



# MINUTES

## JUNE 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Mike Klimesh, Vice Chair	Representative Megan Jones, Chair
Senator Nate Boulton	Representative Amy Nielsen
Senator Mike Bousselot	Representative Rick L. Olson
Senator Waylon Brown [by teleconference]	Representative Michael V. Sexton
Senator Pam Jochum	Representative David E. Young

EX OFFICIO, NONVOTING MEMBER: Nate Ristow, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Legal Counsel, 515.281.6329

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### BULLETINS NEEDED FOR THIS MEETING: 5/3/23, 5/17/23, 5/31/23

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#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 10:30 a.m. on Tuesday, June 13, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the May 8, 2023, meeting were approved. The next meeting was scheduled for Tuesday, July 18, at 10:30 a.m. Mr. Ewing explained to members participating via phone that all lines are muted upon entry to the meeting and the process to unmute their line. The meeting was adjourned at 12:15 p.m.

#### Fiscal Overview

Mr. Chris Ubben, Fiscal Legislative Analyst, presented the LSA fiscal report. Regarding ARC 7023C and 7024C, committee members asked if Mr. Ubben could provide the estimated number of students corresponding to the increase from \$106.9 million to \$344.9 million. Mr. Ron Robinson, Fiscal Analyst, explained that the increase is based on the numbers in figure 1 of the fiscal note for 2023 Iowa Acts, House File 68; however, he described several factors that may impact the numbers. The number of individual accounts is estimated to be 14,068 in FY 2024 and to increase to 42,000 by FY 2027. Members asked if the estimates are based on 2 or 3 percent state supplemental aid (SSA). He replied that it is based on 2.5 percent; however, when the graybook is published, it will be based on 3 percent. The graybook will also contain projections based on 0 percent SSA. Members asked if the \$4.8 million contract the state has with Odyssey is included in the dollar amounts in the fiscal note. Mr. Robinson stated that the fiscal note does not include the cost of the contract as it was not available at the time the note was drafted. He stated that he now has a copy of the contract; however, he has not had the opportunity to review it. Members asked if the contract cost is based on a certain number of education savings accounts (ESAs), or is it based on a lump sum regardless of the number of ESAs. He stated that he is not certain. Members asked him to provide the cost to the state based on 3 percent SSA. He responded that FY 2024 would be \$107.4 million, FY 2025 \$153.2 million, FY 2026 \$300.2 million,

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

and FY 2027 \$318.3 million. He also stated that at 0 percent SSA, the total cost decreases by \$22.8 million.

## **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

Representing the agency: Colin Tadlock

ARC 7037C (AF), Marketing—Choose Iowa Promotional Program, Value-Added Agricultural Program, Ch. 52

No discussion on ARC 7037C.

## **VETERINARY MEDICINE BOARD**

Representing the agency: Colin Tadlock

ARC 7029C (NOIA), Military Service and Veteran Reciprocity, Ch. 15

No discussion on ARC 7029C.

ARC 7030C (NOIA), Licensure by Verification, Rule 6.6

No discussion on ARC 7030C.

ARC 7031C (NOIA), Auxiliary Personnel—Licensure by Verification, Rule 8.11

No discussion on ARC 7031C.

## **UTILITIES DIVISION**

Representing the agency: Matthew Oetker

ARC 7014C (AF), Electric Transmission Line Companies, Rules 11.6(1), 11.8(2), 11.10, 11.12(1)

Committee members asked for confirmation that the rulemaking refers to transmission lines, and that under rule 11.10(4), a company is not required to resubmit an application if it is reconstructing already existing lines. Mr. Oetker confirmed that the rulemaking is related to transmission lines and stated that it addresses the construction of a new substation on an existing line. Members asked if adding “reconstructed with different materials or specifications” expanded the rulemaking. He responded that the division had consolidated rules 11.10(4) and 11.10(5) and the language already existed in rule 11.10(5).

No action taken on ARC 7014C.

ARC 7017C (AF), Gathering Lines—Renewable Natural Gas Facilities, Rules 10.1(3), 10.19

No discussion on ARC 7017C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Lisa Connell

ARC 7020C (NOIA), Review of Rules, Chs. 4, 27, 32, 34, 35, 37, 40, 41, 46, 70, 78, 79, 164

Committee members stated that the most recent legislation related to this rulemaking was 13 years ago and asked for confirmation that the five-year review was cleaning up rules that should have been rescinded earlier. Ms. Connell confirmed that was correct.

No action taken on ARC 7020C.

## **IOWA FINANCE AUTHORITY**

Representing the agency: Kristin Hanks-Bents

ARC 7021C (AF), Disaster Recovery Housing Assistance, Ch. 29

No discussion on ARC 7021C.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Representing the agency: Ashleigh Hackel

ARC 7034C (AF), Boarding Homes—Five-Year Review of Rules, Ch. 66  
No discussion on ARC 7034C.

ARC 7035C (AF), Health Care Facilities Administration—Five-Year Review of Rules, Rules 50.3(3)“f,”  
50.6-50.9, 50.11  
No discussion on ARC 7035C.

ARC 7036C (AF), Minimum Physical Standards for Residential Care Facilities, Ch. 60  
No discussion on ARC 7036C.

ARC 7033C (AF), Nursing Facilities—Five-Year Review of Rules, Physician Assistants, Ch. 58  
Mr. Ewing explained that the objection being reviewed as part of the rulemaking was imposed by the committee in 1979. He also explained what an objection is, how one is imposed by the committee, and the implications of having an objection imposed on a rule. He stated that an objection is published in the Iowa Administrative Code with the rule on which its imposed. The objection under review does not directly pertain to the current rulemaking. He stated that the committee must consider the objection from 1979 and if the committee does not vote to keep the objection, then it will be automatically removed. He explained that an objection is only considered when the rule the objection is imposed upon is considered by the committee; however, the committee can remove an objection at any time. Members asked if there is a master list of all rules that currently have an objection associated with the rule. Mr. Ewing responded that he would compile a list to provide to the committee. He also stated that all rules will be reviewed as part of Executive Order 10 within the next four years. Members asked if it was necessary to make a motion to remove the objection on ARC 7033C so that a record is created. Mr. Ewing responded that a motion is not necessary as by operation of law, the objection will be removed if the committee does nothing.

### **Objection**

The objection will be removed from the rule.

## **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 7025C (AF), Controlled Substances Act Registration—Business Locations, Rule 10.4  
Committee members asked who submitted the public comment on the rulemaking. Ms. Mears replied that it was an Iowa pharmacist. Members asked where in the Iowa Code the board is given the authority to authorize registrations on a case-by-case basis. She stated that the Iowa Code authorizes the board to issue registrations to anyone dispensing. She explained that while historically that meant issuing a registration to a specific individual at a specific location, current business models may have different individuals rotating through one location. Members asked if that means the board licenses a location versus an individual. She responded that the Iowa Code authorizes the board to license entities and while the board prefers to issue a registration for a specific individual at a specific location, the board modified its practices as entities changed business practices. Members expressed concern about the lack of specific authorization in the Iowa Code for the board’s rulemaking, overreach by unelected policy makers, and lack of input by legislators.  
No action taken on ARC 7025C.

ARC 7026C (AF), Temporary Designation of Controlled Substances; Precursor Substances, Rules 10.39,  
12.1(1)  
No discussion on ARC 7026C.

ARC 7027C (AF), Licensure by Verification; Veterans; Spouses of Veterans, Rules 33.1, 33.3, 33.4  
No discussion on ARC 7027C.

## REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 7019C (AF), Electric Fuel Excise Tax, Chs. 260, 262

Committee members asked if a hotel owner who has a charging station in the parking lot is required to obtain a license whether the owner owns the charging station or it is owned by a third party. Ms. Wulfsen responded that the owner of a charging station is the entity required to be licensed, and all electric chargers not located at a residence must be licensed. Members asked if the state is losing the opportunity to collect revenue from Airbnb-type establishments. She agreed that is the case. Members asked if the approximately \$130,000 net revenue from the increase in road use tax fund revenue and the decrease in sales tax revenue leaves the state cash positive, negative, or neutral when the cost of the equipment needed to test charging stations is factored in. She stated that the equipment is an up-front capital investment and the Department of Agriculture and Land Stewardship is responsible for purchasing the equipment. She stated that she will find out the cost of the equipment and provide the committee with that information.

No action taken on ARC 7019C.

## ALCOHOLIC BEVERAGES DIVISION

Representing the agency: Tyler Ackerson

ARC 7028C (AF), Trade Practices, Ch. 16

No discussion on ARC 7028C.

## NATURAL RESOURCE COMMISSION

Representing the agency: Chris Ensminger

ARC 7010C (AF), Furbearer Hunting, Trapping—Season Dates, Rules 108.1-108.9

Committee members thanked the commission for having discussions with the committee regarding the rulemaking after the committee imposed a 70-day delay at the last committee meeting.

### Delay Lifted

The committee voted unanimously to lift the 70-day delay.

## EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes, Kassandra Cline, Mark Ford

ARC 7023C (NOIA), Students First Act—Education Savings Accounts (ESAs), Ch. 20, also Filed Emergency ARC 7024C

Ms. Margaret Buckton, speaking on behalf of the Urban Education Network of Iowa and Rural School Advocates of Iowa, urged the department to clarify a number of matters in the rulemaking, including the distinction between online services and online schools, standards for accredited providers, when a school district is notified that a student is pursuing an ESA, and to what degree state rules and federal regulations will apply to nonpublic schools at which students with ESAs attend.

Ms. Melissa Petersen, speaking on behalf of the Iowa State Education Association, urged the department to clarify the process when a student with an ESA withdraws from a nonpublic school, particularly how a student's school district would become aware. She also expressed concern that the fiscal analysis of the rulemaking was based on the fiscal note for 2023 Iowa Acts, House File 68, which assumed state supplemental aid of 2.5 percent. She acknowledged updated calculations would be included in the graybook.

Committee members asked for clarification on various scenarios in which a student uses an ESA, such as when nonpublic school tuition exceeds the amount in an ESA, when a student leaves the nonpublic school partway through a school year, and when a student needs tutoring services funded by an ESA. Mr. Mayes and Ms. Cline responded. They noted that parents must cover any cost not covered by an

ESA, that contracts between families and nonpublic schools will cover some matters not addressed in statute or rule, that refunds are made into the ESA and not directly to a family, that payments are made into an ESA twice a year, that students returning to a school district from a nonpublic school would be handled similarly to how transfers between school districts are handled currently, and that the department's billing window will govern whether and when a student receives a payment into an ESA if they enroll in a nonpublic school after the school year begins. Mr. Mayes noted that because the statute prohibits the department from imposing an undue burden on nonpublic schools, the department's rulemaking authority is limited, and the department must give deference to nonpublic schools.

Committee members asked for further information on the application process for an ESA. Mr. Mayes and Ms. Cline described the process in more detail, noting that the timeline is different in the first year of the program. They explained that the department's computer system only tracks applications for an ESA, not applications for admittance to nonpublic schools, and that the department would not have information on why a student is not admitted to a nonpublic school. They stated that the department does not yet have data on the number of applicants for ESAs who already attend nonpublic schools, but that information will be available at a later time.

In response to additional questions from committee members, Mr. Mayes, Ms. Cline, and Mr. Ford explained the billing and invoicing process for ESAs in more detail, the duration for which the ESA vendor will retain ESA funds if the student leaves a nonpublic school, how interest on funds in ESAs is managed, and prioritization of ESA funds.

No action taken on ARC 7023C or ARC 7024C.