

**MINUTES OF THE MARCH 2017 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, March 10, 2017, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair, and Senator Mark Chelgren, Vice Chair; Senators Mark Costello, Wally Horn, Pam Jochum, and Jack Whitver; Representatives Megan Jones, Rick Olson, Art Staed, and Guy Vander Linden were present.

Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 9:15 a.m.

Fiscal overview Christin Mechler presented the LSA fiscal report.

WORKFORCE DEVELOPMENT DEPARTMENT Heather Palmer represented the department.

ARC 2940C No questions on proposed amendments to 8.8 pertaining to payroll tax tables.

ECONOMIC DEVELOPMENT AUTHORITY Jennifer Klein represented the authority.

ARC 2938C No questions on proposed amendments to ch 106 concerning the small business innovation research and technology transfer outreach program.

ARC 2944C No action on ch 49, historic preservation and cultural and entertainment district tax credits.

MEDICINE BOARD Mark Bowden represented the board.

ARC 2950C No action on amendments to ch 17 pertaining to licensure of acupuncturists. In response to a question from Sen. Chelgren, Mr. Bowden stated that stakeholders were involved in the rule-making process and support the amendments.

PROFESSIONAL LICENSURE DIVISION Susan Reynolds represented the division.

ARC 2952C No action on amendments to ch 41 regarding licensure of chiropractic physicians.

REVENUE DEPARTMENT Theresa Dvorak represented the department.

ARC 2942C Proposed amendments to chs 12, 32, 39, 40, 46, 52 to 54, 80 and 241 and proposed ch 242 pertain to facilitating business rapid response to state-declared disasters. In response to a question from Sen. Costello, Ms. Dvorak stated that the deferment of various taxes applies 10 days before a disaster or emergency is declared by the Governor or the President and extends 60 days after a state disaster or emergency is declared.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2959C No action on an amendment to 10.20 concerning the adoption by reference of federal occupational safety and health administration (OSHA) standards related to walking and working surfaces. In response to questions from Rep. Pettengill, Ms. Uehling stated that OSHA conducts detailed national economic analyses that are not categorized by state and that the analyses for the walking and working surfaces regulations were positive. Regarding online access to the regulations, Ms. Uehling stated that summary information is available on OSHA's Web site. Mr. Smith added that the summary information includes the rule from the Federal Register, the text of the regulation, a fact sheet, a Q and A page, and an OSHA press release.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD Jill Simbro represented the board.

ARC 2941C Proposed amendments to chs 1, 2, and 4 pertain to the description of the board's organization; examinations and licensing; and rules of professional conduct. In response to a question from Sen. Chelgren, Ms. Simbro stated that a landscape architect must be licensed in Iowa to be considered a professional landscape architect. In response to a suggestion from Rep. Pettengill, Ms. Simbro will ensure that before the amendments are adopted, the content of the rules to be rescinded in Items 4 and 6 can be found elsewhere in the board's rules. At the request of Rep. Pettengill, Ms. Simbro will later discuss with Rep. Pettengill additional information about the requirements for the licensure of landscape architects.

- UTILITIES DIVISION** Cecil Wright represented the division. Other interested parties included Mark Schuling of the office of consumer advocate, Anthony Carroll on behalf of AARP, Michael Sadler on behalf of CenturyLink, and Leo Bub on behalf of AT&T.
- ARC 2955C No questions on proposed amendments to ch 31 pertaining to access to affiliate records, requirements for annual filings, and asset and service transfers.
- ARC 2956C Proposed amendments to ch 19 pertain to service supplied by gas utilities. Discussion pertained to the removal of the sunset provision in the rule that had allowed natural gas utilities to file for approval of an automatic adjustment mechanism to recover the costs of certain capital infrastructure investments. In response to questions from Reps. Pettengill and Jones and Sen. Chelgren, Mr. Wright explained the general authority of the board to establish rates for rate-regulated utilities and how the amended rule would provide for preapproval of projects by the board and the limiting of recovery of costs for new projects to five years. He stated that the amended rule would provide a less cumbersome process. Rep. Jones encouraged the board to conduct further review of the amended rule in reference to recovery of costs by a municipal utility.
- ARC 2957C Proposed amendments to ch 1 pertain to organization and operation. In response to a question from Rep. Jones, Mr. Wright stated that regarding the definition of "personally identifiable information" in 1.9(2), persons using the electronic filing system will be asked to remove the unique identifiers listed in the definition before filing the information. Reps. Jones and Pettengill commended the board for a policy that protects citizens' personally identifiable information.
- ARC 2963C No action on the rescission of ch 30 pertaining to tax reform revenue adjustment.
- ARC 2954C Amendments to ch 22 pertain to telecommunications services.
- Discussion pertained to Voice over Internet Protocol (VoIP), specifically, about whether VoIP is considered a telecommunications (local exchange) service, which would be subject to regulation by the board, or an information service, which would not be subject to regulation by the board.
- Mr. Schuling stated the opinion that VoIP is a local retail exchange service and, as a result, should not be deregulated in rule by the board's defining of VoIP as an information service. Instead, he asserted, the deregulation of VoIP should be conducted by the board through a deregulation proceeding pursuant to Iowa Code chapter 476 and that the proceeding could also address current and future concerns about service quality and customer complaints and whether remaining telecommunications providers will be treated fairly if VoIP is deregulated. He requested that the effective date of the amendments be delayed and that the deregulation of VoIP become part of the current deregulation proceeding regarding telecommunications. Mr. Carroll concurred with Mr. Schuling's concern about deregulating VoIP through an amendment to a definition rather than using a full deregulation proceeding. Mr. Carroll stated that competition and the transition to alternative technologies should require accountability and provide consumer protection from unreliable service and unreasonable practices, especially for the elderly and the most vulnerable Iowans. Mr. Carroll also requested a full deregulation proceeding.
- Mr. Sadler expressed support for the amendments and stated that VoIP should be recognized as an information service and should be deregulated. Mr. Bub explained how the conversion of Internet protocol (IP) data causes VoIP to be an information service and asserted that from a definitional perspective, the board has recognized VoIP as an information service and, within the board's authority, has brought VoIP in line with federal regulations. According to Mr. Bub, because VoIP is an information service, not a telecommunications service, a deregulation proceeding regarding VoIP would be inappropriate and could cause legal harm.
- In response to committee members' questions, Mr. Wright explained the purpose of the current deregulation proceeding, which is to examine not only VoIP but also the local exchange carriers, resellers and all of the other providers of local exchange service to see whether there is sufficient competition to remove regulation. He stated, however, that because the board has determined that VoIP is an information service, VoIP is not subject to Iowa Code chapter 476 for the regulation of local exchange service. Mr. Wright reiterated that the current deregulation proceeding is not specific to VoIP; it is specific to all local telecommunications service.

Utilities Division (continued)

Rep. Staed acknowledged the current deregulation proceeding, noting that a ruling related to the proceeding is expected by July 1, and expressed concern about whether a decision by the committee about the deregulation of VoIP is appropriate. He expressed the desire to allow the deregulation proceeding to be completed before the amendments become effective.

Motion to delay

Rep. Staed moved a session delay on ARC 2954C.

Motion failed

On a roll call vote of two to seven, the motion failed. [One member was absent at the time of the vote.]

Rep. Staed requested that Mr. Wright check to be sure that paper telephone directories, if requested by customers, are provided free of charge.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw and Christine Paulson represented the commission.

ARC 2949C

No action on amendments to chs 20 to 23, 25 to 28, 31 and 33 pertaining to air quality. Rep. Jones encouraged more timely promulgation of rules that implement legislation.

NATURAL RESOURCE COMMISSION Todd Rozendaal, Orrin Jones and Bruce Trautman represented the commission. Other interested parties also included Pam Mackey Taylor on behalf of the Iowa chapter of the Sierra Club.

ARC 2961C

No action on amendments to ch 21 regarding the lease to beginning farmers program.

ARC 2937C

No questions on proposed amendments to chs 91, 97 and 102 regarding waterfowl, coot and dove hunting, and falconry.

ARC 2951C

No action on amendments to ch 86 pertaining to turtle harvesting.

In response to questions from Sen. Chelgren, Mr. Trautman stated that professional research regarding the status of the turtle population has been conducted on Lake Darling and will continue statewide as directed by 2016 Iowa Acts, House File 2357. Mr. Trautman discussed the turtle population and catch and possession limits and explained that the information gathering, which began in 2016, as directed by House File 2357, will be completed in four more years. In response to questions from Rep. Staed, Mr. Trautman explained that all neighboring states have turtle harvesting regulations, including closed commercial harvests and bag limits and seasons, and stated that Iowa has the least regulation related to catch limits and season dates. Mr. Trautman also addressed the long-term effects of the rules on the sustainability of the turtle population, noting that the harvest is outside of the egg-laying season, and on the livelihood of turtle harvesters, noting that, based on statistics from 2008 to 2016, the daily catch and possession limits would affect only the five turtle harvesters with the highest average harvest during a 60-day season.

Ms. Mackey Taylor expressed support for the rules, which, she stated, allow for a sustainable harvest, and she commended the rule-making process for its transparency.

EDUCATION DEPARTMENT Phil Wise, Erica Cook, Jeremy Varner, Carole Richardson and Amy Williamson represented the department.

ARC 2939C

Proposed ch 65 pertains to programs for at-risk early elementary students. In response to a question from Rep. Pettengill, Ms. Cook stated that the proposed rules streamline the awards process so that, by contrast with the existing rules, award funds will be made available to school districts at the beginning of the academic year.

ARC 2945C

No action on amendments to 24.3 and 24.5 pertaining to community college accreditation.

ARC 2948C

No action on amendments to ch 79 regarding standards for practitioner and administrator preparation programs.

Rep. Pettengill commended the department for its work on the amendments and, based on public comment, for incorporating in the amendments requirements for curriculum specific to dyslexia. Rep. Staed concurred with Rep. Pettengill's remarks regarding the rules. In addition, on behalf of concerned constituents in his district, he stated that colleges and universities need to prepare teachers in literacy, including teaching students with dyslexia, and that additional training in teaching students with dyslexia be provided to teachers in current practice.

Education Department (continued)

In response to an inquiry from Rep. Olson, Ms. Williamson explained that the requirements for teachers in current practice are set forth in the Iowa early literacy law and are supported by area education agencies (AEAs) and that the amendments will ensure that the practice of current teachers reaches the level expected by the department.

ARC 2946C No action on ch 35 pertaining to educational standards and program requirements for children's residential facilities.

ARC 2947C The rescission of chs 46 and 47 and the adoption of a new ch 46 pertain to career and technical education.

Mr. Wise stated that most of the public comments related to the statute, not to the rules, and to requests to revise the statute, for which the department does not have the authority. He explained that, as a result, the adopted rules are identical to those proposed under Notice.

Rep. Jones stated that the meaning of "data collection" in 46.11(5) needs clarification based on concern regarding the collection of unnecessary data and that the introductory paragraph of 46.12 regarding the board's adoption of standards pertaining to regional centers needs to be revised to include specific standards.

In response, Mr. Varner explained that the department collects and reports to the federal government necessary data to remain eligible for funds related to the Carl D. Perkins Career and Technical Education Improvement Act of 2006. Mr. Varner stated that the department will review data collection, though concerns about this subject have not previously been expressed. Regarding standards pertaining to regional centers, Mr. Varner stated that all regional planning partnerships must be established by July 1, 2017, and that their leadership will be local, i.e., superintendents and other local officials will be officers in the partnerships, and the partnerships' success will be local, i.e., local school districts and community colleges will be partnering to determine the process for delivering high-quality programs to all students. Mr. Varner explained that stakeholders, including school superintendents, AEA chiefs and community college presidents, have requested, and the board has agreed to allow, standards for regional centers to be developed next year. In the interim, Mr. Varner continued, the regional planning partnerships will develop plans unique to their regions to ensure consistent and equitable access to high-quality career and technical education. He added that the department would expect the regional planning partnerships to establish standards before the partnerships actually build and operate regional centers and that the standards would then be incorporated into ch 46. Rep. Jones recommended that if the focus is on local control and the uniqueness of each region, the language of the introduction to 46.12 could be removed and replaced with minimum standards. In response, Mr. Varner explained that the minimum standards set forth in the statute will be inadequate to ensure that the development process is comprehensive and deliberative or to ensure that there are no gaps in the system as the regional partnerships develop the centers.

In response to a question from Sen. Chelgren, Mr. Wise stated that 15 regions will be established, which will be, in part, self-defining because of their already-established relationships and that each school district will have a vote in a regional partnership.

Rep. Pettengill discussed legislation that is in process to address agriculture teachers' concerns about the statutory allocation of funds under the career and technical education program and, in light of the prospective legislation, about action by the committee regarding ch 46. Rep. Vander Linden commended the department for adopting rules that correspond to statute but explained that, in his opinion, a session delay would be needed to allow the statute to be corrected. Rep. Olson inquired about the feasibility of a session delay versus a 70-day delay. Rep. Staed stated that because he has heard positive comments from the agriculture teachers in school districts in Cedar Rapids regarding the process taking place and the use of the resources of the regional centers, he would resist a delay and allow the rule-making process to proceed.

Education Department (continued)

Motion to delay Rep. Vander Linden moved a session delay on ARC 2947C.

Motion carried On a roll call vote of eight to two, the motion carried. [Note: Because the session delay has occurred during the 2017 General Assembly, the delay will not expire until the adjournment of the 2018 General Assembly.]

Committee business The minutes of the February 10, 2017, meeting were approved.

The next meeting was scheduled for Friday, April 7, 2017, at 9:15 a.m.

On a unanimous vote, the committee approved the committee rules of procedure.

At the request of Rep. Pettengill, Mr. Ewing will make available an updated summary of the LSA analysis of rule makings that implement bills enacted during the 2016 General Assembly.

Adjourned The meeting was adjourned at 11:40 a.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Dawn Pettengill


Vice Chair Mark Chelgren