

**MINUTES OF THE OCTOBER 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, October 11, 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 Jo Oldson, Rick Olson, and Guy Vander Linden were present. Representative David Heaton was not 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. Ms. Lerdal also introduced Aaron Todd, who will succeed her upon her retirement in December.
- Rules of Procedure At the September meeting, the committee had agreed to initiate a review of its rules of procedure. Mr. Royce stated that the proposed changes, which clarify but do not change the rules, are a starting point for discussion. Rep. Pettengill asked that the committee consider the following: whether to use the term vice chair or co-chair; stating in the rules the length of the chair’s term and the number of votes required for action (i.e., specifying seven votes rather than 2/3 of the committee); quorum requirements; and the parameters for adoption of a rule or statute by reference. Sen. Kibbie inquired about joint rules related to the committee’s recommendation of bills. Sen. Bartz noted that there are differences in the way that the house and senate deal with rules. Sen. Courtney asked that any action on rules of procedure be deferred for the time being. The committee took no action.

EDUCATION DEPARTMENT Carol Greta represented the department.

- ARC 9684B Sen. Bartz had requested that this rule making, published in the 8/24/11 IAB and not included for review at the September meeting, be reviewed at the October meeting. Proposed 22.12 stipulates that supplementary funds to support high school students who participate in concurrent enrollment courses be used, in part, to provide the students with transportation to and from these courses. Ms. Greta stated that the board will terminate this notice at its November meeting so that the legislature might review the issue. Sen. Bartz expressed concern about maintaining the status quo regarding transportation in the absence of statute or rule. In response, Ms. Greta stated that, pursuant to department guidance, transportation cannot be a barrier to students’ enrollment in these courses, and the department encourages school districts to follow that guidance. She pointed out that, in addition to school bus transportation, reimbursement for students’ transportation expenses is also an option for school districts in the interim before legislative review of the issue.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department. Other interested parties included Karen Kienast and Janis Curtis.

- ARC 9738B Proposed amendments to chs 1, 20, 50 to 54, 56 to 61 and 63 pertain to the information technology enterprise and the human resources enterprise. Mr. Hunter stated that this rule making is part of a comprehensive review of all department rules. Mr. Hunter reported that public comment has focused on the proposed definition of confidential employee. He stated that the intent of the proposed definition is to bring the definition into compliance with statute, address the objection from 1986 still in place, and coordinate the application of the merit system and the collective bargaining system pursuant to statute. Mr. Hunter asserted that the proposed definition was not intended to change the employment status of any employee. He stated that the department would not adopt the proposed definition but will continue to examine alternatives. He also requested guidance from the committee.

Administrative Services Department (continued)

Discussion pertained to a variety of issues. Sen. Kibbie inquired further about the purpose for the change in the definition, the effect of the proposed definition on merit-covered employees, and the timing of the rule making. Sen. Courtney asked how the change would improve state government. Rep. Olson explored the time frame for the drafting of the rule making and whether legislation necessitated the rule making. Rep. Vander Linden asked the number of employees affected by the proposed definition.

In response to committee concerns, Mr. Hunter stated that the main purpose for the proposed definition is to bring the definition of confidential employee into compliance with statute, which would improve state government. He reiterated that the proposed definition is not intended to change the status of merit-covered employees and stated that the number of affected employees is not known.

Rep. Pettengill reviewed possible solutions to eliminate conflict between the statutory definition and the definition in the rules and noted that legislation might be needed to remove the conflict. Sen. Kibbie asked that the department continue to inform agencies and employees statewide of the proposed changes. He also requested that the department continue to keep the committee informed about the progress of the rule making and the anticipated special review(s) of the rule making by the committee prior to final adoption. Sen. Bartz stated that the protection of the best interests of the state and of state employees is necessary, and he noted that the burden of proof regarding the objection lies with the state.

Ms. Kienast questioned the purpose of the new definition. She asserted that Iowa Code chapter 20 relates only to confidential employees eligible for collective bargaining and that the two-part existing definition addresses which employee is eligible or ineligible for collective bargaining, not whether an employee would continue to have merit system protection. Ms. Curtis stated that no interpretation of the definition has been provided, noted that there were procedural irregularities in the conduct of the public hearing, and expressed concern that the new definition would result in the loss of merit status by many employees.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Marnie Stein, Jim McGraw, and Diane Moles represented the commission.

ARC 9736B Proposed amendments to 22.100, 33.1 and 33.3(1) pertain to carbon dioxide (CO₂) emissions. Ms. Paulson stated that the proposed amendments would adopt federal regulations that will defer for a three-year period the counting of CO₂ emissions from biogenic sources toward PSD and Title V applicability. She noted that failure to adopt these regulations would make state rules more stringent than federal regulations, which is prohibited by state law.

Ms. Paulson clarified for Sen. Bartz the projected time frame for the deferral of these federal regulations. Ms. Paulson clarified for Rep. Pettengill that, during the deferral period, facilities should keep track of their biogenic emissions to show that these emissions are exempt from the Title V program. Ms. Paulson added that EPA will not do a “look-back” at facilities that, during the deferral period, did not count CO₂ emissions from biogenic sources toward PSD applicability. However, Ms. Stein clarified that, during the deferral period, ethanol plants, for example, are subject to the federal reporting program for fuel emissions but not for fermentation. In response to an inquiry from Sen. Horn, Mr. McGraw agreed to inquire about the Title V operating permit in progress for the ADM project in Cedar Rapids.

ARC 9737B Proposed amendments to chs 40 to 43 and 83 pertain to drinking water. Ms. Moles stated that the amendments incorporate in state program rules federal regulations from two significant federal rules and other changes, primarily related to analytical methods, to maintain primacy in the drinking water program. Ms. Moles reported that 870 stakeholders received the proposed rules for comment, and letters of support were received from the Iowa Association of Water Agencies and from the Iowa section of the American Water Works Association.

Environmental Protection Commission (continued)

Discussion pertained to primacy, nontransient noncommunity water systems, chlorinated water systems, construction permit conditions, the surface water treatment rule, notification of affected parties and the reference to winter delay. In response to requests from Sen. Bartz, Ms. Moles will provide the committee with EPA's written comments regarding the stringency requirements that necessitated the amendment in Item 6 and agreed to reconsider the amendment to the definition of "nontransient noncommunity water system" in Item 2 and the purpose of a permit extension stated in the last sentence in Item 41.

NATURAL RESOURCE COMMISSION Willie Suchy represented the commission.

- ARC 9720B No action on amendments to ch 91 concerning the annual adjustment to season dates for waterfowl and coot hunting. Mr. Suchy reported that, pursuant to a change in federal regulations, the only change from the notice is the addition of two days to the length of the white-fronted goose season.
- ARC 9718B No action on amendments to ch 94 pertaining to nonresident deer hunting. Mr. Suchy noted that the definition of a blind had been clarified.
- ARC 9717B No action on amendments to ch 106 regarding deer hunting by residents. Mr. Suchy noted that the definition of a blind had been clarified.

REVENUE DEPARTMENT Jim McNulty represented the department.

- ARC 9741B Proposed amendments to chs 12, 40, 42, 52, 53 and 67 pertain to tax refunds, tax credits and reporting related to biofuels and ethanol blended fuels. In response to an inquiry from Sen. Kibbie, Mr. McNulty stated that public comment consisted of questions about how to claim a biodiesel production refund.
- ARC 9739B No questions on proposed amendments to chs 38 and 40 regarding exclusions and exemptions related to active duty pay.
- ARC 9740B No questions on proposed amendments to chs 38, 40 to 42, 44, 52, 53, 58 and 59 regarding individual, corporate and franchise tax.

EDUCATIONAL EXAMINERS BOARD George Maurer represented the board.

- ARC 9743B No action on amendments to ch 12 pertaining to the fee for a professional service license.
- ARC 9744B Proposed amendments to 13.9(7) concern the options a teacher intern would have to secure an initial license. Mr. Maurer clarified for Rep. Pettengill the option to secure an initial license that includes completion of paid substitute teaching. In response to an inquiry from Sen. Kibbie, Mr. Maurer stated that, based on public comment, the board will review the requirement that 60 percent of the time in substitute teaching be in the intern's endorsement area.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

- ARC 9698B No action on amendments to chs 7 and 175 pertaining to the child abuse registry.
- ARC 9734B No questions on the termination of proposed amendments to chs 11 and 76, which relate to collection of unpaid premiums assessed for medical assistance.
- ARC 9701B Amendments to chs 11 and 76 relate to collection of unpaid premiums for medical assistance. Ms. Freudenberg clarified for Sen. Bartz the department's ability to place a lien on property in repayment of a particular debt.
- ARC 9735B No questions on the termination of proposed amendments to ch 36 relating to facility assessments.
- ARC 9731B No questions on proposed amendments to ch 36 pertaining to quality assurance assessment.
- ARC 9728B No action on amendments to ch 92, IowaCare.
- ARC 9730B No action on amendments to 108.10 relating to supervised apartment living placement services.
- Special Review The rule making under special review pertains to the removal of the remaining exclusions from Medicaid coverage for drugs to promote cessation of smoking. In compliance with 2011 Iowa Acts, House File 649, section 6(6), this rule making was reviewed by the committee prior to emergency adoption with an effective date of November 1, 2011.

ECONOMIC DEVELOPMENT AUTHORITY Matt Rasmussen and Julie Lunn represented the authority.

ARC 9748B No questions on proposed amendments to ch 47 pertaining to endow Iowa tax credits.

ARC 9746B No action on amendments to ch 65 relating to the brownfield redevelopment program. Mr. Rasmussen reported that the authority anticipates making changes based on public comment.

ARC 9754B No action on amendments to chs 104 and 175 regarding approval of contract amendments for the targeted industries internship program.

Committee business The minutes of the September 13, 2011, meeting were approved.

The next meeting was scheduled for Tuesday, November 1, 2011, at 9:30 a.m.

Rep. Olson requested that discussion of deferred judgments be postponed.

Adjourned The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill