

# **MINUTES OF THE NOVEMBER 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 Friday, November 8, 2013, in Room 116, State Capitol, Des Moines, Iowa.

**Members present:** Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Lisa Heddens [by teleconference], Rick Olson, Jeff Smith, and Guy Vander Linden were present.

**Also present:** Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Michael Bousselot, on behalf of the Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

**Convened** Rep. Pettengill convened the meeting at 9:35 a.m.

**Fiscal overview** Adam Broich presented the LSA fiscal report. Fiscal analyst Shawn Snyder clarified for Rep. Pettengill the state aid portion of the table related to education department ARC 1119C.

At the request of Rep. Pettengill, Mr. Broich explained pending changes to the format of the fiscal report and stated that he will provide the committee with a draft of the new format.

**COLLEGE STUDENT AID COMMISSION** Executive Director Karen Misjak represented the commission. Other interested parties included David Adelman on behalf of the Iowa Academy of Family Physicians.

ARC 1123C No questions on proposed amendments to 1.2 concerning updates and clarifications related to the commission's organization and operation.

ARC 1122C No questions on proposed amendments to 20.1 regarding the Iowa national guard educational assistance program.

ARC 1121C Proposed ch 24 concerns the rural Iowa primary care loan repayment program. Ms. Misjak clarified for Rep. Pettengill the timing of the application and the provision of matching funds. Mr. Adelman explained the application process and the public and private funding of the program and outlined legislative changes regarding program enhancements to be addressed in the 2014 session.

ARC 1120C No questions on proposed ch 25, rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program.

**ECONOMIC DEVELOPMENT AUTHORITY** Kristin Hanks represented the authority.

ARC 1098C No action on amendments to ch 116 pertaining to the innovation fund tax credit program.

**EDUCATIONAL EXAMINERS BOARD** Darcy Lane and Joanne Tubbs represented the board.

ARC 1085C No action on the amendment to 13.28(17)"i" pertaining to the correction of the grade level of the all science endorsement.

ARC 1087C No action on amendments to 22.2 concerning the length of time a licensee with a substitute authorization may serve in one classroom or assignment. Ms. Lane clarified for Rep. Pettengill the difference between the length of an assignment allowed under a substitute authorization and under a substitute license.

ARC 1086C No action on 22.6 relating to the school administration manager authorization.

**EDUCATION DEPARTMENT** Mike Cormack, Elizabeth Calhoun, and Jeff Berger represented the department. Other interested parties included Emily Piper of the Iowa Association of School Boards.

ARC 1115C Amendments to 12.1 relate to instructional days and hours. In response to an inquiry from Rep. Pettengill, Mr. Berger explained why parent-teacher conferences are considered instructional time. Mr. Cormack confirmed for Sen. Jochum that the rules reflect 2013 Iowa Acts, House File 215, and stated that the department will bring forward legislation in the 2014 session to make technical changes related to instructional days.

ARC 1116C No action on amendments to 12.2 and 12.5(14) pertaining to the delivery of and assessment in competency-based and traditional instruction.

**Education Department (continued)**

- ARC 1118C No action on 12.10 pertaining to independent accrediting agencies. Mr. Cormack expressed the board's concern about the statute and the board's reluctance to promulgate this rule while acknowledging that the rule complies with the statute.
- ARC 1126C Proposed amendments to ch 31 relate to private instruction and dual enrollment. Mr. Cormack stated that the amendments set forth a new category of home instruction and added that a private instruction handbook is available online. He also conveyed the board's concern about the statute and the board's reluctance to promulgate these amendments while acknowledging that the amendments comply with the statute. Ms. Calhoun defined for Rep. Pettengill competent private instruction (CPI) and clarified for Sen. Courtney that parents participating in CPI may decide whether to accept suggestions and assistance from the supervising teacher.
- ARC 1117C No action on 79.14(13) concerning the teacher preparation clinical practice standard related to the teach Iowa student teaching pilot project.
- ARC 1119C Amendments to 97.7 pertain to the supplementary weighting plan for operational services. Mr. Berger summarized the department's concern about the intent of the legislation and about the legislature's intended appropriation. Mr. Berger suggested that the committee consider a session delay.
- Discussion pertained to the effect of a session delay. In response, Mr. Berger stated that a session delay would not preclude shared arrangements and would allow the statute to be adjusted in accordance with the incentive for shared arrangements and with cost containment.
- Ms. Piper expressed support for the session delay, adding that plans for sharing and expansion for the 2014-2015 school year have not yet been made. She also stated that clarifying the statutory language will create a balance between the fiscal impact on the state and the needs of school districts.
- Motion to delay Rep. Vander Linden moved a session delay on ARC 1119C [97.7].
- Motion carried On a roll call vote of 9 to 0, the motion carried.

**ENVIRONMENTAL PROTECTION COMMISSION** Elaine Douskey represented the commission.

- ARC 1100C No action on 135.5(1)"e" pertaining to changes in leak detection and notification requirements for unstaffed facilities that operate underground storage tank (UST) systems that have pressurized piping.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT** John Benson represented the department.

- ARC 1093C The amendment to 9.3 proposes to adopt the updated and federally approved Iowa hazard mitigation plan. Mr. Benson confirmed for Rep. Pettengill that the department examines the entire spectrum of potential hazards in the update of the plan, and he clarified for Sen. Jochum that the department examines and incorporates into Iowa's plan information about disaster response and recovery by other states.
- ARC 1114C No action on ch 14, flood mitigation program. Mr. Benson summarized the application process and noted that the sales tax increment is the funding source for the seven prospective applicant cities.

**IOWA FINANCE AUTHORITY** Mark Thompson represented the authority.

- ARC 1144C No questions on proposed amendments to 3.5 and the rescission of 3.6, 3.7, 3.9, 3.12, 3.20 to 3.27 and 3.31 to 3.37 pertaining to multifamily housing.
- ARC 1139C No action on amendments to 12.1 and 12.2 concerning the qualified allocation plan related to the low-income housing tax credit program.
- ARC 1142C No action on the amendment to 27.3(2)"a" regarding home purchase financing related to the military service member home ownership assistance program. Mr. Thompson explained that this amendment brings the rule into compliance with the statute and stated that the amendment is identical to that approved by the committee for emergency filing at the October meeting. Sen. Smith stated that the amendment is a good short-term solution and that he looks forward to working with the authority to amend the statute.
- ARC 1140C No action on amendments to ch 39 relating to the HOME investment partnerships program.

**Iowa Finance Authority (continued)**

ARC 1112C No action on the adoption of ch 44, Iowa agricultural development division, and the rescission of former agricultural development authority chs 1 to 11. Mr. Thompson explained that 2013 Iowa Acts, House File 607, transferred the duties and responsibilities of the agricultural development authority to the Iowa finance authority and allowed emergency rule making to accomplish the transfer.

**LABOR SERVICES DIVISION** Kathleen Uehling and Director Michael Mauro represented the division.

ARC 1159C The proposed amendment to 71.1 pertains to the American Society of Mechanical Engineers (ASME) standard for elevator inspector qualifications. In response to committee members' questions, Ms. Uehling stated that national industry associations certify elevator inspectors; the division issues all permits, whether inspections are conducted by state or private inspectors; and the division maintains a roster of certified private inspectors.

ARC 1158C No action on amendments to 71.16 pertaining to fees related to the conveyance safety program. Discussion pertained to the safety record for conveyances, a comparison of the former fees with the increased fees, the funding of the program and the incorporation of conveyance fees into the bid for a building project.

ARC 1108C Proposed 72.1(9) adopts by reference relevant portions of ASME standards related to platform lifts and stairway chairlifts. Ms. Uehling confirmed for Rep. Pettengill that the ASME standards are available to the public at the office of the division. Ms. Uehling will provide Rep. Pettengill with the statute that exempts the division from making the ASME standards available to the law library.

ARC 1160C No questions on proposed ch 156, bidder preferences in government contracting.

ARC 1107C Proposed ch 169 and amendments to chs 170 to 174 and 177 pertain to general requirements for athletic events that include wrestling, boxing and mixed martial arts. Discussion pertained to event licensing fees and to the purpose for the regulation of athletic events. Mr. Mauro stated that the regulation of athletic events is funded only by event licensing fees and that regulation of these events affords the state protection from liability but is not intended to preclude athletic events from being held in smaller towns.

**PUBLIC HEALTH DEPARTMENT** Carmily Stone, Cindy Houlson, Marcia Spangler and Director Mariannette Miller-Meeks represented the department.

ARC 1089C No action on amendments to ch 25 pertaining to the plumbing code, specifically, plumbing materials and methods for buildings and premises in Iowa.

ARC 1128C Proposed amendments to 28.1 pertain to licensure fees related to plumbing and mechanical systems. Ms. Stone confirmed for Rep. Pettengill that the department has no regulatory authority to perform inspections and that the three-year license fees will keep the program budget within 10 percent of expenses as required by statute.

ARC 1074C At the October meeting, the committee imposed a 70-day delay on 95.6(2) regarding overpayments (IAB 10/2/13). After summarizing the process for and cost of refunding overpayments, Ms. Miller-Meeks welcomed discussion of the policy regarding the retention of overpayments. She stated that the department intends to rescind 95.6(2), which had increased from \$15 to \$20 the amount of overpayment retained, and requested guidance from the committee regarding overpayments. Committee members inquired about the allocation of staff time to process refunds, the handling of underpayments, the policy regarding bad checks, the overpayment policies of other departments, and alternatives. In response to an inquiry from Sen. Smith, Ms. Miller-Meeks stated that the department will consider decreasing to \$5 the amount of overpayment retained. In addition, she noted that the full implementation of the Vital Events System will decrease the incidence of overpayments. Sen. Chelgren asked that citizens be provided complete information about obtaining a vital record. Sen. Smith expressed appreciation to the department for addressing the issue of overpayments.

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

ARC 1162C No questions on proposed 10.2(33) pertaining to the interest rate for calendar year 2014. Mr. McNulty summarized for Sen. Chelgren the department's overpayment policy and, for Rep. Pettengill, the cost for filing an income tax return. In response to a request from Sen. Smith, Ms. Daniels will research the department's cost to send a refund check to a taxpayer.

**Revenue Department (continued)**

- ARC 1101C No action on amendments to chs 40 to 42, 45, 52, 53 and 59 regarding individual income, corporation income and franchise taxes.
- ARC 1137C No action on amendments to chs 40 and 86 relating to inheritance tax. In response to an inquiry from Sen. Horn, Ms. Daniels provided an example to illustrate that when inherited retirement benefits are subject to income tax, they will not also be subject to inheritance tax.
- ARC 1138C No action on amendments to chs 41, 42, 46, 52 and 58 concerning historic preservation and cultural and entertainment district, agricultural assets transfer, custom farming contract, from farm to food donation, targeted jobs and endow Iowa tax credits.
- ARC 1102C No action on amendments to chs 42, 50, 52 and 89 pertaining to the earned income, Iowa taxpayers trust fund, innovation fund investment and school tuition organization tax credits; the S corporation apportionment credit; and the aggregate tax credit cap.
- ARC 1105C No action on ch 78 and amendments to 75.5 and 77.1(1) relating to replacement tax and statewide property tax on rate-regulated water utilities. Ms. Daniels followed up on an earlier committee inquiry regarding 78.7(4) to explain why taxes found to be unconstitutional cannot be refunded and to note that Iowa Code chapter 437A is the replacement tax code in which the provision is likely referenced.
- ARC 1103C No action on ch 238, flood mitigation program. In response to an inquiry from Sen. Jochum, Ms. Daniels explained that legislation may not be needed to prevent an area of the state that experienced a qualifying event from receiving funds from all three of the following sources: the local option sales tax (TIF), the flood mitigation program, and the reinvestment districts. In response to a previous inquiry, Ms. Daniels confirmed for Sen. Jochum that the term "stepgrandchild" is not defined in the Iowa Code; therefore, the department did not define the term in rule (see ARC 1002C, IAB 9/4/13).

**TREASURER OF STATE** Stefanie Devin represented the treasurer of state.

- ARC 1109C Proposed ch 11 pertains to the deposit of public funds by state agencies. Ms. Devin stated that the purpose of these rules is to ensure that public money is protected by the sinking fund. In response to committee members' questions, Ms. Devin explained the impetus for the rules and how the sinking fund protects the deposits.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF**

- ARC 1157C The department representative was unable to appear; this rule making will be reviewed at the December meeting.
- Motion to delay Rep. Vander Linden moved a 70-day delay on ARC 1157C.
- Motion carried On a voice vote of 9 to 0, the motion carried.

**WORKFORCE DEVELOPMENT DEPARTMENT** Joe Bervid represented the department.

- ARC 1094C No questions on proposed amendments to ch 26 pertaining to online filing of unemployment insurance appeals.
- ARC 1095C Proposed amendments to 26.14 relate to an appealing party's participation in an appeal hearing. In response to an inquiry from Rep. Pettengill, Mr. Bervid explained current practice and stated that notices of hearing are sent to the appealing party's address of record.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Rick Shults, Jennifer Vermeer, Rocco Russo and Wendy Rickman represented the department.

- ARC 1129C Proposed amendments to ch 7 pertain to appeals and hearings. In response to committee members' questions, Mr. Boussetot stated that the insurance division can be contacted to ascertain the number of Iowans who have thus far enrolled in the federal health insurance exchange.
- ARC 1096C No action on amendments to ch 25 concerning mental health and disability services regional core services. Ms. Freudenberg summarized the changes that were made in response to public comment. Ms. Freudenberg clarified for Sen. Jochum that a county is not precluded from offering more services than those required. Rep. Pettengill commended the department for the rule making's preamble, which details the areas of public concern.

## Human Services Department (continued)

- ARC 1145C No action on amendments to chs 28 to 30 concerning mental health institutes and state resource centers. Mr. Shults clarified for Rep. Heddens that the state will work cooperatively with a county on the facility admissions process regardless of the source of funding. He added that if services are not funded primarily by Medicaid (mental health institutes), the services are the county's responsibility; if the services are funded primarily by Medicaid (state resource centers), the services are the state's responsibility.
- ARC 1146C No action on amendments to chs 41 and 93 regarding the family investment program (FIP) and the PROMISE JOBS program. Ms. Rickman clarified for Rep. Heddens the policy regarding appointments for PROMISE JOBS applicants.
- ARC 1147C No action on amendments to ch 47 pertaining to the family self-sufficiency grants program.
- ARC 1148C No action on amendments to 65.8 concerning the standard utility allowance related to food assistance.
- ARC 1135C No questions on ch 74 and amendments to ch 88 pertaining to the Iowa health and wellness plan.
- ARC 1134C No action on amendments to ch 75 pertaining to medical assistance eligibility.
- ARC 1149C No action on amendments to ch 77 regarding qualifications for enrollment as a respite or interim medical monitoring and treatment provider under Medicaid. Ms. Vermeer clarified for Rep. Heddens and Sen. Jochum that the amendments affect a small group of providers and will not preclude the continuation of services by respite providers that are enrolled under different certifications.
- ARC 1151C No action on amendments to chs 78 and 81 concerning payment for customized wheelchairs for Medicaid members residing in nursing facilities.
- ARC 1161C No questions on 78.13 pertaining to nonemergency medical transportation. Ms. Vermeer summarized the history of the program and stated that the purpose for the rules is to clarify the coverage criteria to be followed by the broker that provides nonemergency medical transportation.
- ARC 1150C No action on 79.1(5)"ac" pertaining to rural hospital disproportionate share payments.
- ARC 1152C No action on amendments to 79.1(7) relating to payment for physician services rendered in facility settings.
- ARC 1154C No action on amendments to 79.1(22) concerning Medicare crossover claims.
- ARC 1155C No action on amendments to chs 79 and 80 regarding sanctions and timely filing of claims under Medicaid. At the request of Sen. Courtney, Ms. Vermeer will provide the committee with data regarding provider fraud, waste and abuse. Ms. Vermeer and Mr. Russo addressed inquiries from Sen. Jochum regarding the allowed exception to policy regarding 79.9(7) and corporation ownership and recoupment of wrongful payments in 79.2(3). Ms. Vermeer clarified for Rep. Heddens how the exception to policy will be administered.
- ARC 1153C No action on amendments to 79.14 pertaining to the provider enrollment or reenrollment application fee.
- ARC 1156C No action on amendments to chs 172, 175 and 186 regarding child abuse reporting and assessment and placement on the central registry for child abuse. Discussion in response to an inquiry from Sen. Chelgren pertained to the process by which a client may address concerns and may file a complaint regarding the department worker assigned to the client. In response, Ms. Rickman explained the process and stated that she shares and seeks to address the committee's concern.
- Committee review of emergency rule making** Pursuant to 2013 Iowa Acts, Senate File 446, the department presented notice of its intention to propose under Notice of Intended Action and simultaneously to adopt by Emergency the rule makings listed below and requested committee review and approval of the rules prior to emergency adoption. (Note: Rule reference numbers shown were assigned by the department for purposes of review and discussion.)
- 14-084 Amendments to 75.70 and 75.71 concerning the Iowa family planning network (IFPN).
- Motion to approve Sen. Jochum moved approval of the emergency rule making.
- Motion carried On a voice vote of 8 to 0, the motion carried.

Human Services Department (continued)

14-086 Amendments to ch 74 regarding the Iowa health and wellness program (IHAWP).

Motion to approve Sen. Chelgren moved approval of the emergency rule making.

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

**Committee business** The minutes of the October 7 and 8, 2013, meeting were approved.

For informational and study purposes, Mr. Royce and Mr. Ewing distributed to the committee two documents: a memorandum that presents an overview of and issues related to each of the committee's powers under 2013 Iowa Acts, House File 586; and a Drake Law Review article by Jerry L. Anderson, Professor of Administrative Law at Drake University, entitled "A Constitutional and Empirical Analysis of Iowa's Administrative Rules Review Committee Procedure," which questions on constitutional grounds the operation of the committee.

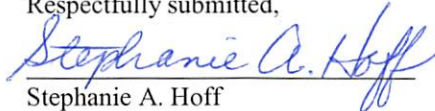
Sen. Chelgren stated that he is at work on an amendment that would add to Article 3 of the Iowa Constitution a new section 41 to define "administrative rules review committee." Section 41 would grant the committee express authorization in the Constitution to continue its operation.

The next meeting was scheduled for Tuesday, December 10, 2013, at 9:30 a.m.

Adjourned

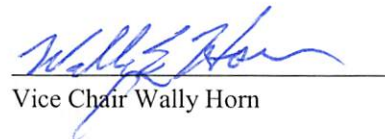
The meeting was adjourned at 3:17 p.m.

Respectfully submitted,

  
Stephanie A. Hoff

APPROVED:

  
Chair Dawn Pettengill

  
Vice Chair Wally Horn