

**MINUTES OF THE JANUARY 2013 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, January 8, 2013, at 10 a.m. and Wednesday, January 9, 2013, 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, Pam Jochum, and James Seymour; Representatives David Heaton, Rick Olson, and Guy Vander Linden were present. Senator Thomas Courtney and Representative Jo Oldson were 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 10:05 a.m.

Fiscal overview Adam Broich presented the LSA fiscal report.

AGING, DEPARTMENT ON Kim Murphy represented the department.

ARC 0508C No questions on proposed amendments to 1.5 pertaining to definitions applicable to all chapters of the department's rules.

ARC 0506C No questions on proposed amendments to 2.1 and 2.5 concerning the department mission statement and organizational structure.

ARC 0505C Proposed amendments to ch 7 pertain to dietary guidelines and manuals and to nutrition sites of area agencies on aging (AAAs). Rep. Pettengill stated that service providers should give adequate notice of relocation or termination of a nutrition site and suggested that service provider contracts include a specific notification requirement. Ms. Murphy agreed to bring this suggestion to the department for consideration.

ARC 0507C Proposed ch 23 concerns aging and disability resource centers. In response to an inquiry from Sen. Jochum, Ms. Murphy stated that cooperation between the department of human services (DHS) and the department on aging (DOA) is evidenced by DHS representation on the Aging and Disabilities Resource Center Task Force and that discussion about the configuration of the DHS districts and DOA planning and service areas is ongoing. Ms. Murphy clarified for Rep. Heaton and Sen. Jochum that coordination centers are points of information, not of function (i.e., service delivery); that an options counselor is not a service provider; and that the centers are intended to be user-friendly. In response to an inquiry from Rep. Pettengill, Ms. Murphy stated that receivers and providers of services will have representation on the advisory board and that the rules will be revised as the functions of the advisory board are developed.

ARC 0516C No questions on the proposed rescission of ch 28, Iowa senior living program—home- and community-based services for seniors. Rep. Heaton expressed regret about the elimination of the Senior Living Trust Fund.

ARC 0499C Ch 29 pertains to the reduction of AAAs. Rep. Pettengill, while noting that the preamble states that no impact on jobs has been found, requested that the department track any impact on jobs caused by the reduction of AAAs. Ms. Murphy reported that the AAAs have requested some changes to the emergency rules, which will be addressed when the accompanying Notice is adopted and filed.

AGRICULTURAL DEVELOPMENT AUTHORITY Steve Ferguson represented the authority.

ARC 0515C Proposed amendments to chs 2 and 6 pertain to beginning farmer loan and tax credit programs. Mr. Ferguson clarified for Sen. Bartz the program eligibility of a farmer who rents farmland.

EDUCATIONAL EXAMINERS BOARD Duane Magee, Susan Fischer and Darcy Lane represented the board.

ARC 0494C No questions on proposed amendments to 11.7(1) regarding delivery of a notice of hearing.

Educational Examiners Board (continued)

- ARC 0509C Proposed amendments to 13.16(1) relate to the substitute teacher's license issued to an applicant who has completed a nontraditional teacher preparation program and has one or more years of teaching experience. Mr. Magee clarified for Sen. Bartz the requirements for this type of substitute teacher's license, and he clarified for Sen. Horn that to substitute teach in a public school, a home school teacher would need to meet the substitute authorization or substitute license requirements.
- ARC 0492C No questions on the rescission of 17.4, requirements for a Class D career and technical license.
- ARC 0493C Proposed amendments to 18.5 pertain to the professional administrator license. Mr. Magee clarified for Rep. Pettengill that an administrator must complete a mentoring program.
- ARC 0491C No questions on proposed amendments to 19.6 regarding the Class A administrator exchange license for out-of-state applicants.
- ARC 0446C No action on amendments to 13.26(5) relating to verification of highly qualified teacher (HQT) status.
- ARC 0448C No action on amendments to 13.26(5) concerning the 5-8 algebra for high school credit endorsement. In response to an inquiry from Sen. Jochum, Mr. Magee explained the requirements for the endorsement and stated that the scope of the endorsement is limited to 5-8 algebra.
- ARC 0449C No action on amendments to 13.28(17) relating to content requirements for a science teaching endorsement. In response to an inquiry from Sen. Horn, Ms. Fischer stated that input on the amendments was received from a committee that sought to align science requirements with the Iowa core curriculum and was comprised of college professors who prepare science teachers, science teachers, and administrators with a science background. Sen. Jochum questioned whether the concern expressed by the Iowa State Education Association (ISEA) regarding lowering of standards for science teachers had been addressed. In response, Ms. Fischer explained the committee's view that the all science endorsement is aligned with the Iowa core curriculum in science. In addition, Mr. Magee expressed the opinion that ISEA accepts the endorsement but may not agree with it and noted that teachers serve on the board and on the committee that endorsed the amendments.
- ARC 0450C No action on amendments to 14.2 regarding the updating of terminology to "intellectual disability."
- ARC 0444C No questions on proposed amendments to 18.7 regarding administrator licenses.
- ARC 0451C No action on amendments to 19.7 regarding renewal of administrator licenses.

EDUCATION DEPARTMENT Mike Cormack and Jeremy Varner represented the department. Other interested parties included Marty Ryan of Fawkes-Lee and Ryan.

- ARC 0525C No action on amendments to 12.5(15) pertaining to high school credit based on demonstration of competency. Discussion pertained to the rigor of the assessments, opportunities for student advancement, and assessment methods. Mr. Cormack stated that the assessments are board-driven and rigorous, as evidenced in 12.5(14), and that the assessment methods may include examinations, portfolios of student work, or capstone projects. Rep. Heaton concurred with Sen. Bartz, who expressed support for allowing students to be afforded opportunities to excel, unconstrained by age or grade level.
- ARC 0522C No action on ch 15, use of online learning and telecommunications for instruction by schools. Mr. Cormack clarified for Rep. Heaton that a teacher may use online learning in a classroom to assist in instruction but not to supplant the teacher's instruction.
- ARC 0521C No action on amendments to 17.10(8) pertaining to supplementary weighting for project lead the way courses for students under open enrollment.
- ARC 0531C No questions on proposed amendments to 21.2 regarding community college award requirements, including implementation of a new associate of professional studies pilot, and career and technical program length. Mr. Varner stated that no public comment was received.
- ARC 0526C No action on amendments to 22.2 relating to the proficiency requirements of the senior year plus program career and technical coursework.

Education Department (continued)

ARC 0519C No action on 22.32 concerning project lead the way courses for students in the senior year plus program.

ARC 0510C Proposed amendments to ch 32 concern the high school equivalency diploma. Mr. Varner explained that the General Educational Development (GED) test was purchased by Pearson, a for-profit education-directed company, and that a high school diploma steering committee is exploring alternative providers for the state's high school equivalency test. In response to a request from Rep. Heaton, Mr. Cormack agreed to bring the department of corrections into the education department's discussion of alternatives to the GED test. Mr. Varner verified for Sen. Seymour that there are several other providers of tests for high school equivalency and clarified that in Iowa, passing the department-authorized test leads to the granting of a high school equivalency diploma. In response to an inquiry from Rep. Pettengill, Mr. Cormack agreed to verify the accuracy of the Iowa Code citation in 32.4 and to revise 32.4 to clarify that an applicant may retake failed parts of the five-part test. Sen. Bartz inquired about the requirement in Item 7 that an applicant for a high school equivalency diploma cannot receive a diploma until the applicant has reached 18 years of age and the applicant's class from ninth grade has graduated. Mr. Varner replied that the requirement is statutory and that the issue could also be referred to the steering committee.

Mr. Ryan commended the department for exploring different test options and expressed concern about the absence of an upper limit on the cost of taking the test, about the stipulated age of an applicant, and about the clarity of Iowa Code sections 259A.2 and 259A.6 regarding the age factor.

Motion to refer Sen. Bartz moved a general referral on Item 7 (32.8).

Motion carried On a voice vote of 7 to 0, the motion carried.

ARC 0517C No action on amendments to 43.21 and 43.24 regarding background checks for school bus drivers and driver applicants.

ARC 0479C No action on 81.7 pertaining to school business official knowledge and skills standards and criteria.

ARC 0524C No action on amendments to ch 83 concerning the frequency of performance reviews for teacher and administrator quality programs.

ARC 0523C No action on amendments to ch 84 regarding financial incentives for national board certification.

ARC 0520C No action on amendments to ch 97 pertaining to project lead the way courses under supplementary weighting.

ARC 0518C No action on amendments to 98.13 and 98.21 relating to categorical funding for the statewide voluntary four-year-old preschool and returning dropout and dropout prevention programs.

ENVIRONMENTAL PROTECTION COMMISSION Courtney Cswercko and Bill Ehm represented the commission. Other interested parties included Jessica Harder on behalf of the Iowa League of Cities and the Iowa Association of Municipal Utilities (IAMU).

ARC 0529C The amendments to ch 64 pertain to wastewater and operation permits for disadvantaged communities. Ms. Cswercko summarized minor changes from the Notice that resulted from public comment.

Mr. Ehm clarified for Rep. Heaton that approximately \$2 billion in loans have been made through the clean water state revolving fund (CWSRF) and that communities may apply for loans directly to the department or through a local utility. Ms. Cswercko explained that the state may negotiate with EPA a compliance schedule that extends over 15 years as long as progress toward the stated goals is made as soon as possible and that communities granted disadvantaged status choose and proceed with the funding of an affordable alternative and report progress at required intervals. In response to an inquiry from Sen. Bartz, Ms. Cswercko stated that an unincorporated unsewered community may be granted disadvantaged status on its own, i.e., not under the county, and that approximately 350 of 1,000 unsewered communities could qualify for disadvantaged status. Sen. Seymour commended Ms. Cswercko for her work on the rules.

Environmental Protection Commission (continued)

Ms. Harder expressed support for the rules and appreciation to the department, legislators and the governor's office for rule making that assists communities in water treatment upgrades.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION John Benson represented the division.

ARC 0512C No questions on proposed amendments to ch 10 regarding enhanced 911 telephone systems.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Rick Shults and Jennifer Vermeer represented the department. Other interested parties included Linda Hinton of the Iowa State Association of Counties and Lynn Ferrell of Polk County Health Services.

ARC 0487C No action on amendments to chs 7 and 175 regarding removal of names from and appeals related to the child abuse registry.

ARC 0489C No action on amendments to chs 51 and 52 pertaining to cost-of-living increases to several supplementary assistance programs.

ARC 0485C No action on amendments to chs 77 and 79 concerning Medicaid reimbursement of pharmacy dispensing fees and licensure of out-of-state retail pharmacies. Ms. Vermeer agreed to provide Rep. Heaton with information about the reimbursement methods for drugs provided in unit doses and to provide Sen. Seymour with a comparison of Iowa's dispensing fees with those of other states.

ARC 0497C Proposed amendments to ch 78 pertain to Medicaid dental coverage. Ms. Vermeer clarified for Sen. Bartz essential differences between private dental coverage and Medicaid dental coverage. Rep. Heaton noted that medical necessity and prior authorization are key factors in the administration of Medicaid dental coverage.

ARC 0496C Proposed amendments to ch 78 concern prior authorization for diabetic equipment and supplies. Ms. Vermeer agreed to provide Rep. Heaton information about whether Medicaid or Medicare requires the presentation of a person's blood glucose meter before new diabetic strips may be issued.

ARC 0486C No action on amendments to ch 119 regarding record check evaluations.

Special Review For the committee's information, the department submitted for review amendments to ch 79 that require all Medicaid programs to increase, up to Medicare levels, the reimbursement rates for primary care services provided by physicians as required by the Patient Protection and Affordable Care Act, effective January 1, 2013. Ms. Vermeer explained that an emergency rule making was necessary because a final rule and guidance were not issued by the Centers for Medicare and Medicaid Services (CMS) until November 2012. In addition, federal approval of Iowa rules must be secured from CMS before increased payments may be issued. As soon as CMS approval is received, retroactive payments will be made by the department. In response to an inquiry from Sen. Seymour, Ms. Vermeer stated that the increase in reimbursement applies only to providers with specialty designations of family medicine, internal medicine, and pediatric medicine and to subspecialists licensed within these categories and only for evaluation management (office) codes and vaccination administration codes.

Special Review In compliance with 2012 Iowa Acts, Senate File 2315, division IV, section 38, and prior to emergency adoption, the committee reviewed new 25.91 pertaining to the establishment of criteria for exempting counties from joining into regions to administer mental health and disability services. Ms. Freudenberg explained that the statute requires counties to form regions voluntarily by April 1, 2013, or submit a letter of intent by May 1, 2013, to apply for an exemption from forming a region of at least three contiguous counties. All applications for exemption are due by June 30, 2013, and the director of the department shall issue a decision on an application within 45 days of receipt.

Mr. Ferrell asserted that the rules require that a county seeking exemption already be providing the required core services. Ms. Hinton expressed concern about required service capacity and the source of the data to determine that capacity. Ms. Hinton and Mr. Ferrell expressed the view that the statute requires a county seeking exemption to have the capacity to provide certain core services and perform required functions of a region, whereas the rules set forth requirements that exceed those in statute and would be difficult to meet.

Human Services Department (continued)

In response, Mr. Shults stated that there is confusion about the difference between the core services required of a region, and, therefore, of a prospective exempted county, and the process by which the core services are delivered. He stated that the rules do not require additional core services but instead require a prospective exempted county to provide evidence of the availability of and accessibility to the required core services.

Discussion pertained to consideration of public comment, statutory intent, state funding, application forms, and the provision of consistent statewide services. In response to an inquiry from Rep. Pettengill, Mr. Shults stated that the concerns of interested parties regarding the requirements for exemption were considered by the commission, which found the rules to be consistent with statute. In response to an inquiry from Rep. Olson, Mr. Ferrell stated that Polk County would seek an exemption, but he was uncertain if the county would qualify. Mr. Ferrell also noted that the rules, unlike the statute, do not stipulate that the services to be provided are subject to the availability of funding and that the application forms have not been made available. Mr. Ferrell expressed concern regarding the nonpriority populations identified in statute, that is, children and persons with developmental disabilities who are not intellectually disabled, whose services could be curtailed if the cost to an exempted county for providing the required core services precludes funding the continuation of services to these nonpriority groups. Mr. Ferrell suggested that the statute be amended to include funding for services to these groups. In response to an inquiry from Rep. Pettengill, Rep. Heaton expressed support for the rules, which consider the individuals that the counties serve, and noted that the original intent of the legislation was to ensure a consistent set of services across the state; thus, a county seeking exemption from a region must fulfill the requirements of a region.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Deborah Svec-Carstens represented the department. Other interested parties included Kelly Meyers on behalf of the Iowa Health Care Association (IHCA) and the Iowa Center for Assisted Living (ICAL); Mike Moore on behalf of United Presbyterian Home, Washington, Iowa; and Bill Nutty on behalf of Leading Age Iowa.

ARC 0484C

The amendment to 51.24(3) and ch 59 pertain to tuberculosis (TB) screening for health care workers in health care facilities and hospitals and for residents of health care facilities regulated by the department. Mr. Werning stated that the rules were substantially written by the department of public health and are intended to bring Iowa rules into compliance with the TB screening and testing guidelines from the Centers for Disease Control and Prevention (CDC). Mr. Werning stated that concerns have been raised regarding the retesting of current employees and the testing of volunteers who assist in facilities. He reported that the department issued a notice on January 4, 2013, to clarify that pursuant to the new rules, there is no requirement for retesting of employees of health care facilities and that the department is working with stakeholders to better define "volunteer" and explain the testing of volunteers, neither of which is clearly addressed by the CDC guidelines.

In response to an inquiry from Sen. Bartz, Mr. Werning stated that to his knowledge, there is not a statutory provision that provides a religious exemption from TB testing. Ms. Meyers expressed concern that the inclusion of "volunteer" in the definition of "health care worker" might deter volunteer services in long-term care facilities and expressed appreciation to the department for its consideration of this concern. Mr. Moore requested that the rules be delayed pending clarification of the definition of "volunteer." Mr. Nutty requested that the definition of volunteer and the stipulation regarding the two-step testing process be clarified and that the rules be delayed until those issues are resolved.

Motion to delay
Motion carried
ARC 0513C

Following discussion, Sen. Bartz moved a 70-day delay on ARC 0484C.

On a voice vote of 7 to 0, the motion carried.

No questions on proposed amendments to chs 57, 58, 62, 63 and 65 pertaining to screening and testing for tuberculosis.

Inspections and Appeals Department (continued)

ARC 0514C Proposed ch 61 concerns minimum physical standards for nursing facilities. Mr. Werning explained that after a comprehensive review of the rules, the department has excluded from the proposed rules all design and construction standards that are contained within the rules of the department of public safety. The proposed rules instead focus exclusively on the physical standards directly related to the care of nursing facility residents, including the preparation of food and the maintenance of specialized units or rooms.

In response to an inquiry from Rep. Heaton regarding the proposed standards in the rules, Mr. Werning stated that discussion with interested parties regarding the standards is ongoing.

Ms. Meyers commended the department for the review of ch 61 and for continuing to work with interested parties to address several unresolved concerns outlined in written comments by IHCA and ICAL.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

ARC 0500C No action on amendments to ch 39 pertaining to the HOME partnership program. Mr. Thompson reported that all comments received were positive.

MEDICINE BOARD Mark Bowden represented the board. Other interested parties included Ashley Engelbrecht on behalf of the Iowa Medical Society.

ARC 0532C No action on 22.5 pertaining to the requirement that licensees report a hospital's limitation, restriction, suspension or revocation of a licensee's hospital privileges or any voluntary limitation, restriction, suspension or revocation of a licensee's hospital privileges to avoid an investigation or a hospital action.

Ms. Engelbrecht stated that the board worked with the society on the rule and that the society will assist physicians with compliance.

ARC 0533C No action on subrule 23.1(48) concerning board authority to impose discipline for a licensee's failure to report to the board any actions taken against the licensee's hospital privileges.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Other interested parties included Rob Hajek of the Home Builders Association of Iowa and Suzanne Gebel on behalf of the Iowa Funeral Directors Association (IFDA).

ARC 0481C No action on amendments to ch 7 pertaining to Tdap vaccine and the immunization registry. Ms. Nervig reported that in a follow-up rule making, the department will correct a footnote number in the table of immunization requirements.

ARC 0482C No action on the amendments to 70.2 regarding lead-based paint activities, specifically, the definition of "minor repair and maintenance activities." Sen. Bartz expressed his continued opposition to the standard of one square foot for painted or finished woodwork per renovation because the state standard is more stringent than that of EPA and because the regulation might be unenforceable and affect compliance with construction standards.

Mr. Hajek expressed support for the amendments, which are closer to federal standards and help to minimize the cost to affected parties.

ARC 0483C The rescission of chs 95, 96, and 98 to 107 and the adoption of chs 95 to 100 pertain to vital records. Ms. Nervig, referring to a compilation of public comment, summarized the changes from the Notice.

Ms. Gebel expressed appreciation to the department for the adoption of recommended changes. She then stated that based on existing rules, contract negotiations are in process for an electronic vital records system, including an electronic vital death registration system, i.e., electronic death certificates. Because the vendor could delay or even curtail negotiations because of the adoption of new rules, Ms. Gebel requested that the rules be delayed and the contract be completed before the rules become effective. In response to an inquiry from Rep. Pettengill, Ms. Nervig stated that the department is aware of IFDA's concerns and that the adopted rules could be amended as necessary when the contract is awarded.

Motion to delay

Following discussion, Rep. Pettengill moved a session delay on ARC 0483C.

Motion carried

On a voice vote of 7 to 0, the motion carried.

Public Health Department (continued)

- ARC 0480C No action on amendments to chs 131 and 132 relating to the updating of the Iowa EMS Scope of Practice document to the most recent edition, April 2012.
- ARC 0474C No questions on proposed amendments to ch 113 pertaining to public health response teams.

PROFESSIONAL LICENSURE DIVISION Tony Alden and Pierce Wilson represented the division.

- ARC 0537C No action on amendments to chs 262 and 265 concerning continuing education for respiratory care practitioners and setup and delivery of equipment related to the practice of respiratory care.
- ARC 0462C No action on amendments to 326.8 relating to supervision of physician assistants.

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PHARMACY BOARD Lloyd Jessen represented the board.

- ARC 0504C No action on amendments to chs 2, 3, 5, 8, 10, 12, 17, 24 and 30 pertaining to licensure and fees.
- ARC 0511C No questions on proposed amendments to 2.12, 2.13 and 2.17 concerning continuing education and the continuing professional development portfolio.
- ARC 0501C No action on the amendment to 6.2 relating to the duties of a pharmacist in charge. Mr. Jessen clarified for Sen. Bartz that a pharmacist in charge must provide employees with written pharmacy policies and procedures and must require and document that each employee has reviewed the policies and procedures.
- ARC 0502C No action on amendments to ch 7 regarding verification by a remote pharmacist in a hospital pharmacy practice. Mr. Jessen clarified for Rep. Heaton the purpose for a hospital pharmacy's contract with another pharmacy for remote pharmacist preview and verification of patient-specific drugs or devices ordered for a patient.
- ARC 0503C No action on amendments to 8.5 pertaining to board notification and inspection related to a pharmacy remodel or relocation. Mr. Jessen clarified for Sen. Horn the types of pharmacy relocations. In response to an inquiry from Rep. Olson, Mr. Jessen stated that compliance officers work closely with pharmacies and would do so during an inspection of a pharmacy undergoing remodeling and that a mid-project inspection may be needed if unanticipated problems arise.

PUBLIC SAFETY DEPARTMENT Roxann Ryan and Brian Young represented the department.

- ARC 0540C Proposed amendments to chs 501 and 502 concern licensing and fees for electricians and electrical contractors. Ms. Ryan stated that under the National Electrical Reciprocal Alliance that involves 17 states, the same standards apply to in-state and out-of-state electricians. Ms. Ryan stated that the department seeks the assurance that out-of-state electricians are qualified.
- Mr. Young clarified for Sen. Seymour how reciprocal licenses work during a natural disaster. In response to an inquiry from Sen. Bartz, Mr. Young named the states in the Alliance and stated that each state must have reciprocal agreements with each of the states in the Alliance. Ms. Ryan explained that though a state within the Alliance may have a reciprocal agreement with a non-Alliance state, the uniformity in licensing standards among the Alliance members is advantageous. In response to Rep. Heaton's concern, Mr. Young acknowledged the possibility that the reciprocal agreements could put in-state contractors at risk for competition from out-of-state companies but noted that the reciprocal agreement also presents new business for in-state contractors. Rep. Heaton commended the adequacy of electrician licensing fees to provide for inspections.
- ARC 0541C Proposed amendments to ch 505 pertain to program approval and standards for postsecondary electrical education programs.
- Mr. Young clarified for Rep. Pettengill the requirements of each postsecondary electrical education program and agreed to provide data with which to compare those requirements.
- ARC 0542C No questions on proposed amendments to 550.4 regarding qualifications of state and political subdivision electrical inspectors.

REVENUE DEPARTMENT Victoria Daniels represented the department.

- ARC 0527C No action on amendments to ch 224 pertaining to telecommunications sourcing, prepaid wireless E911 surcharges, and the central office equipment sales tax exemption.

Revenue Department (continued)

- ARC 0452C No questions on proposed 10.2(32) regarding the 5 percent interest rate on interest-bearing taxes for calendar year 2013.
- ARC 0467C No action on 80.29 concerning geothermal heating and cooling systems installed on residential property. Ms. Daniels clarified for Sen. Bartz the calculation of the assessed value of property.
- ARC 0466C No action on 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. In response to an inquiry from Rep. Olson, Ms. Daniels stated that a tax expenditure study published by the department every five years examines all sales tax exemptions, including all sales and use taxes related to farming; Ms. Daniels agreed to provide the committee with the soon-to-be-published 2010 study. Ms. Daniels clarified for Sen. Bartz that ATVs for farm use may or may not be considered implements of husbandry depending upon their use and that the committee, at its September 11, 2012, meeting, referred the issue to the legislature.
- ARC 0468C No action on amendments to ch 239 pertaining to local option sales tax urban renewal projects.
- Ms. Daniels provided follow-up information regarding two committee concerns. In response to an inquiry from Rep. Vander Linden, she first distributed a memo from the chief appraiser of the property tax division regarding property tax (see ARC 0400C, November 13, 2012, minutes). Ms. Daniels then reported that she has relayed to an industry representative the committee's concern about distinguishing between a primary car wash and secondary car wash and that the department will consider an amendment to the definitions if necessary (see ARC 0403C, November 13, 2012, minutes).

SOIL CONSERVATION DIVISION Margaret Thomson represented the division.

- ARC 0477C No action on amendments to ch 10 regarding incentive provisions for soil erosion control related to construction conservation practices in calendar year 2012.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

- ARC 0538C No action on 91.11(8)"a" allowing licensed grain dealers to provide a list of canceled credit-sale contracts to examiners as an alternative to placing the cancellation information on the individual paper contracts, a change that will accommodate the electronic storage of the contract documents. Rep. Pettengill expressed concern that inspectors may not have the opportunity to check paper records to verify that a contract has been canceled. Ms. Thomson agreed to verify the availability of paper records for inspection and to provide the information to Rep. Pettengill.

TRANSPORTATION DEPARTMENT Director Paul Trombino and Donna Buchwald represented the department. Other interested parties included Vanessa Marcano and Hugh Espey on behalf of Iowa Citizens for Community Improvement (CCI); Rita Bettis on behalf of the American Civil Liberties Union (ACLU) of Iowa, et al.; Joe Enriquez-Henry and Mary Campos on behalf of the League of United Latin American Citizens of Iowa (LULAC); and Araceli (Sally) Goode.

- ARC 0478C No action on the amendment to 150.4(3)"c" pertaining to construction of curb ramps on existing sidewalks within the right-of-way of primary road extensions. Ms. Buchwald summarized changes from the Notice resulting from committee comments at the October 9, 2012, meeting. Sen. Bartz expressed appreciation for the department's consideration of and action on committee concerns.

- Special Review A special review was requested regarding deferred status driver's licenses for persons granted Deferred Action for Childhood Arrival (DACA) status by the U.S. Citizenship and Immigration Services in a June 15, 2012, memorandum from the Secretary of the U.S. Department of Homeland Security (USDHS). Mr. Trombino stated that in the memorandum, the Secretary does not grant persons with DACA status legal authorization to be present in the United States.

Transportation Department (continued)

Thus, after review by department legal counsel and the governor's office and pursuant to Iowa Code sections 321.182, 321.190, and 321.196, which require that foreign nationals seeking driver's licenses (DLs) or nonoperator's identification (ID) cards be "authorized to be present," the department concluded in December 2012 that it does not have the legal authority to issue DLs or ID cards to foreign nationals with DACA status. Mr. Trombino stated that Iowa law would need to be amended to allow foreign nationals with DACA status to obtain DLs or ID cards.

Rep. Vander Linden, who had requested the special review, expressed the opinion that a change in policy, such as the restriction regarding Category C33 to the employment authorization document (EAD) issued to foreign nationals with DACA status that was posted on the department's website, should have been promulgated through rule making. He asserted that the deferred status broadened the category of persons who may legally be in the United States and that granting DLs and ID cards would be good public policy. He also questioned how the department's goal of "safety across all transportation systems" would be attained by not issuing DLs and ID cards to foreign nationals who are authorized to work in Iowa and who would be licensed and insured. Rep. Heaton concurred with Rep. Vander Linden and asserted that the memorandum defers action on deportation and temporarily, for two years, authorizes foreign nationals with DACA status to be present and therefore to acquire DLs and ID cards. Rep. Olson expressed the opinion that the department is disallowing foreign nationals with DACA status from acquiring DLs and ID cards based on a memorandum from a federal agency head, not a federal statute or rule, and inquired about the language that the legislature might adopt to allow foreign nationals with DACA status to acquire DLs and ID cards.

In response, Mr. Trombino stated that there has been no change in policy; on its website, the department clarified that Category C33 appears on EADs issued for DACA status. He stated that the director's duty is to follow Iowa law, which requires authorized presence in order for foreign nationals to be issued DLs and ID cards and that the deferred action on deportation does not allow legal presence. Mr. Trombino stated that his purpose for appearing before the committee was to clarify the department decision, not to propose legislation, but he suggested that the legislature may change the statute, perhaps modeled on the legislation of other states.

Rep. Pettengill and Sen. Bartz affirmed the department's contention that deferred action does not allow authorized presence and that department policy has been clarified, not changed, based on the advice of department legal counsel and of the governor's office. Ms. Findley affirmed the department's decision that Iowa law requires authorized presence for the issuance of DLs and ID cards and that the USDHS memorandum does not confer authorized presence.

Ms. Marcano outlined the specific criteria for DACA status, including factors relating to age, education attained, service in the armed forces, and a clear criminal background check, and advocated for the issuance of DLs and ID cards to foreign nationals with DACA status. Mr. Espey expressed support for persons with DACA status and requested that the action against granting DLs and ID cards be dropped. Ms. Bettis requested that the department reconsider its decision since the current law and rules allow for licensing and stated that foreign nationals with DACA status are authorized to be present and are documented, having received authorization to remain in the United States for a renewable period of two years, social security cards, and EADs. Mr. Enriquez-Henry concurred with the view of the ACLU and requested that the department reconsider its decision. Ms. Campos requested that foreign nationals with DACA status be allowed to attain DLs and ID cards. Ms. Goode requested that the legislature give direction to the department regarding the meaning of deferred status.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.

ARC 0539C

No action on ch 7, voter registration mailing address maintenance.

SECRETARY OF STATE Sarah Reisetter and Charlie Smithson represented the secretary of state. Other interested parties included Ana Mancebo, Joe Fagan, Brenda Brink, Evan Burger, Bridget Fagan, David Goodner and Hugh Espey of Iowa Citizens for Community Improvement (CCI); Marty Ryan of Fawkes-Lee and Ryan; Sen. Mark Chelgren; Nancy Stillians; Bonnie Pitts on behalf of the League of Women Voters of Iowa; Joe Enriquez-Henry and Mitch Henry on behalf of the League of United Latin American Citizens of Iowa (LULAC); Ernie Rudolph of the Iowa Property Rights Council; Araceli (Sally) Goode; and Rita Bettis on behalf of the American Civil Liberties Union (ACLU) of Iowa.

ARC 0528C

New rules 21.100 and 28.5 were Adopted and Filed Emergency and were also published under Notice of Intended Action (i.e., "double-barreled") (see ARC 0272C and ARC 0271C, IAB 8/8/12). This Amended Notice of Intended Action proposes to rescind 21.100 and to rescind 28.5 and adopt a new 28.5 to address concerns that were raised in comments from the public submitted to the secretary of state's office and from the committee following the promulgation of these rules.

In opening remarks, Mr. Smithson stated that under the Amended Notice, the secretary of state does not have the authority to remove anyone from the voter rolls, which action may only be taken at the county level by the county auditor through a specified process; that the rule making is a regulation on the secretary of state; and that election misconduct was addressed in Iowa Code chapter 39A in 2002, before the secretary of state was elected.

Ms. Reisetter explained the proposed changes from the original Notice and the emergency rules. She stated that the rescission of 21.100, regarding complaints, is proposed because the intent of the rule was misinterpreted to provide a mechanism to circumvent Iowa Code sections 48A.14 to 48A.16 and caused concern that registered voters would be removed from the voter registration rolls following anonymous complaints. In addition, in new 28.5, the predetermined search criteria for matching of foreign national files and the voter registration list (restricted to no more than one match per quarter) have been specified, and the time frame for registrants to respond to two different notices from the secretary of state has been changed from 14 days to 30 days, or a minimum of 60 days in the event the registrant informs the secretary of state's office that more time is needed to respond to the notice. Ms. Reisetter emphasized that the secretary of state will work with a registrant to ensure that adequate time for response is granted.

Ms. Reisetter then summarized and responded to public comment regarding the Amended Notice and stated that the election advisory board did not object to nor were any comments received from county auditors or their deputies or staff members about the Amended Notice.

Ms. Mancebo stated that voter fraud is a nonexistent problem and encouraged the expansion of voter rights. Mr. Fagan expressed concern that the rule will discourage an immigrant who is a citizen from exercising the right to vote. Ms. Brink asserted that taxes should be used to solve real problems, not to address voter fraud, a nonexistent problem. Mr. Burger expressed the opinion that voting should be promoted because too few citizens vote and questioned whether the Systematic Alien Verification for Entitlements (SAVE) database provides real-time data. Ms. Fagan stated the opinion that voter fraud is not a problem in Iowa. Mr. Goodner challenged the number of public comments reported by Ms. Reisetter and requested that the committee not allow the rule making to go forward. Mr. Espey stated that voting by noncitizens has not been proven. Mr. Ryan commended the secretary of state for the rescission of 21.100 and expressed concern about several issues, including language perceived to be coercive that may discourage voting. Sen. Chelgren commended the rules for affording a new citizen an opportunity to verify citizenship and, thus, the right to vote, and for maintaining the integrity of the election process. Ms. Stillians expressed opposition to the rule making. Ms. Pitts stated that the legislature and all county auditors should be involved in the rule-making process and that changes in the voter rolls should be transparent, accurate and legal. Mr. Enriquez-Henry expressed opposition to the rules, including the use of Help America Vote Act (HAVA) funds to verify voter rolls, and stated that the issue should be vetted by the legislature. Mr. Henry asserted that the SAVE program is not a database of citizenship records nor can it provide real-time information and asserted that SAVE should not be used to maintain voter registration rolls.

Secretary of State (continued)

Mr. Rudolph expressed support for the rules to ensure that only citizens are permitted to vote. Ms. Goode took issue with the emergency adoption of the rules but expressed support for rule 21.100, the rescission of which is now proposed. Ms. Bettis let stand the opposition to the rules expressed in her written comments, the receipt of which was confirmed by the committee.

Discussion pertained to the means and time frames for notification of registrants, the compliance of the rules with state and federal law, the purpose for the Amended Notice, the use of HAVA funds, and the use and cost of the SAVE program.

In response, Ms. Reisetter explained that the federal 90-day voter challenge requirement is not applicable based on a federal court ruling in Florida; that the Amended Notice proposes the replacement of the emergency adopted rule; that no written disapproval or approval of the use of HAVA funds has been received from the Inspector General; and that based on the same federal court ruling in Florida, USDHS is allowed to negotiate a memorandum of understanding with several states, including Iowa, to use the SAVE program, with a maximum cost per individual of \$1.50. In response to an inquiry from Rep. Olson, Mr. Smithson stated that the intent of the Amended Notice is to replace the emergency rules. There was also discussion regarding the stay imposed by the district court.

Sen. Jochum suggested that registrants receive notices by certified mail. In addition, she stated the opinion that the rule exceeds the authority of the secretary of state and that voting and voter-related issues should be addressed by the legislative branch, noting that Iowa Code chapter 48 outlines exclusive means of maintaining voter registration rolls. She encouraged the secretary of state to withdraw the rule making and submit to the legislature a law that addresses the secretary of state's concerns.

Committee business Committee members thanked departing members Sen. Bartz, Sen. Seymour, Rep. Heaton and Rep. Oldson for their dedicated service.

The minutes of the December 11, 2012, meeting were approved.

The next meeting was scheduled for Friday, February 8, 2013, at 8:30 a.m.

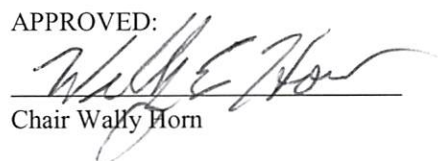
Adjourned

The meeting was adjourned at 12:50 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Wally Horn


Vice Chair Dawn Pettengill