

**MINUTES OF THE AUGUST 2011 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, August 16, 2011, and Wednesday, August 17, 2011, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Jo Oldson, Rick Olson, and Guy Vander Linden were present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Horn convened the meeting at 9:30 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

NATURAL RESOURCE COMMISSION Greg Drees, chair of the commission, Willie Suchy and Tamara Mullen represented the commission. Other interested parties included Marcus Branstad, Nancy Stillians, Rep. Clel Baudler, Rep. Henry Rayhons, Kay Newman, Lyle Goodrich, Sen. Dick Dearden, Liz Garst, Neila Seaman of the Sierra Club, John Reed of the Iowa Firearms Coalition, Larry Stone, and Rep. Sharon Steckman.

Special Review At the request of Sen. Horn, Mr. Royce explained the unusual circumstances of the review of 97.6: The department had sufficient time for publication of the notice of intended action and for the associated public comment regarding the dove hunting season but insufficient time for the rule to become effective as a filed rule in accordance with normal rule-making procedures before the September 1, 2011, opening of the season. Thus, the rule was filed emergency after notice (see ARC 9674B, IAB 8/10/11). As a courtesy to the committee, the department made the rule effective August 17, 2011, so that the committee could conduct a full review of the rule before the effective date.

Mr. Suchy reported that more than 850 public comments were received, most of which opposed the dove hunting season; more than 250 of those opposed to the season expressed a preference for the use of nontoxic shot.

At the request of Mr. Suchy and with the consent of the committee, Mr. Drees addressed the unanimous decision by the commission to approve an on-the-floor amendment to the rule to require the use of nontoxic shot for hunting doves. Mr. Drees discussed the commission’s statutory authority to determine the method and means of take, the science on which the decision was based, the cost of nontoxic shot, statistics relating to neighboring states’ regulations related to nontoxic shot, the commission as a partner with the legislature in conservation and recreation in Iowa, and the commission’s decision to require nontoxic shot based on the belief that the decision had the governor’s approval as long as the commission reached a consensus.

Ms. Findley clarified the position of the governor, which is that whether or not to limit or ban traditional shot is a decision that belongs to the legislature. Sen. Kibbie stated that a ban on the use of toxic shot that was defeated in an amendment to legislation now appears in rule and that he would move a session delay on the nontoxic shot provision following discussion by the committee.

Sen. Bartz expressed concern that the change from the notice of intended action may be outside the scope of the original rule making and may therefore be a violation of Iowa Code chapter 17A. Because the change from the notice does not seem to correlate with legislative intent or with the notice of intended action, he stated that the change should instead be considered in an amended or additional notice to receive full review by the public and the committee. Rep. Pettengill concurred with Sen. Bartz, stated that nontoxic shot was not under consideration when the notice was reviewed and questioned the addition of the Eurasian collared-dove to the rule. Sen. Courtney inquired about the danger of lead shot on other wildlife, how lead shot is ingested by doves, and whether there are plans to ban lead shot entirely. Rep. Vander Linden and Sen. Seymour inquired about lead shot as it relates to the bald eagle population. Rep. Heaton asked about the use of nontoxic shot in neighboring states.

Natural Resource Commission (continued)

Mr. Suchy and Mr. Drees addressed the committee's concerns related to lead shot. Mr. Suchy stated that doves ingest lead when they mistake lead shot for seed or grit as they feed in small, concentrated areas of fields. Mr. Suchy stated that the department policy is to "get the lead out" and to encourage hunters to use nontoxic shot. Mr. Drees added his view that eventually the National Fish and Wildlife Service will mandate that nontoxic shot be used in all shotgun hunting and noted the availability of steel shot in several sizes. Mr. Suchy stated that lead shot in prey is the most likely source of lead toxicity in bald eagles. Mr. Drees noted that toxic shot is prohibited on 500,000 state-managed acres in Nebraska and in South Dakota. Mr. Drees offered to provide the committee with additional information regarding the effects of lead shot.

Ms. Mullen addressed the committee's concerns regarding the rule-making process, the changes from the notice, and legislative intent. She stated that the commission believes that the purpose of rule making is to respond to public comments, a substantial number of which sought nontoxic shot. She stated that, because the noticed rule did not specify the method of take, any legal means of hunting may be used by the public; however, the commission, in response to public comments and based on its statutory authority, limited the method of take to nontoxic shot in the final rule. Ms. Mullen also noted that, despite a substantial number of public comments opposed to the dove season itself, the commission cannot close a season that has been opened by the legislature unless there is a basis for the decision in science. Ms. Mullen stated that the inclusion of the Eurasian collared-dove, an invasive species, protects hunters who might otherwise be cited for shooting this species by mistake. In response to Ms. Mullen, Sen. Courtney stated that the public needs to be informed that, unless specified, any method of take is implicit in the hunting rules.

Mr. Branstad requested that the committee impose a session delay to allow for legislative action. Rep. Baudler expressed the opinion that the rule is anti-hunting and requested that the nontoxic shot provision not become effective. Rep. Rayhons requested a delay of the nontoxic shot provision, as did Mr. Reed. Mr. Goodrich addressed the higher price of steel shot. Sen. Dearden stated that science should dictate hunting regulations but questioned the science behind the lead shot ban.

Ms. Stillians asked that the entire rule be nullified. Ms. Newman distributed information about lead toxicity in wildlife, noted the length of debate by the legislature in initiating the dove season and requested that the rule go forward. Ms. Garst stated that the use of lead is a public health issue and that the legislature needs to move toward the elimination of lead in ammunition and in fishing tackle. Ms. Seaman requested that the rule be allowed to go into effect. Mr. Stone stated that the restriction on lead shot is a conservation issue and expressed support for the rule. Rep. Steckman addressed issues related to lead toxicity and commended the commission's decision.

Sen. Kibbie stated that, based on procedural/process grounds, he would move a session delay regarding the nontoxic shot provision. He pointed out that the legislature may nullify the provision by resolution or may amend the statute, and he noted that, if the legislature does not act, the nontoxic shot provision will go into effect on the day after the 2012 legislature adjourns.

Motion to delay

Sen. Kibbie moved a session delay on the last sentence of 97.6 (Item 2, ARC 9674B, IAB 8/10/11).

Rep. Oldson stated she would oppose the motion because there is precedent for the commission's decision to ban toxic shot, science supports the ban, and the commission did not exceed its statutory authority by imposing the ban. Sen. Horn thanked all participants for their input on the rule making.

Motion carried

On a roll call vote of 9 to 1, the motion carried.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 9526B At the June meeting, the committee imposed a 70-day delay on 8.35(7) related to the responsibilities of the pharmacies involved when a pharmacy closes (see IAB 6/1/11). Ms. Witkowski reported that, after discussions and negotiations among the interested parties, agreement on the provisions of 8.35(7) had been reached. Ms. Witkowski stated that revised 8.35(7) had been adopted and filed emergency and had become effective 8/11/11 (see ARC 9693B, IAB 9/7/11). This emergency filing ensures that revised 8.35(7) became effective prior to the expiration of the 70-day delay, when the previously adopted 8.35(7) would have become effective. Sen. Bartz commended the interested parties for their due diligence in the rule-making process. In response to an inquiry from Sen. Bartz, Mr. Royce stated that, because the interested parties had agreed to the provisions of revised 8.35(7), a double barrel was not necessary. Ms. Witkowski added that the board is open to consideration of additional comments from interested parties.

CITY DEVELOPMENT BOARD Marie Steenlage represented the board.

ARC 9546B At the June meeting, the committee imposed a 70-day delay on this rule making, which pertains to additional documentation required on petitions for annexation, specifically, a statement describing whether a city has applied any smart planning principles to a territory (see IAB 6/1/11). The board requested the 70-day delay on amendments to chs 7 and 8 to allow the board time to reach a consensus. Ms. Steenlage reported that the board rescinded the previously adopted amendments through an emergency filing, effective 7/20/11 (see ARC 9664B, IAB 8/10/11). Mr. Royce clarified for Sen. Bartz that, since the rules under delay had been rescinded, the delay no longer exists.

HISTORICAL DIVISION Mary Cownie and Jerome Thompson represented the division.

ARC 9608B Amendments to ch 48 pertain to historic preservation and cultural and entertainment district tax credits. Ms. Cownie reported that, in accordance with 2011 Iowa Acts, Senate File 521, the amendments remove a \$100,000 residential cap, allow developers and applicants to capture all qualified rehabilitation expenses, and allow up to five years for project completion. She stated that the amendments were filed emergency to allow for the adjustments to the filing window and to project commencement requirements necessitated by the extended legislative session. In response to an inquiry from Sen. Bartz, Mr. Thompson confirmed that the receipt of grants or loans would not exclude the application of historical tax credits to a project. Ms. Cownie explained the approval process for projects that involve pre-1937 barns not listed on the National Register of Historic Places. Rep. Pettengill commended the conciseness of the rule making.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Deb Johnson represented the department. Other interested parties included Larry Carl of the Iowa Dental Association, Dion Williams of Systems Unlimited, and Eric Nemmers of the Iowa Medical Society.

ARC 9625B No questions on proposed amendments to ch 156 pertaining to an increase in maintenance payment and initial allowance for supervised apartment living placements.

ARC 9636B No questions on proposed amendments to ch 158 regarding the foster home insurance fund.

Special Review In compliance with 2011 Iowa Acts, House File 649, section 29, thirteen rule makings related to Medicaid cost containment and rate adjustment, to be published in the 9/7/11 IAB, were reviewed by the committee prior to their effective dates. Ms. Freudenberg explained the action(s) in each rule making, by ARC number and with the effective date, as follows:

1. ARC 9696B, amendments to ch 75 (effective 9/1/11): Allow liens to recover Medicaid expenses for services involving malpractice.

Ms. Freudenberg clarified for Rep. Heaton that program integrity review is required statewide to ensure proper and efficient administration of Medicaid but is not applicable to this rule making.

2. ARC 9699B, amendments to ch 78 (effective 9/1/11): Eliminate coverage for weight-loss drugs and limit coverage of drugs for symptomatic relief of cough and cold.

Human Services Department (continued)

3. ARC 9702B, amendments to ch 78 (effective 9/1/11): Restrict coverage for orthodontia for children. Ms. Freudenberg stated that an index score of 26 and above on the Salzmann Scale (formerly 21 and above) will be applied and preauthorization of services will be required.

Rep. Heaton expressed concern about children who will not receive orthodontic services because of the change in the index score and asked to meet with the department and the Iowa Dental Association in the interim to find a better way to achieve savings. Ms. Freudenberg clarified for Sen. Horn that the reduction in orthodontic services was agreed to by all parties.

Mr. Carl expressed concern about the estimated 1500 children who will be affected, noting that orthodontia is preventive, not cosmetic, and stated that the association opposes this change. Ms. Freudenberg clarified for Sen. Seymour that the number of children receiving orthodontic services will be reduced because of the change in the index score.

4. ARC 9704B, amendments to ch 78 (effective 9/1/11): Limit payment for durable medical equipment under an HCBS waiver to the amount paid for fee-for-service Medicaid.

Ms. Freudenberg clarified for Rep. Pettengill that no cuts in funding are being made; the method of payment will change to mirror that of Medicaid.

5. ARC 9706B, amendments to ch 79 (effective 8/17/11): Increase reimbursement rates for home- and community-based waiver services.

Mr. Williams stated that the change is not an increase in reimbursement but is instead a reinstatement of a previous reimbursement rate decrease and that the rule, as written, does not base reimbursement rates on current cost reports but instead on rates as of 11/30/09, which are based on 6/30/08 cost reports. In response to an inquiry from Rep. Heaton, Mr. Williams explained that, unless a client had a change in service need and reimbursement at current rates was allowed, the provider will be reimbursed at 2009 rates. Mr. Williams requested that the reimbursement rates reflect current costs. Deb Johnson stated that the rules do reflect reimbursement rates based on current cost reports and that only rates based on a fee schedule will be capped at the rate as of 11/30/09. Mr. Williams expressed the opinion that the language of the rules does not reflect that intent. Rep. Heaton stated that he will continue to work with the department and revisit the issue next year.

6. ARC 9708B, amendments to ch 79 (effective 8/17/11): Increase pharmacy dispensing fee.

7. ARC 9710B, amendments to ch 79 (effective 8/17/11): Increase reimbursement rates for non-state-owned psychiatric medical institutions for children.

8. ARC 9712B, amendments to ch 79 (effective 9/1/11): Eliminate graduate medical education payments for out-of-state hospitals.

9. ARC 9714B, amendments to ch 79 (effective 9/1/11): Eliminate payment for treatment of a hospital-acquired condition.

10. ARC 9719B, amendments to ch 79 (effective 9/1/11): Reduce physician payment for services provided in a facility setting.

Mr. Nemmers stated that Iowa physicians have remained committed partners in the Medicaid program but expressed the concern that continued underfunding of the provider network may cause physicians to leave the Medicaid program.

11. ARC 9722B, amendments to ch 79 (effective 9/1/11): Implement emergency room copayment and reduce Medicaid payment when service is nonemergency and patient is not referred by another provider.

Discussion pertained to projected savings, copayments and related issues, and the use and delivery of medical services. Rep. Heaton commended the department for directing Medicaid members to a doctor's office for nonemergency treatment. The department will provide the committee with

statistical information regarding emergency room visits and the calculation of projected savings.

Human Services Department (continued)

- 12. ARC 9724B, amendments to ch 80 (effective 9/1/11): Require new forms for paper billing of Medicare crossover claims.
- 13. ARC 9726B, amendments to ch 81 (effective 9/1/11): Update procedures for federal nursing facility preadmission screening and evaluation of patients with mental retardation or mental illness.

ENVIRONMENTAL PROTECTION COMMISSION Bill Ehm, Jon Tack and Lori McDaniel represented the commission.

ARC 9602B Mr. Ehm explained that the U.S. Court of Appeals for the Fifth Circuit vacated portions of federal regulations pertaining to open feedlots and confinement feeding operations. As a result, the proposed amendments to chs 60 and 63 to 65, which mirror the federal regulations, are being terminated. Mr. Tack clarified for Sen. Bartz that the entire rule making is terminated even though only Items 38 and 49 are related to the court decision.

Special Review At the March meeting, the committee voted to request an informal regulatory analysis on ARC 9371B, which establishes a water sampling procedure based on criteria necessary to support recreational uses in lakes, specifically, swimming (see IAB 2/23/11). This standard for clarity is intended to provide for the safety of swimmers in 159 Iowa lakes. Mr. Ehm stated the two criteria that are measures of the transparency of the water: (1) Secchi disk depth of one meter or greater; and (2) chlorophyll-a at no higher than 25 micrograms per liter (µg/l). Mr. Ehm noted that the informal regulatory analysis addresses the elements required by Iowa Code section 17A.4A(2)“a” and the questions raised by the committee at the March meeting regarding beach closings, economic development and the potential for a mandatory program for an impaired lake. In an update regarding the rule making, Mr. Ehm reported that the department has held two public hearings, has had ongoing dialogue with key stakeholders throughout the rule-making process, and continues to seek input and to make changes to the rule. Mr. Ehm also stated that the department is attempting to correlate this process with the already-successful lake restoration program.

Sen. Kibbie commended the lake restoration process and stated that, to preserve restored lakes, the use of appropriate fertilizers should be encouraged. He also noted that jobs are created related to development, e.g., construction, at restored lakes. In response to an inquiry from Rep. Vander Linden, Mr. Ehm explained the clarity standard and its application and stated that the department does not limit public access to or use of impaired lakes. In response to inquiries from Sen. Bartz, Mr. Tack stated that this rule making would be filed in the fall, and Ms. McDaniel stated that the department attempted to capture the economic impact of the rule in the informal regulatory analysis. Sen. Bartz expressed concern about the impact of the clarity criteria on small business and about the eventual imposition of a nutrient standard on these lakes. In response, Mr. Ehm stated that participation in lake restoration is voluntary and that a mandatory limitation on nutrients in lakes would require legislative action. Mr. Ehm also clarified that the department posts warnings on beaches but does not close beaches. Sen. Bartz requested that the department provide a jobs impact analysis of the rule making.

WEDNESDAY, AUGUST 17, 2011

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Paul Stueckradt represented the department.

ARC 9617B Proposed amendments to chs 104 and 175 pertain to approval of contract amendments for the targeted industries internship program. In response to an inquiry from Sen. Seymour, Mr. Stueckradt reported that no one attended the public hearing.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 9637B No action on amendments to ch 76 regarding external review.

IOWA FINANCE AUTHORITY Mark Thompson and Carla Pope represented the authority.

Iowa Finance Authority (continued)

ARC 9644B Proposed amendments to ch 39 pertain to the HOME partnership program. Ms. Pope reported that public comment related to the number of eligible rental units, the role of a subrecipient, and increases in the allocation of funds. Discussion pertained to the allocation of funds, repayment conditions, and terminology, including subrecipient. Rep. Pettengill commended the program.

ARC 9642B Amendments to ch 41 concern the shelter assistance fund. Ms. Pope summarized the operation of the fund as it relates to the homeless. In response to an inquiry from Sen. Horn, Ms. Pope stated that the homeless include children, veterans and inmates released from corrections facilities. In response to Sen. Courtney, Ms. Pope stated that children comprise the largest population of the homeless in Iowa. Ms. Pope confirmed for Sen. Kibbie that several agencies, including the departments of human services, education, veterans affairs and workforce development, assist homeless children. Ms. Pope noted for Sen. Seymour that the authority tracks recipients' progress out of homelessness and provides an annual report, which is available on the authority's Web site. Ms. Pope agreed to provide the committee with statistical information about homelessness in Iowa and a link to the annual report.

ARC 9633B No action on amendments to ch 42 regarding the emergency shelter grants program.

Special Review 2011 Iowa Acts, House File 649, section 50, created the community housing and services for persons with disabilities revolving loan program, and section 73 allows for emergency adoption of rules and requires committee review before the rules become effective. Mr. Thompson requested the review; no action was taken by the committee. These rules will become effective 8/18/11 (see ARC 9690B, IAB 8/24/11).

MEDICINE BOARD Mark Bowden, Kent Nebel and John Olds represented the board, and Timothy Ihrig appeared at the request of the board. Other interested parties included Heidi Goodman of the Iowa Medical Society, Leah McWilliams of the Iowa Osteopathic Medical Association, and Mark Schouten of the Office of Drug Control Policy (ODCP).

ARC 9601B Amendments to ch 11 require physicians who provide chronic pain management and end-of-life care to complete two hours of continuing education every five years in each of these areas. Mr. Nebel clarified that these hours are included in, but are not in addition to, the 40 hours of continuing education required for biennial renewal. In response to an inquiry from Rep. Pettengill, Mr. Nebel stated that public comment favored encouraging, not mandating, continuing education in the two areas and that courses are available on line and in person and are accepted if nationally accredited. Mr. Bowden offered an example: The board has distributed free of charge to Iowa licensees Responsible Opioid Prescribing, a book with an on-line component that fulfills the requirement for continuing education regarding chronic pain management. Mr. Olds added that many sources of continuing education are available to physicians, and Mr. Ihrig stated that continuing education is a resource that enables physicians to provide quality care. In response to inquiries from Sen. Bartz, Mr. Bowden clarified the categories of physicians who must take the continuing education, and Mr. Nebel stated that the continuing education classes must comply with Iowa law. Rep. Pettengill expressed concern regarding the potential for rural patients to be compelled to secure care in an urban setting instead of receiving end-of-life care from their own physicians. In response, Mr. Olds stated that end-of-life care can be provided by the patient's physician. Rep. Heaton stated that the continuing education requirement related to chronic pain management is reasonable. Sen. Seymour commended the board for working on the issue of chronic pain management and stated that the number of required hours may not be enough. Ms. McWilliams expressed opposition to specific mandatory continuing education requirements. Ms. Goodman expressed opposition to the requirements and stated that there is no evidence that the continuing education will address the issue of pain management and that end-of-life care has not been vetted by the board. In response to an inquiry from Rep. Heaton, Ms. Goodman expressed opposition to the applicability of the requirements to certain physicians, not to the mandatory

continuing education itself. Mr. Schouten expressed support for the continuing education requirements.

Medicine Board (continued)

ARC 9599B Amendments to 13.2 require patient-physician agreements and encourage the use of the Iowa prescription monitoring program and drug testing by physicians who prescribe controlled substances or opiates to treat patients with chronic pain. In response to an inquiry from Rep. Heaton, Mr. Ihrig stated that the pain management agreement is intended to create trust between the patient and the physician but is not a legal document. In response to Sen. Horn, Mr. Nebel stated that the goal of the board is to establish a process to ensure patient safety, not to discourage pain treatment. Mr. Ihrig clarified for Sen. Bartz the use of the pain management agreement. Sen. Kibbie stated that the rules are a step in the right direction and should go into effect.

In response to an inquiry from Rep. Pettengill, Ms. Goodman stated that the board and the medical society had reached a consensus regarding pain management. Mr. Schouten expressed general support for the limited use of patient-physician agreements and the Iowa prescription monitoring program.

ARC 9598B No action on amendments to 23.1 establishing as grounds for discipline failure by a physician with HIV or HBV to report HIV or HBV status. Mr. Nebel reported that no critical public comment had been received.

PUBLIC HEALTH DEPARTMENT Ken Sharp and Jim Goodrich represented the department. Other interested parties included Tom Coke of Coke Nitrogen and Andy Roberts and Nick Cerrato of Plumbers and Steamfitters - Local Union 33.

ARC 9603B No action on amendments to ch 28 pertaining to fees for licensure of plumbing and mechanical systems professionals. Mr. Sharp reported that \$700,000 in refunds of licensure fees had been processed by August 1, 2011, and the general assembly will receive an August 31, 2011, report on the financial status of the board required by statute.

ARC 9604B Amendments to ch 29 concern application, licensure and examination of plumbing and mechanical systems professionals. Mr. Sharp explained that the amendments are intended to align the definitions of HVAC, hydronic and refrigeration with 2011 Iowa Acts, House File 392, so that a person licensed in one mechanical trade might work in most applications across three licenses. However, the pre-2011 definition of hydronic applied only to comfort heating and cooling systems, not to processing and industrial procedures. An unintended consequence of the statutory change in the definition of hydronic has led to confusion regarding the type of licensure required of licensees who had not previously been licensed for processing and industrial procedures. Mr. Sharp reported that, in response to the comments of affected parties, the board has drafted a letter that recognizes the confusion and states that the board will take no legal action related to the new definition and that the applicable definition of hydronic will revert back to that of 2007. Mr. Sharp explained that, until the applicability of the 2011 statutory language is clarified in rule or the statute is changed in 2012, the board will take no action against persons working under the 2007 definition. When the issue is resolved, at least a 90-day grace period will be granted for transition to the new licensing requirements. In addition, workers on projects initiated after a specified effective date (yet to be determined) must comply with the new licensure requirements, and workers on projects initiated before that specified effective date will be grandfathered in without retroactive applicability of the new licensing requirements.

Mr. Coke expressed appreciation to the department and the board for using their enforcement discretion to reach an interim solution. Mr. Roberts stated that the 2011 statutory definition of hydronic is correct and should apply to all hydronic installers of process piping systems. Mr. Cerrato concurred with Mr. Roberts and stated that required hydronic licensure will create jobs in Iowa.

Mr. Sharp clarified for Sen. Bartz that exemptions in statute would apply to homeowners who work on their own systems. Rep. Pettengill expressed appreciation to the board and, specifically, Mr. Sharp for finding a solution to the unintended consequences of the legislation.

ARC 9605B No action on amendments to ch 30 regarding continuing education for plumbing and mechanical systems professionals.

ARC 9631B No questions on ch 55, advisory council on brain injuries.

Public Health Department (continued)

ARC 9632B No questions on proposed ch 77, local boards of health, or the proposed rescission of ch 78. Mr. Goodrich reported that no one attended the public hearing.

ARC 9634B No questions on proposed amendments to ch 82 concerning the office of minority and multicultural health.

ARC 9638B No questions on proposed amendments to 155.21 relating to the staff of substance abuse and problem gambling treatment programs.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Barb Mentzer, and Brian Young represented the department. Other interested parties included Flora Schmidt of the Home Builders Association of Iowa.

ARC 9628B, ARC 9629B and ARC 9630B Mr. Coveyou stated that these notices of intended action propose identical amendments to chs 201, 301 and 504, respectively, regarding standard electrical installations and requested a combined review. Mr. Coveyou noted that electrical wiring is part of the state fire marshal's jurisdiction; that the building code commissioner adopts standards as part of state building code that apply only to construction subject to the state building code; and that the electrical examining board has the broadest authority to adopt standards for electrical work. He also noted that the standards of local jurisdictions cannot be less stringent than those of the state. Mr. Coveyou explained that the National Electrical Code (NEC) is adopted by the National Fire Protection Association (NFPA) and is published every three years and stated that the department attempts to follow a regular schedule of adoption of the NEC to provide continuity and predictability to the construction and electrical industries. Mr. Coveyou stated that the proposed rules are a complete adoption of the 2011 NEC, i.e., without exceptions, and that he anticipates comment from stakeholders.

In response to an inquiry from Sen. Bartz, Ms. Mentzer stated that the board intends to adopt the 2011 edition of the NEC in its entirety since the NFPA, not the state, writes the NEC. In response to an inquiry from Rep. Heaton, Ms. Mentzer stated that, in contrast with the 2008 NEC, the 2011 NEC changes are minor. Ms. Findley inquired about whether the omission of exceptions from the NEC in department rules might have an impact on jobs and stated that a revision of the initial jobs impact statement might be in order if any exceptions are incorporated. In response to Rep. Vander Linden, Mr. Coveyou and Ms. Mentzer stated that the NFPA considers the cost of NEC requirements in formulating the NEC. Ms. Mentzer will provide the committee with a copy of the changes in the 2011 NEC. Mr. Coveyou will place a copy of the 2011 NEC in the law library.

Ms. Schmidt requested that an amendment similar to that in the 2008 NEC be made to the ground fault circuit interrupter requirements in the 2011 NEC.

ARC 9620B No action on 221.4(2) pertaining to E-85 fuel dispensers.

ARC 9627B No action on the rescission of 301.6(1) regarding plumbing installations in places of public assembly.

ARC 9626B Ch 505 and amendments to chs 500, 502 and 551 pertain to the electrician and electrical contractor licensing program and to the electrical inspection program. In response to an inquiry from Rep. Pettengill, Mr. Young clarified the three ways for a person to earn a journeyman electrician license.

PROFESSIONAL LICENSURE DIVISION Sharon Dozier, Judy Manning and Tony Alden represented the division.

ARC 9606B No action on amendments to chs 81 to 83 relating to licensure of dietitians.

ARC 9641B No action on amendments to ch 180 to 183 pertaining to licensure of optometrists.

ARC 9595B No questions on proposed amendments to chs 261 and 263 concerning licensure of respiratory care practitioners.

ARC 9594B No questions on the proposed rescission of 262.4 relating to audit of continuing education for respiratory care practitioners.

ARC 9596B No questions on proposed amendments to 283.2(11) pertaining to discipline of social workers.

NURSING BOARD Lorinda Inman represented the board. Other interested parties included Teri Murphy of the Iowa Staff Nurses Association.

ARC 9621B Proposed amendments to 1.3(2) pertain to the organization of the board. Ms. Inman stated that, on the advice of legal counsel, the board proposes the removal of Robert’s Rules of Order as a guide for conducting board meetings and that the board will follow the usual procedure in handling motions. Ms. Inman stated that any legal challenge would then be based on the issue under discussion rather than the procedure under which the issue had been discussed. In addition, a staff expert on Robert’s Rules of Order would not be needed.

Committee members expressed concern about the proposed removal of Robert’s Rules of Order. Rep. Pettengill inquired about a substitute guide to parliamentary procedure and asked that the board reconsider this proposal. Rep. Olson asked whether the usual procedure for board meetings would be codified for the information of the committee and affected parties. Mr. Royce pointed out that more problems might arise if there is no designated guide for parliamentary procedure, to which Sen. Bartz concurred. Sen. Horn concurred with Sen. Kibbie, who expressed the hope that all boards and commissions would follow Robert’s Rules of Order and that the committee would go on record in agreement.

Ms. Murphy expressed opposition to the selection of a chairperson for a standing committee in lieu of election and to the removal of Robert’s Rules of Order.

ARC 9622B Proposed amendments to 4.6 and 4.14 pertain to the clarification of the reporting of deferred judgments by licensees. Rep. Olson expressed the opinion that neither a deferred judgment nor the failure to report a deferred judgment should cause a license to be sanctioned. Sen. Kibbie requested that the reference to a deferred judgment be removed from the rule. In concurring with Sen. Kibbie, Rep. Olson requested that the rule be tailored to the language of the statute, Iowa Code section 147.55(5), which refers to a conviction “related to the profession or occupation of the licensee,” and noted that the statute does not state that a deferred judgment is a conviction. In response to Rep. Olson, Ms. Inman stated that the board considers a licensee’s pattern of behavior in determining if a crime is related to the profession of nursing.

Ms. Murphy inquired about what constitutes a crime and expressed concern about the need to distinguish between the private and public life of a licensee.

UTILITIES DIVISION Gary Stump and Cecil Wright represented the division.

ARC 9609B No questions on amendments to 15.19 and 15.21 regarding renewable energy tax credits.

ARC 9614B Amendments to 20.19(1) pertain to outage notification requirements for electric utilities. Mr. Wright stated that comments from industry support the change to a six-hour requirement, but comments from the consumer advocate request that the two-hour requirement be retained. In response to an inquiry from Rep. Pettengill, Mr. Wright stated that the board has not yet received comments from emergency management personnel but will await those comments before proceeding.

Committee business The minutes of the July 12, 2011, meeting were approved. The next meeting was scheduled for Tuesday, September 13, 2011, at 9 a.m. Rep. Pettengill proposed that the committee sponsor a nullification resolution to overturn the delayed language in ARC 9674B. Mr. Royce offered to draft the resolution for review by the committee at the September meeting.

Adjourned The meeting was adjourned at 12:45 p.m.

Respectfully submitted,

Stephanie A. Hoff

August 16 and 17, 2011

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill