agencies and organizations. The activities of the center will be coordinated with current efforts to promote and ensure literacy for all students.

Mr. Tilly clarified for Sen. Seymour that the strategies developed by the center will address reading instruction for the general and special education student populations. Mr. Cormack clarified for Sen. Bartz that public comment is being accepted both in writing and at the public hearing. In response to an inquiry from Rep. Pettengill, Mr. Tilly stated that the host for the center, a public institution such as a school district or an AEA, will be under a contractual agreement on a year-to-year basis; that the department will solicit private funds to augment the initial \$2 million from the state; and that the use of intellectual property produced by the center will be free to participating entities.

ARC 0385C No questions on proposed amendments to ch 97 pertaining to project lead the way courses under supplementary weighting.

ARC 0387C Proposed amendments to 98.13 and 98.21 relate to categorical funding for the statewide voluntary four-year-old preschool and returning dropout and dropout prevention programs. In response to an inquiry from Rep. Pettengill, Mr. Berger explained that the provisions in 98.13(2)"b" and "c" provide an accounting mechanism for school districts to demonstrate that the categorical funds are spent for the designated purpose and that no funds will revert to the district if all expenses are documented for the full amount of funds received.

**PAROLE BOARD** Jim Twedt represented the board. Other interested parties included Marty Ryan of Fawkes-Lee and Ryan on behalf of the Justice Reform Consortium.

ARC 0320C Proposed amendments to ch 8 pertain to parole and work release decisions. Under the current rules, an inmate with a risk assessment score of one through six needs three affirmative votes for release; with a score of seven or eight, four affirmative votes; and with a score of nine, five affirmative votes. Mr. Twedt stated that the risk assessment tool is under revision and a number of other risk assessments have been or are being developed and validated to ensure that public safety is considered in the board's parole and work release decisions. He explained that the proposed amendments align the rules with the risk assessments, no longer tying a specific risk assessment score to the number of affirmative votes needed for parole or work release, and change to three the number of affirmative votes required for the release of any individual inmate.

Mr. Twedt explained that while the number of votes required for release of higher-risk inmates will decrease, the proposed amendments are intended to comply with new risk assessment methods and to reduce the time between the decision and the release. He also explained that the higher number of votes required when the risk assessment was first implemented will no longer be necessary because the board will have better risk assessment methods. Mr. Twedt explained that the overall assessment is determined through computer scoring that accounts for various factors, including criminal history and classes taken by the inmate during incarceration.

Committee members expressed concern that the proposed amendments loosen the parole requirements and questioned whether reducing the time between the decision and release is an adequate reason for rule making. Some members stated that the changes would improve the decision-making process.

## Parole Board (continued)

In response to questions from members, Mr. Johnson stated that the governor's office supports the amendments. He explained that the current risk assessment system and scoring methodology incorporated in the current rules is ineffective and outdated. He added that only three board members are ever present at board meetings. When a decision regarding release of an inmate requires more than three votes, a delay occurs until the other members vote based on notes from the meeting rather than from live experience. Mr. Johnson also noted that there is not a specific statutory basis for requiring more than three votes for a parole decision. He stated that the proposed amendments promote efficiency in the parole and work release process and do not represent a danger to public safety.

In response to a request from Sen. Bartz, Mr. Twedt agreed to provide the committee with the citation for the statute that requires three affirmative votes for the granting of a parole or work release.

Mr. Ryan expressed support for the proposed amendments, noting that the changes would allow the board to rely on greater human discretion in decision making rather than on scores alone and would be cost-effective.

**TRANSPORTATION DEPARTMENT** Donna Buchwald, Deanna Maifield, and Mark Lowe represented the department.

ARC 0333C The proposed amendment to 150.4(3)"c" pertains to construction of curb ramps on existing sidewalks within the right-of-way of primary road extensions. Ms. Buchwald stated that the amendment removes the requirement that cities and counties pay 45 percent of the curb ramp installation in the code jurisdictional primary road right-of-way. She stated that the amendment will allow the department to move forward with highway projects without depending on funding sources under the control of other jurisdictions. The amendment will allow up to 100 percent of department funding on curb ramps, rehabilitation, widening and reconstruction work in primary road extensions on department-initiated projects. On city- or county-initiated projects that intersect the primary road right-of-way or on department-initiated rehabilitation projects, the department may fund up to 100 percent of the curb ramps. The funding will apply only to Americans with Disabilities Act (ADA) improvements and only to construction costs.

Sen. Bartz expressed concern that the amendment could create inequity between rural and urban areas and stated that for purposes of equity, the annual limitation of \$250,000 for any one city should not be removed. Ms. Buchwald explained that to ensure flexibility, consistency and equity statewide, district engineers will set forth guidance for the process of negotiating the terms for projects.

ARC 0309C No action on amendments to 615.17 relating to license suspension for a serious violation, specifically, passing a stopped school bus. Discussion pertained to passing on the right side of a school bus, the penalties following a violation, and verification of a violation. In response to an inquiry from Sen. Bartz, Mr. Lowe stated that public education is needed about rules regarding passing a stopped school bus.

ARC 0347C No action on amendments to chs 601, 605, 625 and 630 concerning issuance of driver's licenses and identification cards and REAL ID.

**REVENUE DEPARTMENT** Jim McNulty and Victoria Daniels represented the department.

ARC 0323C No questions on proposed 12.19 pertaining to sales and use tax refunds for eligible businesses.

ARC 0337C No action on amendments to chs 40, 42, 43, 46, 49, 52, 55 to 57, and 59 to 61 relating to individual income, corporation income, and franchise tax.

ARC 0310C No action on ch 223, sourcing of taxable services.

ARC 0326C No questions on proposed amendments to 240.7 regarding effective dates of taxation rate increases or decreases when certain services are furnished.

ARC 0361C Rules 42.47, 42.48 and 52.44 pertain to geothermal heat pump and solar energy system tax credits. In response to an inquiry from Sen. Bartz, Mr. McNulty explained that the installation date on or after January 1, 2012, is stated in the rules based on the department's general authority to administer the tax credits and is intended to ensure that the credits are not applied to actions taken before that date. Sen. Bartz explained that a general referral would alert the legislature to the need for correcting the discrepancy between statute and rule.

Revenue Department (continued)

- Motion to refer Sen. Bartz moved a general referral of ARC 0361C.  
Motion carried On a voice vote of 8 to 0, the motion carried.  
ARC 0380C No questions on proposed 80.29 concerning geothermal heating and cooling systems installed on residential property.  
ARC 0379C No questions on proposed amendments to 226.1 and 226.19 relating to the sale or rental of farm machinery and equipment and attachments to self-propelled implements of husbandry.  
ARC 0378C Proposed amendments to ch 239 pertain to local option sales tax urban renewal projects. Ms. Daniels clarified for Rep. Heaton the process by which tax from each tax increment financing (TIF) area is recorded.

**PUBLIC HEALTH DEPARTMENT** Barb Nervig, Ken Sharp, and Joe Ferrell represented the department. Other interested parties included Andy Roberts on behalf of Plumbers and Steamfitters UA Local 33 and Randi Malone on behalf of Plumbing-Heating-Cooling Contractors of Iowa (PHCC-IA).

- ARC 0370C No questions on amendments to ch 7 pertaining to Tdap vaccine and the immunization registry.  
ARC 0341C Paragraph 28.1(5)"c" pertains to licensure fees required by the plumbing and mechanical systems board.  
ARC 0340C Amendments to 29.7(2) relate to renewal of a lapsed license as stipulated by the plumbing and mechanical systems board.

Because ARCs 0341C and 0340C are directly related, Mr. Sharp addressed them concurrently. He explained that when a licensee allows the license to lapse, the licensee cannot continue to work until the license is renewed; a licensee who continues to work with a lapsed license may be subject to disciplinary or other legal actions. He added that the amendments allow a licensee whose license has lapsed for more than 60 days but not more than 365 days to renew the license without reexamination upon payment of a late fee and renewal fee. Mr. Sharp stated that a licensee who has allowed a license to lapse for more than one year may reinstate the license either by sitting for the examination and paying the renewal fee or by retaking all continuing education courses and paying the renewal fee.

Sen. Courtney and Rep. Olson inquired about the public comment, deadlines for license renewal, and reexamination to demonstrate competence.

In response, Mr. Sharp stated that license reinstatement had been a contentious issue for the board whose vote was five to three in favor of the amendments, with two members absent. Mr. Sharp explained that the board members in favor of the amendments shared Sen. Courtney's concern that a large proportion of public comments opposed the amendments. Mr. Sharp also acknowledged some board members' agreement with Rep. Olson's view that licensees should meet deadlines for license renewal and that a 60-day or 90-day renewal period would be reasonable. Mr. Sharp summarized the process by which the board has instituted statewide licensing since the initial legislation was passed in 2007, including the statutory requirements, the license renewal and reinstatement by other licensing boards under the purview of the department, past practice by local licensing boards, and public comment, and stated that the amendments are intended to facilitate progressive improvement in the plumbing industry. He added that since the grandfathering provisions expired in 2009, a person must obtain an initial license by examination as is required by other licensing boards under the department's purview.

Mr. Johnson acknowledged the effort by the board and the department to address licensure issues and expressed the governor's support for the commonsense solution.

Mr. Roberts expressed opposition to the rules and stated that a licensee who has allowed a license to lapse for more than 60 days should be required to sit for the examination, asserted that public health and safety are jeopardized when a licensee has not demonstrated competence through examination, and requested that the committee impose a session delay. Ms. Malone also expressed opposition to the rules and stated that, as in other states, a licensee should pass a state examination to reinstate a lapsed license.

**Public Health Department (continued)**

- Motion to delay Sen. Courtney moved a session delay on ARCs 0341C and 0340C [28.1(5)“c” and 29.7(2), respectively] to allow legislative review of license reinstatement.
- Motion failed On a roll call vote of 4 to 4, the motion failed.
- ARC 0381C No questions on proposed ch 42 and amendments to chs 38 and 41 pertaining to radiation.
- ARC 0369C The proposed amendment to 70.2 pertains to lead-based paint activities, specifically, the definition of “minor repair and maintenance activities.” Sen. Bartz commended the department for increasing the minimum disturbed painted surface that triggers regulation, expressed concern that renovation costs might be prohibitive for elderly citizens, and requested that the chapter be revisited as a whole to ensure that the rules are not more restrictive than federal regulations.
- ARC 0364C No action on amendments to ch 76, maternal and child health program.
- ARC 0376C The proposed rescission of chs 95, 96, and 98 to 107 and the adoption of chs 95 to 100 pertain to vital records. Ms. Nervig stated that the reorganization of the rules has been in process for several years and that the proposed rules have been distributed to stakeholders for comment during the entire process. Rep. Pettengill requested that the terms “gestational period” and “gestational age” be defined in 95.1. Sen. Bartz requested that the term “certificate” be defined in 95.1.
- ARC 0377C Proposed amendments to chs 131 and 132 relate to the updating of the Iowa EMS Scope of Practice document to the most recent edition, April 2012. In response to an inquiry from Sen. Horn, Mr. Ferrell stated that the 21 members of the Iowa EMS Advisory Council, including the Iowa Medical Society, have reviewed the rules.
- ARC 0365C No action on amendments to ch 155 pertaining to tuberculosis screening of staff and residents of substance abuse and problem gambling treatment programs.

**PHARMACY BOARD** Terry Witkowski represented the board.

- ARC 0351C Proposed amendments to chs 2, 3, 5, 8, 10, 12, 17 and 24 pertain to licensure and fees. Ms. Witkowski clarified for Sen. Horn that all fees are deposited into the general fund for use by the board. Ms. Witkowski clarified that all of the board’s expenses, including staff salaries, are fully supported by fees.
- ARC 0375C No questions on the proposed amendment to 6.2 relating to the duties of a pharmacist in charge.
- ARC 0343C No action on amendments to 6.9(3) pertaining to transfer of prescriptions.
- ARC 0372C No questions on proposed amendments to ch 7 concerning verification by a remote pharmacist in a hospital pharmacy practice.
- ARC 0371C No questions on proposed amendments to 8.5 regarding board notification and inspection related to a pharmacy remodel or relocation.
- ARC 0342C No action on amendments to ch 11 relating to drugs in emergency medical services programs.
- ARC 0374C Proposed amendments to chs 13 and 20 pertain to sterile compounding practices. In response to an inquiry from Sen. Seymour, Ms. Witkowski explained the purposes for and the general process of compounding.
- ARC 0373C No questions on proposed amendments to chs 22 and 23 pertaining to provision of an emergency/first dose drug supply.

**PROFESSIONAL LICENSING AND REGULATION BUREAU** David Batts represented the bureau.

- ARC 0345C No questions on proposed amendments to ch 4 pertaining to social security number disclosure.

**SOIL CONSERVATION DIVISION** Margaret Thomson represented the division.

- ARC 0331C No action on amendments to ch 10 pertaining to incentive provisions for soil erosion control related to construction conservation practices in calendar year 2012.

**HUMAN SERVICES DEPARTMENT** Jennifer Harbison, Julie Allison, Rick Shults, and Jennifer Vermeer represented the department.

- ARC 0325C No questions on proposed amendments to chs 7 and 175 regarding removal of names from and appeals related to the child abuse registry.
- ARC 0304C No action on amendments to ch 7 relating to appeals, default decisions, and good cause.

Human Services Department (continued)

- ARC 0305C No action on amendments to ch 78 concerning coverage, age limit, reimbursement, and prior authorization for lenses and frames.
- ARC 0306C No action on amendments to ch 83 pertaining to Medicaid waiver services.
- ARC 0332C No questions on proposed amendments to ch 86 regarding filing date provisions and the definition of "client error" related to the HAWK-I program.
- ARC 0324C Proposed amendments to ch 119 pertain to record check evaluations. In response to an inquiry from Rep. Pettengill, Ms. Allison stated that provisions for educational training programs have been added to the amendments pursuant to 2010 legislation.
- ARC 0346C No action on ch 23, mental health and disability services redesign transition fund. In response to an inquiry from Sen. Bartz, Mr. Shults stated that no funds have yet been appropriated for the transition fund and that an estimate of the size of the transition fund based on the needs registered by the counties has not yet been developed.
- ARC 0367C No questions on the proposed amendment to 50.2(3) pertaining to the application for state supplementary assistance.
- ARC 0366C No questions on proposed amendments to chs 77 to 79 concerning the addition of assisted living on-call service providers under HCBS waiver services.
- ARC 0359C No action on amendments to chs 77 to 79, 82, 83 and 88 regarding payment of the nonfederal share of medical assistance costs, waiver services cap and reimbursement rates, and covered mental health services.
- ARC 0358C No action on amendments to chs 77 to 79 relating to the enrollment of public health agencies as a new Medicaid provider type.
- ARC 0360C No action on amendments to chs 77 to 79 regarding the enrollment of speech-language pathologists as a new Medicaid provider type.
- ARC 0354C No action on 78.3 and 79.1(5)"g" relating to Medicaid reimbursement methodology for readmission for inpatient hospital care. In response to an inquiry from Sen. Horn, Ms. Vermeer stated that the purpose of the change in Medicaid reimbursement methodology for readmission for the same condition is similar to the Medicare reimbursement methodology.
- ARC 0355C No action on amendments to 79.1 concerning Medicaid reimbursement rates for physician-administered drugs.
- ARC 0356C No action on amendments to chs 112 and 117 pertaining to the two-year foster family home license and foster parent training.
- ARC 0357C No action on amendments to ch 113 regarding bedrooms and fire safety related to foster family home licensure.
- ARC 0368C No questions on proposed amendments to 170.4(7)"a" pertaining to an increase in child care assistance half-day rate ceilings.

**ADMINISTRATIVE SERVICES DEPARTMENT** Caleb Hunter and Michelle Minnehan Golightly represented the department. Other interested parties included Craig Goettsch, Catharine Fitzsimmons, Cecil Wright and Tricia Johnston.

- ARC 0327C The proposed amendment to 50.1 pertains to the definition of "confidential employee." Mr. Hunter stated that with the input of four department employees, one from each department enterprise, the definition is amended to include an employee who is in a confidential relationship with a director, chief deputy administrative officer, division administrator, or similar position, and is part of a management or legal team of that top-level administrator. Under the definition, a confidential relationship means a relationship in which one person has a duty to the other not to disclose information. Mr. Hunter stated that the amendment is intended to address the objection placed on the definition by the committee in 1986 and to implement in an appropriate manner Iowa Code section 8A.412, which provides in part that "[t]he merit system shall apply to all employees of the state and to all positions in state government now existing or hereafter established." Mr. Hunter noted that confidential employees are among 24 specific exclusions from the merit system statute and that the amended definition is intended to allow exemptions to be created as needed in particular situations. Mr. Hunter stated that the amendment would not impact any collective bargaining agreement.

## Administrative Services Department (continued)

Several committee members inquired about the impetus for the rule, questioned the necessity for the amendment, noted the ambiguity regarding confidentiality and the employees to whom the definition would apply, and inquired about the number of employees who would be affected. Other members inquired about the addition of a classification system to the confidential status to prevent arbitrary application of the definition and inquired about whether the definition is intended to prevent the inappropriate disclosure of confidential information by employees who are engaged in public policy making related to that information.

In response, Mr. Hunter stated that the amendment is intended to ensure that employees engaged in policy making are properly classified. Ms. Golightly added that the two-part definition provides for proper classification in that the employee is in a confidential relationship with a top-level administrator and is part of that administrator's management team, and she noted that, because agencies function differently, the definition allows decisions about reclassification of employees to be made on an agency-by-agency basis. Mr. Hunter stated that the definition clarifies for employees who have confidential relationships, in some cases with political appointees, the requirement not to disclose confidential information and that the number of state employees who will be affected is unknown.

Mr. Goettsch stated that the definition is vague and arbitrary, could be construed differently by each agency, and provides no guidance about who is covered by it. He asserted that only the legislature has the authority to amend the statute; thus, by amending the merit system statute through rule making, the department has exceeded its delegated authority. Ms. Fitzsimmons stated that the preamble of the rule making does not include a statement of the problem with the definition dating to 1986 or explain how the amendment addresses the problem. She added that the rule making was not executed in accordance with Executive Order 80 regarding solicitation of input from affected stakeholders and that because the definition is vague, the number and classifications of affected employees within an agency cannot be determined. Mr. Wright stated that because no purpose for the amendment is given, the public cannot discern the effect of the definition and respond to it, that the broad definition appears to include almost all state employees, and that the definition in effect abolishes the merit system for almost all state employees, resulting in two classifications of employees: contract and confidential. Ms. Johnston stated that the amendment could potentially place all administrative law judges (ALJs) in the realm of management and remove ALJs for the department of corrections from their place as fair and impartial decision makers who answer to the general counsel of the department and are bound by Iowa Code chapter 903A to be impartial.

Mr. Royce noted in the course of discussion that the objection imposed in 1986 related to the status of secretaries who served top-level administrators. Sen. Courtney explored the possibility of a motion to lift the objection as a remedy for the issue raised by the rule making.

**Motion** Sen. Courtney moved that the objection to rule 11—50.1(8A) [formerly 581—1.1(19A)], definition of “confidential employee,” be lifted.

Sen. Bartz expressed the opinion that lifting the objection would not remedy the problem of disclosure of confidential information by employees involved in policy making. Sen. Courtney suggested that if a motion to lift the objection were to carry, the rule making could be referred to the legislature.

**Motion carried** On a roll call vote of 6 to 3, the motion carried.

**ENVIRONMENTAL PROTECTION COMMISSION** Christine Paulson represented the commission.

**ARC 0330C** No action on amendments to chs 20, 22 and 25 relating to air quality, specifically, air emissions testing.

**ARC 0329C** No action on amendments to 23.1 pertaining to emission standards. In response to an inquiry from Rep. Pettengill, Ms. Paulson stated that EPA, in an update regarding EPA's proposed changes to the RICE standard, intends to extend the number of hours that a municipal utility may use for demand response.

**NATURAL RESOURCE COMMISSION** Commissioner Sally Prickett, Ben Burke, Willie Suchy, and Chuck Corell represented the commission. Other interested parties included Wayne Nielsen, Bill Smith, Jim Goodman and Dick Hutmacher.

**ARC 0308C** No action on ch 56, shooting sports program grants.

Natural Resource Commission (continued)

ARC 0383C No action on the rescission of ch 62 and the amendments to ch 61 pertaining to state parks and recreation areas and state forest camping.

ARC 0382C No action on amendments to ch 63 relating to gatherings with keg beer.

ARC 0307C The amendments to ch 91 pertain to zones, bag limits and season dates for waterfowl and coot hunting. Specifically, the amendments set the waterfowl and coot season, including the addition of a third zone for duck and goose hunting referred to as the Missouri River zone.

Discussion pertained to the reduction in the size of the Missouri River zone, the public comment process, and the emergency after notice filing.

Mr. Suchy noted that the new Missouri River zone proposed under notice included all of Iowa west of Interstate 29. Ms. Prickett stated that the comment and discussion during the notice period made clear that the boundaries of the new zone warranted further consideration. As a result of comments received and information obtained during the notice portion of the rule-making process, the commission reduced the size of the new zone to include all the lands and waters in the state of Iowa west of Interstate 29 and north of State Highway 175. Mr. Suchy explained that the amendments were filed emergency after notice because the department had a narrow time line in which to adopt the amendments due to federal review. Mr. Suchy added that at a public meeting held before publication of the Notice of Intended Action, 40 percent of the 350 hunters attending preferred two zones and two seasons.

Discussion pertained to the rule making with regard to the statute that allows for even substantial changes to a Notice of Intended Action as long as the changes are within the scope of the original notice and are a logical outgrowth of the comment received. Committee members noted that the emergency filing precluded any delay of the rule and that the only possible committee action would be an objection. In addition, members expressed concern that the public should have had an opportunity for further comment.

Mr. Nielsen and Mr. Smith expressed opposition to the reduction in the size of the Missouri River zone. Mr. Nielsen expressed the opinion that the reduction warranted a new Notice of Intended Action and that the emergency filing violated the rule-making process. Mr. Smith stated that until the June 2012 vote by the commission, when the size of the Missouri River zone was reduced, the public had no notice of the reduction and was denied an opportunity for further comment.

Mr. Goodman and Mr. Hutmacher expressed support for the reduction in the size of the Missouri River zone. Mr. Goodman stated that the reduction honors hunters who hunt in habitat in public and private areas associated with natural migration. Mr. Hutmacher stated that the smaller Missouri River zone, concentrated around the Sioux City area, provides the greatest opportunity for late-season hunters.

Motion to object Rep. Pettengill moved an objection only to the amendments related to the Missouri River zone.

Motion failed On a roll call vote of 3 to 6, the motion failed.

Committee business The minutes of the September 11, 2012, meeting were approved.

The next meeting was scheduled for Tuesday, November 13, 2012, at 9 a.m.

Adjourned The meeting was adjourned at 3:27 p.m.

Respectfully submitted,

*Stephanie A. Hoff*  
Stephanie A. Hoff

APPROVED:

*Wally E. Horn*  
Chair Wally Horn

*Dawn Pettengill*  
Vice Chair Dawn Pettengill