

**MINUTES OF THE MARCH 2018 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 9, 2018, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Mark Chelgren, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Jim Carlin, Mark Costello, Wally Horn, and Pam Jochum; Representatives Megan Jones, Amy Nielsen, Rick Olson, and Guy Vander Linden were present.
- Also present: Jack Ewing and Amber Shanahan-Fricke, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Chelgren convened the meeting at 9:05 a.m.
- Fiscal overview** Christin Mechler presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

- ARC 3651C No questions on proposed amendments to 170.2 and 170.4(2) related to child care assistance, including the fee schedule, temporary-lapse policy and a wait list exemption for homeless families.
- ARC 3619C No questions on proposed amendments to 22.1 and 22.2(4) concerning eligibility for the autism support program.
- ARC 3652C Proposed amendments to ch 7 pertain to appeals and hearings.
Rep. Pettengill noted the recent passage in the House of 2018 Iowa Acts, House File 2462, a bill which addresses, among other things, appeals by managed care organizations, and inquired about whether the bill, if enacted, would affect these amendments. Ms. Freudenberg stated that the department would monitor the progress of the bill.
- ARC 3659C No questions on proposed 77.3(3) regarding participation in the psychiatric bed tracking system by state mental health institutes and certain hospitals.

CIVIL RIGHTS COMMISSION Kristin Johnson represented the commission.

- Special Review Rep. Pettengill requested a special review of ch 9, discrimination in housing, in response to requests for a remedy to address situations in which new multitenant dwellings thought to be accessible to persons with disabilities are found not to meet the standards for accessibility at the time of rental and that, as a result, require expensive retrofitting to meet the standards.
Ms. Johnson explained that the Iowa Code sets forth seven specific accessibility standards consistent with the federal Fair Housing Act for new construction of multitenant dwellings. Because the commission is a law enforcement agency rather than a regulatory agency, she continued, approval of design and construction plans is not under the commission’s jurisdiction or authority. Ms. Johnson stated that in order to enforce the standards in the law, the commission has developed a testing program, the purpose of which is for trained volunteer testers to take measurements and photographs to determine if the accessibility standards are being met. If the standards are not being met, the complaint process is initiated and then a trained employee conducts a complete inspection. Ms. Johnson explained that the commission has developed and distributed a handout to inform city inspection departments, building trades groups, landlord associations and architectural trade organizations of the standards and sends for distribution to city inspection departments and other interested parties notices to local commissions about Build It Right Iowa trainings. Ms. Johnson stated that city building codes may be incomplete and may not address the seven standards and that construction standards related to accessibility have been met with resistance by city inspection departments. She explained that no hearings have been held or fines assessed for noncompliance; the commission has worked out settlements to complete the necessary retrofitting.
In response to a request from Rep. Pettengill, Ms. Johnson stated that the commission would work with the legislature on a bill intended to ensure that the accessibility standards are incorporated at the design and construction stage.

ARCHITECTURAL EXAMINING BOARD Robert Lampe represented the board.

ARC 3661C Proposed amendments to 5.1, 5.3 and 5.4 pertain to exceptions to the need for professional architectural services.

In response to a question from Rep. Pettengill about the inclusion in the rules of the criteria for accessibility for persons with disabilities, Mr. Lampe stated that the criteria would likely be included in the building code matrix under residential use but offered to relay the question to the board and provide a more detailed response to the committee.

INSURANCE DIVISION Craig Goettsch represented the division.

ARC 3615C Proposed amendments to ch 50 concern an investment adviser's business and continuity succession plan, merger and acquisition brokers, intrastate crowdfunding offerings, the securities industry essentials exam and the electronic filing depository system.

In response to questions from Sen. Chelgren and Rep. Pettengill, Mr. Goettsch explained that the intrastate crowdfunding exemption includes the process of selling equity stock by any business entity and that there is a substantive and legal difference between the proposed rule and the securities bill (2018 Iowa Acts, House File 2239) introduced in the legislature.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD Jill Simbro and Jonathan Martin represented the board.

ARC 3653C No questions on proposed amendments to 3.1 to 3.3 concerning continuing education.

UTILITIES DIVISION Matt Oetker represented the division.

ARC 3644C No action on amendments to ch 2 regarding documents and forms filed with the utilities board.

ARC 3645C No action on amendments to ch 4 concerning declaratory orders.

ARC 3646C No action on amendments to ch 33 pertaining to nonutility activities, specifically, record keeping and cost allocations.

In response to a question from Sen. Chelgren, Mr. Oetker cited Iowa Code section 476.72(3), which defines "nonutility service," and noted that there are perhaps two public utility companies in Iowa that provide nonutility services.

ARC 3665C No action on amendments to ch 37 regarding the equipment distribution program.

In response to a question from Rep. Jones, Mr. Oetker explained that the long list of devices eligible under the program are not contained in the rule but are available on the board's website and from vendors, among other sources.

EDUCATION DEPARTMENT Nicole Proesch, Thomas Mayes and Eric St Clair represented the department. Other interested parties included Dave Stone of the United Way of Central Iowa.

ARC 3612C Proposed amendments to ch 64 pertain to child development grants and the child development coordinating council.

In response to a question from Rep. Jones, Ms. Proesch explained that an extended revision process resulted in the inclusion of references to the year 2015 in 64.15(2).

ARC 3613C Proposed 12.11 pertains to high-quality standards for computer science.

In response to a question from Rep. Nielsen, Ms. Proesch stated that the application for receipt and disbursement of moneys from the computer science professional development incentive fund is being developed. Ms. Proesch will provide the committee information related to the fund prior to adoption of the rule.

ARC 3614C Proposed amendments to 41.102(1) and 41.160 pertain to special education, specifically, regular high school diplomas and assessments.

In response to a question from Rep. Pettengill, Mr. Mayes stated that the revised definition of "regular high school diploma" in 41.102(1)"c"(4) mirrors verbatim the federal definition, a copy of which he distributed to the committee.

ARC 3630C No action on ch 32, high school equivalency diploma.

In response to questions from committee members, Mr. St Clair explained that a high school equivalency diploma is considered to be, and is recognized as equivalent to, a high school diploma and is approved and issued by the department.

Education Department (continued)

Mr. Stone expressed support for the rules and thanks to the legislature for its passage of 2017 Iowa Acts, House File 473. In addition, he explained in general the issuance of high school diplomas by a home school district to persons under 21 and by the state to persons 21 and older.

At the request of Rep. Olson, Mr. St Clair agreed to provide the committee with a sample copy of a high school equivalency diploma.

ARC 3631C

No action on amendments to ch 83 regarding the teacher quality program.

ARC 3632C

No action on amendments to ch 98 pertaining to financial management of categorical funding.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Steve Squires represented the department.

ARC 3649C

Proposed 1.4 pertains to the investigations division.

In response to questions from committee members, Mr. Squires discussed the Medicaid fraud control unit (MFCU), including the background, training, caseloads and compensation of investigators; the funding of the MFCU; and ways in which fraud can be reported, including information on the department’s website. Mr. Squires agreed to provide the committee with information about the national ranking of the Iowa MFCU.

ARC 3650C

No questions on proposed amendments to 1.3 and 30.1 and rescission of ch 25 regarding the Iowa targeted small business certification program and the administration division of the department.

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

ARC 3622C

Proposed amendments to 30.3 and 30.6 pertain to the asbestos notification fee and the fee adjustment process.

Ms. Walker stated that the department is responsible for enforcement of work practice standards related to minimizing the release of asbestos during demolition and renovation. The federal standard, as Mr. McGraw explained, is the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, which requires that parties undertaking demolition and renovation file notifications with the department to implement the NESHAP. The representatives explained that the purposes for the amendments are to raise the notification fee and dollar cap from \$100 to \$200 to fund a third FTE to staff the program and to provide a process for the department to request a midyear fee adjustment from the commission.

Committee members questioned the fee increase, given the apparent decrease in the number of notifications from 4,000 to 2,000 initially cited during the discussion, and the mechanism for a midyear request for a fee increase set forth in 30.6(4). In addition, members inquired about which stakeholders support the additional FTE, department inspectors and the inspection process, and licensure and discipline of asbestos contractors.

In response, Mr. McGraw and Ms. Walker clarified that since 2015, the funding of the program through notification fees has been driven by the volume of notifications received by the department. Mr. McGraw explained that outdated data on which the fee had been based had not distinguished between original and revised notifications and, thus, 2,000, not 4,000, is a more accurate number of original notifications submitted annually, for which a fee is charged, and that 1,000 to 1,500 is an accurate number of revised notifications submitted annually, for which a fee is not charged. Mr. McGraw emphasized that funding is based on the number of original notifications submitted, that the corresponding workload is not decreasing but instead has been at the same level for some time and that, with the fee increase, the funding will fit the workload level. Ms. Walker added the additional FTE would also provide education and outreach about compliance with the asbestos NESHAP. Mr. McGraw explained that in order to provide adequate funding of the program for this fiscal year, the department is proposing 30.6(4), which would allow more flexibility for the timing of a fee adjustment by modifying rule 30.6, which requires a July 1 effective date and notification of a fee adjustment to the public at least 30 days in advance of the effective date.

Environmental Protection Commission (continued)

Mr. McGraw stated that asbestos contractors (asbestos removal experts) are stakeholders who requested additional education and outreach about how to ensure proper asbestos removal. Regarding department inspections, the representatives explained the notification process, which is performed by department inspectors and is based on prioritization of project types (e.g., school, hospital); summarized the onsite inspection process, including the system used for identifying the 10 percent of asbestos removal projects that department inspectors check for violations of the NESHAP; and explained that compliance actions taken as a result of violations of the NESHAP include administrative fines, notices of violation and referrals by the commission to the attorney general. Regarding asbestos contractors, Ms. Walker explained that the labor services division of the Iowa workforce development department licenses and disciplines asbestos contractors.

Reps. Vander Linden and Nielsen and Sens. Carlin and Chelgren questioned whether the need for an additional FTE had been demonstrated and expressed concern about the 90 percent of projects that are not inspected by the department and about whether contractors new to the business would find the increase in the fee and dollar cap to be prohibitive.

At the request of Rep. Olson, Ms. Walker will provide the committee with the number of asbestos contractors whose licenses are suspended annually.

ARC 3625C No questions on proposed amendments to ch 64 pertaining to the initial issuance of NPDES General Permit Nos. 8 and 9.

NATURAL RESOURCE COMMISSION Karen Kinkead, Aron Arthur, Chris Ensminger and Aaron Brees represented the commission. Other interested parties included Jack Dahlsten.

ARC 3621C Proposed amendments to ch 101 pertain to falconry. Ms. Kinkead explained that the U.S. Fish and Wildlife Service (USFWS) is proposing to grant to Iowa five new Peregrine falconry permits, which might also be considered the granting of five permits for the opportunity to capture a falcon, not to capture the falcon itself.

In response to committee members' questions, Ms. Kinkead stated that 53 Iowans currently hold falconry permits. She explained the lottery process, the goal of which is to protect a species and to provide a recreational opportunity either for Iowa master falconers or Iowa general falconers with at least five consecutive years of field experience. Mr. Arthur explained the jurisdiction of the state regarding permits to which federal regulations apply and noted that the five permits would be granted to other states if Iowa declines the permits.

Rep. Jones stated that the lottery is overly burdensome. Rep. Costello expressed support for the lottery, including the requirement that the opportunity to capture a falcon be restricted to master falconers or general Iowa falconers to ensure proper care of the falcons.

ARC 3623C No questions on proposed amendments to ch 91 concerning waterfowl and coot hunting seasons.

Regarding the season for Canada geese, Mr. Dahlsten requested that the commission consider removing days from earlier in the season, that is, in October and November, and extending the season through January 31.

ARC 3624C No questions on proposed amendments to 108.7(2) regarding the bobcat harvest zone.

ARC 3626C No questions on proposed amendments to ch 16 pertaining to storage of stand-up paddleboards.

ARC 3627C No questions on proposed amendments to chs 45, 51 and 52 regarding artificial and natural marshes, decoys and wildlife refuges.

PROFESSIONAL LICENSURE DIVISION Tony Alden and Susan Reynolds represented the division.

ARC 3617C No questions on proposed amendments to chs 261 and 262 regarding licensure and continuing education for polysomnographic technologists and respiratory care and polysomnographic practitioners.

ARC 3642C No action on 327.8 pertaining to the sharing of information about complaints related to physician assistant practice.

In response to a question from Sen. Carlin, Ms. Reynolds described in general the process for filing a complaint about a physician assistant.

NURSING BOARD Kathy Weinberg represented the board.

- ARC 3618C No questions on the proposed rescission of ch 16, nurse licensure compact.
- ARC 3660C No questions on proposed amendments to 6.5(1) regarding supervision by licensed practical nurses.

PHARMACY BOARD Sue Mears and Andrew Funk represented the board.

- ARC 3636C No action on an amendment to 2.2(1) regarding the provision of ITIN and proof of presence related to pharmacist licensure by examination.
- ARC 3637C No action on amendments to chs 5 and 11 pertaining to registration of services programs that provide controlled substances.
- ARC 3638C No action on amendments to ch 6 regarding general pharmacy practice.
- ARC 3639C No action on amendments to 8.20 concerning the dispensing of remaining prescription refills at the end of a prescriber/patient relationship.
- ARC 3640C No action on the rescission of chs 9 and 21 and adoption of new ch 21 pertaining to automated medication distribution systems and telepharmacy services and to electronic data and automated systems in pharmacy practice.
In response to a question from Sen. Chelgren, Ms. Mears stated that a prescription is electronically transmitted directly from the provider’s computer system to that of the pharmacy.
- ARC 3641C No action on ch 28, agency procedure for rule making.

REVENUE DEPARTMENT Tim Reilly represented the department. Other interested parties included Jennifer Kingland on behalf of the Iowa Association of Realtors.

- ARC 3620C No questions on proposed amendments to 71.20(4) and 71.21(8) pertaining to grounds for protest of property tax assessments.
- ARC 3654C No questions on a proposed amendment to 80.6(1) to correct a cross reference related to an industrial property tax exemption.
- ARC 3655C No questions on proposed amendments to 80.9(3) regarding a forest and fruit-tree reservation exemption, specifically, an adjustment in the deadline for notification of property owners.
- ARC 3657C No questions on proposed 40.82, first-time homebuyer savings accounts.
Ms. Kingland expressed support for the statute and stated that the association is reviewing the rules and will work with the department and the committee regarding any concerns that may arise.
- ARC 3664C No action on amendments to 40.53, 41.5(18) and 53.21 concerning the deduction for contributions to the Iowa education savings plan trust.
In response to a question from Rep. Jones, Mr. Reilly explained that he is working toward the goal of completing rule making to implement legislation from 2015 and 2016.

WORKFORCE DEVELOPMENT DEPARTMENT David Steen represented the department.

- ARC 3647C No action on amendments to chs 23 to 25 pertaining to taxable wages, claims, and federal payment offset.
In response to a question from Sen. Chelgren, Mr. Steen stated that there is no lawful reason for a person’s presenting a claim bearing two social security numbers and that such a claim would be held automatically and the case of potential fraud investigated.
- ARC 3648C No action on 24.2(1)“e” regarding an update of the reporting requirements for claimants during a continued claim.
- ARC 3658C No questions on the proposed rescission of 22.9(3) pertaining to employer registration penalties.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

- ARC 3656C No questions on proposed amendments to 502.2(9)“b” regarding a license to disconnect or reconnect existing air-conditioning and refrigeration systems.
- ARC 3662C No action on ch 211, carbon monoxide alarms.
In response to a question from Sen. Chelgren, Ms. Edmondson mentioned some of the stakeholders that participated in the development of the rules, including landlord associations, realty companies and fire service members.

Public Safety Department (continued)

ARC 3628C Proposed ch 159 pertains to the statewide sobriety and drug monitoring program. In response to a question from Sen. Chelgren, Ms. Edmondson confirmed that the alternative methods for testing to determine the presence of alcohol or a controlled substance are set forth in the legislation.

Committee business The minutes of the February 9, 2018, meeting were approved. The next meeting was scheduled for Friday, April 6, 2018, at 9 a.m. Mr. Ewing presented an updated summary of rule making related to bills enacted in 2017. He reported that rule making will be in process for one remaining bill, which becomes effective July 1, 2018.

Adjourned The meeting was adjourned at 12:20 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Mark Chelgren

Vice Chair Dawn Pettengill

Draft