

**MINUTES OF THE JANUARY 2014 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, January 10, 2014, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Pam Jochum, and Roby Smith; Representatives Lisa Heddens, Jeff Smith, and Guy Vander Linden were present. Senator Thomas Courtney and Representative Rick Olson were not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Deputy Legal Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 9:38 a.m.

Guest observer Mr. Johnson introduced Banin Rezai of Afghanistan, who is a student at Pella Christian High School and an intern in the Governor's office.

Fiscal overview Adam Broich presented the LSA fiscal report. Regarding Economic Development Authority ARC 1249C, legislative analyst Kent Ohms clarified for Sen. Chelgren the time line for the \$500,000 nonreversion appropriation for employee stock ownership plan (ESOP) formation assistance.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Vern Armstrong represented the department.

ARC 1206C No action on amendments to ch 7 pertaining to appeals based on the competitive procurement bid process.

ARC 1208C No action on amendments to 41.24(8) and 93.13 concerning a limited benefit plan (LBP) related to the PROMISE JOBS program. In response to an inquiry from Rep. Heddens, Ms. Freudenberg explained that if notification to a participant is returned to the department by the U.S. Postal Service, the notification is not considered received and is reissued to the participant.

ARC 1207C No action on amendments to chs 41, 46 and 60 prohibiting the use of an electronic access card at certain locations. Ms. Freudenberg stated that specific locations are prohibited by federal regulation or statute. She clarified for Rep. Smith that the types of items purchased with an electronic access card are not restricted and that an electronic access card may be used at a convenience store, not a liquor store.

ARC 1257C Proposed amendments to ch 58 pertain to the Iowa individual assistance grant program (IIAGP). In response to an inquiry from Rep. Pettengill, Mr. Armstrong stated that the department contract for service statewide will provide timely local assistance through community action agencies and other local entities during Governor-designated disaster events.

ARC 1214C No action on 74.15 pertaining to enrollment for IowaCare members in the Iowa health and wellness plan (IHAWP). Ms. Freudenberg clarified for Rep. Pettengill that income data received from the income and eligibility verification system (IEVS) is used to determine eligibility for IHAWP.

ARC 1212C No action on amendments to 75.70 and 75.71 pertaining to financial eligibility determinations for family planning services.

ARC 1228C No questions on proposed amendments to chs 95 and 99 regarding Iowa supreme court guidelines for the establishment and modification of child support.

ARC 1209C No action on amendments to chs 109 and 110 pertaining to licensure status and notifications related to child care centers and child development homes.

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

ARC 1249C No action on ch 56 pertaining to employee stock ownership plan (ESOP) formation assistance. In response to an inquiry from Sen. Jochum, Mr. Whipple explained that the \$500,000 nonreversion appropriation offsets the cost of feasibility studies for potential ESOPs and that the promotion of ESOPs is being conducted through public-private partnerships. Sen. Chelgren requested that the authority provide the committee with an annual update on the formation of ESOPs.

Economic Development Authority (continued)

- ARC 1258C No questions on the termination of proposed amendments to 71.1 and 71.6 relating to the targeted jobs withholding tax credit program.
- ARC 1248C No questions on proposed amendments to chs 71 and 187 pertaining to the targeted jobs withholding tax credit program.

ENVIRONMENTAL PROTECTION COMMISSION Wendy Walker and Jim McGraw represented the commission.

- ARC 1227C No action on amendments to chs 20, 22, 31 and 33 concerning air quality related to nonattainment areas. Mr. McGraw clarified for Rep. Vander Linden that adoption of the national ambient air quality standards (NAAQS) ensures that the department retains the authority to issue permits in nonattainment areas.

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

- ARC 1241C No action on the amendment to 9.3 that adopts the updated and federally approved Iowa hazard mitigation plan.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- ARC 1230C No questions on proposed amendments to ch 51 pertaining to hospital accreditation organizations.
- ARC 1242C No questions on proposed 51.41 pertaining to criminal, dependent adult abuse, and child abuse record checks for prospective hospital employees.
- ARC 1205C No action on amendments to chs 54, 57, 58 and 62 to 65 regarding the removal of references to resident advocate committees and the addition of the certified volunteer long-term care ombudsman program related to nursing facilities and residential and intermediate care facilities.
- ARC 1204C No action on amendments to chs 57, 58 and 62 to 65 pertaining to changes to Iowa Code references in rules that address dependent adult abuse related to nursing facilities and residential and intermediate care facilities.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

- ARC 1252C No action on 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. In response to an inquiry from Rep. Pettengill, Mr. Thompson stated that this program may also be applicable to housing, specifically, apartments for senior citizens (not assisted living apartments).
- ARC 1253C No action on the amendment to 27.3(2)"a" regarding home purchase financing related to the military service member home ownership assistance program.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Donna Mueller represented IPERS.

- ARC 1256C The proposed amendments to chs 2, 4, 9, 11 to 14, and 16 pertain to group trusts; contribution rates; refunds; retirement, disability and death benefits; same gender spouse; alternate payee; and domestic relations orders. Ms. Mueller clarified for Rep. Pettengill that the signature of member and spouse on an application for retirement benefits must be notarized unless the signature is witnessed by an authorized employee of IPERS.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 1232C No action on 72.1(9), which adopts by reference relevant portions of ASME standards related to platform lifts and stairway chairlifts.
- ARC 1240C No action on ch 169 and amendments to chs 170 to 174 and 177 pertaining to general requirements for athletic events that include wrestling, boxing and mixed martial arts. Ms. Uehling explained that the athletic program, which is administered by the labor commissioner, is funded by program fees rather than a general fund appropriation. She stated that 2013 Iowa Acts, Senate File 430, requires the labor commissioner to establish by rule event licensing fees to cover the cost of administering the athletic program. In response to an inquiry from Sen. Horn, Ms. Uehling stated that promoters and fighters expressed opposition to the fees and that there had been claims that the fees would delay the staging of athletic events. Ms. Uehling stated that in response to significant public comment, the license fees have been reduced and the effective date specifically for event license fees has been set for May 1, 2014, to allow more time for the industry to adjust.

NATURAL RESOURCE COMMISSION Bruce Trautman represented the commission.

ARC 1226C No action on amendments to chs 28 and 47 pertaining to the all-terrain vehicle and snowmobile registration revenue cost-share programs.

PUBLIC HEALTH DEPARTMENT James Goodrich, Randy Mayer, Carmily Stone, Cindy Houlson and Jerilyn Oshel represented the department.

ARC 1229C Proposed amendments to ch 7 pertain to the addition of vision screening to the health screening information in the immunization registry. Rep. Pettengill stated that the definition of "health screening" should include only vision, dental and immunization screening as authorized by statute. Sen. Chelgren and Rep. Pettengill asserted that access to information other than vision, dental or immunization screening should not be permitted. Sen. Chelgren requested that Mr. Goodrich provide a list of databases in development that could potentially access health screening information.

ARC 1215C No action on ch 11 pertaining to human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS).

ARC 1218C No action on ch 23 pertaining to licensee practice under the plumbing and mechanical systems board. Ms. Houlson clarified for Rep. Pettengill the public comment in support of language regarding bonding and of the proposal by the industry to remove the sheet metal master license from the statute during the 2014 legislative session.

ARC 1219C No action on amendments to ch 27 regarding the incorporation of mechanical, HVAC-refrigeration, and sheet metal disciplines under the plumbing and mechanical systems board.

ARC 1220C The amendments to ch 29 pertain to licensure and examination of plumbing and mechanical systems professionals.

Discussion pertained to the passing score on the licensure examination and to the rescission of 29.4(3), which removes the requirement that "an applicant shall have no record of felony conviction relating to the profession as determined by the board."

Mr. Johnson questioned the basis for the proposed passing score and suggested that the decision to alter the required examination score should be based on a thorough analysis of test data. Ms. Stone explained that the board did not adopt the proposed passing score of 70 percent for the following reasons: the licenses and examinations were reorganized following the proposal and are based on a passing score of 75 percent; 21 public comments supported a passing score of 75 percent; and reciprocity agreements with bordering states require a passing score of 75 percent. Ms. Stone agreed to provide Mr. Johnson, the committee and the board data from the testing agency to determine the number of applicants who have scored between 70 and 74 percent. Regarding an inquiry from Rep. Pettengill, Ms. Houlson explained that 29.4(3) was rescinded because the language that precludes the licensure of an applicant with a felony conviction is found elsewhere in the department's rules. Ms. Stone added that the board's screening process includes a review of any felony convictions. In response to an inquiry from Rep. Heddens, Ms. Stone agreed to provide the committee with information about the board's screening process. Mr. Royce suggested that the criteria for that process be included in the rules.

Motion to delay Rep. Pettengill moved a session delay on Item 12 (rescission of 29.4(3)).

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

ARC 1221C No action on amendments to ch 30 pertaining to continuing education.

ARC 1222C No action on amendments to ch 32 regarding licensee discipline.

ARC 1223C No action on 33.13(2) concerning contested cases.

ARC 1224C No action on amendments to ch 35 relating to reciprocity agreements for mechanical, HVAC-refrigeration, and sheet metal licensees.

ARC 1225C No action on amendments to ch 151 pertaining to the tobacco use prevention and control community partnership initiative.

REVENUE DEPARTMENT Jim McNulty and Jessica Braunschweig-Norris represented the department.

ARC 1231C No questions on proposed amendments to chs 3, 6 to 8, 10, 38 to 43, 46, 48, 52, 53, 58, and 59 concerning department organization and individual, corporation and franchise taxes and credits.

ARC 1250C No action on 10.2(33) pertaining to the interest rate for calendar year 2014.

Revenue Department (continued)

ARC 1238C No questions on proposed amendments to 71.21 pertaining to the property assessment appeal board.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 1216C No action on amendments to ch 21 pertaining to approval of postsecondary schools.

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

ARC 1236C Proposed amendments to ch 13 pertain to the licensure and practice of professional school counselors. Mr. Magee clarified for Rep. Pettengill that individual counseling continues to be included in the practice of professional school counselors.

ARC 1235C No questions on proposed amendments to 13.28(9) and 17.1 concerning family and consumer science endorsements.

ARC 1234C No questions on proposed amendments to 18.4 pertaining to the initial administrator license.

ARC 1233C No questions on proposed amendments to 24.3 and 24.4(2) regarding competencies for generalists and special needs concentration related to paraeducators.

EDUCATION DEPARTMENT Mike Cormack and David Tilly represented the department. Other interested parties included Emily Piper of the Iowa Association of School Boards, Margaret Buckton of the Urban Education Network of Iowa, Heidi Kroner of Decoding Dyslexia-Iowa, and Elizabeth Hoksbergen and Nathan Kirkegaard on behalf of Apples of Gold Centers for Learning.

ARC 1244C No questions on proposed amendments to 1.2 pertaining to the expansion of the length of service by the student member of the state board of education.

ARC 1246C No action on amendments to ch 31 relating to private instruction and dual enrollment.

ARC 1245C Proposed ch 62 pertains to state standards for progression in reading. Mr. Cormack introduced the rule making, which implements 2012 Iowa Acts, Senate File 2284. He summarized public comment, which expressed the need for greater emphasis on dyslexia in the rules, requested greater flexibility and clarity, and opposed the retention provision. Mr. Tilly added that in 2013, \$8 million was appropriated to fund Senate File 2284, and the rules have been drafted to include early intervention, intensive instruction and parental involvement. He presented six written changes to the proposed rules that have resulted from public comment and noted that the retention provision, among others, is statutory and cannot be changed.

Discussion pertained to clarification of 62.5(3) regarding continuation of instruction and referral to special education, school districts' curriculum choices, and parental involvement. Sen. Chelgren suggested that the legislature not dictate decisions related to reading progression that are better left to school districts.

Ms. Piper commended the department for the proposed changes made in response to public comment and questioned the tying of standards to retention, the time frame for practical application of the rules, and the adequacy of per-student funding. Ms. Buckton also commended the proposed changes and stated that because the continuation of the program is contingent on ongoing funding, the rules should reference a contingency not only for professional development but also for intensive reading services and summer school. Ms. Kroner stated that the rules should require identification of children with a dyslexic profile to ensure that the children receive appropriate, systematic reading instruction, specifically, an Orton-Gillingham-based program. Ms. Hoksbergen recommended that after early assessment is conducted, a child with a dyslexic profile be placed in a research-based and intensive Orton-Gillingham-based program chosen by the child's school district. Mr. Kirkegaard stated that grade retention has an emotional effect on a child who is retained.

PROFESSIONAL LICENSURE DIVISION Tony Alden represented the division. Other interested parties included Vicki Richmond and Jennifer Hoff of the Iowa Sleep Society; Renee Fitzhugh; and Kerry George of the Iowa Society for Respiratory Care.

ARC 1255C Proposed 265.5 and amendments to 262.3(2) pertain to practice and continuing education for respiratory care practitioners. Rep. Vander Linden questioned the authority of the board to add sleep-related (polysomnography) testing to the services performed by respiratory therapists and whether all respiratory therapists have documented training and demonstrated competence in polysomnography.

Professional Licensure Division (continued)

In response, Mr. Alden stated that the board considers the performance of sleep-related (polysomnography) testing to be within the scope of and training in respiratory therapy as defined in statute. Mr. Alden explained that a physician, physician assistant or advanced registered nurse practitioner determines and supervises the procedures performed by a respiratory therapist in daily practice.

Ms. Richmond and Ms. Hoff distinguished between the narrower scope of practice for respiratory therapy and the broader scope of sleep medicine and requested that the board remove the words "sleep-related (polysomnography) testing" from 265.5. Ms. Fitzhugh stated that respiratory therapy and polysomnography are distinct professions and that trained respiratory therapists are qualified to train in polysomnography. Mr. George stated that respiratory therapy is not exclusionary, that the board has the authority to promulgate rules related to the scope of practice, and that polysomnography is within the scope of practice for respiratory therapy.

Rep. Vander Linden stated that the board has broadened the scope of practice for respiratory therapy. He suggested that the board remove the language regarding sleep-related (polysomnography) testing from the rule making while legislation related to polysomnography is considered during the current general assembly; Sen. Chelgren concurred.

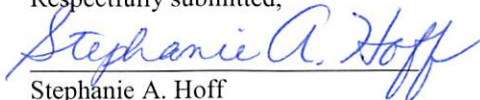
Committee business The minutes of the December 10, 2013, meeting were approved.

The next meeting was scheduled for Friday, February 7, 2014, at 9 a.m.

Adjourned

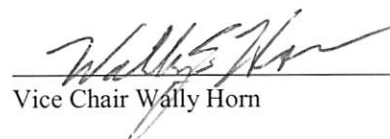
The meeting was adjourned at 1:15 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Dawn Pettengill


Vice Chair Wally Horn