

**MINUTES OF THE NOVEMBER 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, November 1, 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; Larry Johnson, on behalf of the Governor's office; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:30 a.m.
- Fiscal overview** Aaron Todd presented the LSA fiscal report. In response to an inquiry from Sen. Bartz, Mr. Todd agreed to provide information to clarify whether the \$127 million general fund reduction related to wind energy production tax incentives is a change in the amount or is the same amount as that projected in the fiscal note at the end of the last legislative session.

CREDIT UNION DIVISION JoAnn Johnson represented the division.

- ARC 9777B No action on amendments to ch 18 relating to maintenance of allowance for loan and lease losses account.

EDUCATION DEPARTMENT Carol Greta represented the department.

- ARC 9791B Proposed amendments to ch 22 pertain to student proficiency standards and expansion of regional academies under the senior year plus program. In response to an inquiry from Sen. Bartz, Ms. Greta clarified that the time frame for the waiver discussed in 22.27 applies only to the next school year; in addition, she stated that the rule pertains to an optional waiver from accreditation standards, not to a waiver from documentation for establishment of a regional academy. In response to an inquiry from Sen. Courtney, Ms. Greta distinguished between a regional academy and a charter school.
- ARC 9792B No questions on proposed amendments to 64.15 pertaining to grantees' use of moneys for child development programs for at-risk children.
- ARC 9793B Proposed amendments to ch 98 pertain to the uses of categorical funding, including the home school assistance program and the physical plant and equipment levy (PPEL). In response to an inquiry from Rep. Pettengill, Ms. Greta stated that the term "maintenance" is defined in Item 3 to clarify for school districts that the costs related to maintenance of equipment and technology are not permitted to be paid for by the PPEL.
- ARC 9794B Proposed amendments to 102.5 relate to duties of school authorities in cases of alleged physical or sexual abuse of a student by a school employee. Ms. Greta noted that the statute requires that a school employee accused of physical or sexual abuse be placed on administrative leave by the board of directors of a school district and the authorities in charge of an accredited nonpublic school. Ms. Greta stated that comments received from school administrators express concern about the costs and about placing an employee on administrative leave before the allegation of abuse is founded. Ms. Greta noted that the legislation was contained in an appropriations bill, and education stakeholders were not involved in or consulted about the legislation. Discussion pertained to the procedure for a finding of abuse, including what constitutes evidence; the Level One and Level Two investigation processes; the school employee's role and rights; and administrative leave with or without pay. Ms. Greta explained that the Level One investigation is a five-day period in which jurisdiction is established by a school employee; the Level Two investigation, with no set timetable, is conducted by law enforcement or through private investigation. She stated that the school employee under investigation may be interviewed, accompanied by the employee's union steward. Committee members expressed concern about a school employee's rights and the difficulties that may result if the alleged abuse is not founded.

Education Department (Cont'd)

- Motion to refer Sen. Bartz moved a general referral on ARC 9794B.
Mr. Royce stated that the referral would be made when the rule is adopted.
- Motion carried On a voice vote of 10 to 0, the motion carried.

INSURANCE DIVISION Matt Hargrafen represented the division.

- ARC 9815B No questions on proposed ch 96, synthetic guaranteed investment contracts.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

- ARC 9803B No action on amendments to ch 27 concerning the military service member home ownership assistance program.
- ARC 9764B Amendments to ch 39 relate to the HOME partnership program. Rep. Pettengill commended the authority for not limiting eligible activities in rental housing rehabilitation or rental housing new construction to projects involving five units or more. In response to an inquiry from Sen. Kibbie, Mr. Thompson stated that the number of requests for home loans has decreased from four years ago and that most current activity concerns refinancing.
- ARC 9802B The amendment to 39.4(1) pertains to the base home purchase price eligibility limits under the HOME partnership program. Mr. Thompson clarified for Sen. Bartz that for administration of the program, HUD allows an initial purchase price that cannot exceed either the single family mortgage limits under Section 203(b) of the National Housing Act established in February 2008 or 95 percent of the HUD after-rehabilitation value limits for median sales price by county.

LABOR SERVICES DIVISION Michael Mauro and Kathleen Uehling represented the division.

- ARC 9758B Proposed amendments to 32.8(2)“a” create an exemption that allows employed youth aged 16 and 17 to drive golf carts as part of their employment. Ms. Uehling stated that the exemption is proposed because Iowa Code section 92.8(2) prohibits anyone under the age of 18 from employment as a “motor vehicle driver and helper.” Committee members expressed concern about the applicability of the statute to other types of youth employment that require the use of a motor vehicle, such as an all-terrain vehicle; about increased liability to the state; and about possible conflict with federal law. In response, Mr. Mauro stated that the division would research the statute as it relates to other types of youth employment; Mr. Johnson confirmed that there would be further discussion between the governor’s office and the attorney general regarding liability to the state; and Ms. Uehling noted that the division is in the process of investigating conflicts with federal law. Sen. Bartz commended the purpose for the rule but requested that its language be clarified in light of the restrictions on employment of youth set forth in Iowa Code chapter 92.
- ARC 9790B No action on amendments to chs 90 and 91 regarding international boiler and pressure vessel codes.

PHARMACY BOARD Lloyd Jessen and Terry Witkowski represented the board.

- ARC 9782B No action on amendments to 2.12 regarding specific requirements for continuing education for pharmacists.
- ARC 9783B No action on ch 40 and amendments to ch 3 pertaining to tech-check-tech (TCT) programs.
- ARC 9784B No action on amendments to 4.1 and 4.6 concerning the application for registration by pharmacist-interns.
- ARC 9785B No action on amendments to ch 5 that clarify the authority of a pharmacy support person under pharmacist supervision to place a pharmacist-verified prescription container into a bag or sack for delivery to a patient.
- ARC 9787B No questions on proposed amendments to 6.14 relating to patient counseling and instruction.
- ARC 9788B No questions on proposed amendments to 7.1 and 7.8(3) clarifying the definition of hospital pharmacy and the provision related to verbal orders for administration of medications in a hospital.
- ARC 9786B No action on ch 11, drugs in emergency medical service programs.

Pharmacy Board (Cont'd)

- ARC 9789B Proposed ch 24 pertains to pharmacy Internet sites. In response to an inquiry from Rep. Heaton, Mr. Jessen stated that Internet pharmacies are inspected on site as part of the verified Internet pharmacy practice site (VIPPS) accreditation.
- ARC 9693B No action on subrule 8.35(7) pertaining to a closing pharmacy. Review of this rule making had been held over from October. In response to an inquiry from Sen. Horn, Ms. Witkowski clarified that closing pharmacy refers to the closing of any pharmacy, whether permanently closed or sold and reopened.
- ARC 9671B Held over for review from October, proposed amendments to chs 8, 10, 21 and 23 relate to pharmacy practice. In response to an inquiry from Rep. Heaton, Ms. Witkowski clarified that electronic prescribing of noncontrolled substances is not mandatory and that pharmacies using electronic prescribing of controlled substances must comply with stringent DEA requirements.

PROFESSIONAL LICENSURE DIVISION Sharon Dozier, Tony Alden and Judy Manning represented the division. Other interested parties included Joe Kelly on behalf of the Iowa Hearing Association.

- ARC 9768B No action on the amendment to 4.3(5) pertaining to the governance of board meetings. Ms. Dozier noted that this amendment applies to all 19 professional licensing boards.
- ARC 9799B No questions on the proposed amendment to 83.2(12) concerning discipline of dietitians, specifically, clarification that conviction of a crime includes when the judgment of conviction or sentence was deferred. Rep. Olson stated that a statutory change will be proposed to address this issue.
- ARC 9800B No questions on proposed amendments to 124.2 relating to advertisements for a hearing aid business and to deferred judgments. Ms. Dozier noted that 2011 Iowa Acts, House File 649, section 87, rescinds the statute requiring qualifying language in advertisements. Mr. Kelly expressed appreciation to the committee, the board, and the department for assistance with the legislation.
- ARC 9801B No questions on proposed amendments to chs 141 and 144 pertaining to licensure and discipline of nursing home administrators.
- ARC 9798B No questions on the proposed amendment to 242.2(12) regarding discipline for psychologists, specifically, clarification that conviction of a crime includes when the judgment of conviction or sentence was deferred.
- ARC 9780B No questions on proposed amendments to 262.3(2) concerning removal of language that refers to approved continuing education sponsors for respiratory care practitioners.
- ARC 9767B No questions on proposed amendments to chs 300 and 304 pertaining to licensure, board meetings, and discipline for speech pathologists and audiologists. Ms. Manning clarified for Sen. Bartz that the board will continue to send renewal notices to licensees by regular mail until the board receives all licensees' e-mail addresses for electronic renewal notification.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

- ARC 9772B No action on ch 55, advisory council on brain injuries.
- ARC 9773B No action on ch 77, local boards of health, or the rescission of ch 78. Ms. Nervig agreed to provide Sen. Bartz with information regarding whether a district board of health formed of two county boards of health becomes a separate entity and how the new board is named.
- ARC 9775B No action on amendments to ch 82 concerning the office of minority and multicultural health.
- ARC 9771B No questions on proposed amendments to 126.3(1) relating to consideration of fees as repayment receipts by the state medical examiner.
- ARC 9774B No action on amendments to 155.21(8) pertaining to the personnel of substance abuse and problem gambling treatment programs.

RACING AND GAMING COMMISSION Jack Ketterer and Brian Ohorilko represented the commission.

ARC 9808B Proposed amendments to chs 4 and 8 to 11 pertain to fines, advance deposit wagering, horse racing, and gambling games. Mr. Ketterer clarified for Rep. Heaton that casinos no longer offer the games removed in Item 9 and that Item 10 applies only to tournament chips. In response to an inquiry from Rep. Olson, Mr. Ketterer clarified that in Item 1, the individual assessed a fine, not any other person, must pay the fine; clarified the claiming rule; and described the development of and purpose for the advance deposit wagering rule. In response to an inquiry from Sen. Courtney, Mr. Ketterer clarified that the waived claiming rule allows a competitive level for in-state horse owners. Sen. Kibbie commended the commission for its well-administered pari-mutuel and casino gambling operation.

REVENUE DEPARTMENT Jim McNulty, Victoria Daniels and Richard Stradley represented the department.

ARC 9797B No questions on proposed amendments to chs 6 to 8 regarding department reorganization and substitute tax forms.

ARC 9814B No action on ch 224 and amendments to chs 18 and 26 pertaining to sales tax treatment of telecommunication services.

ARC 9796B No questions on proposed amendments to chs 42, 43, 52 and 58 concerning tax credits for individual, corporation and franchise tax.

ARC 9761B No questions on proposed amendments to 71.21 relating to the change of address of the property assessment appeal board.

SECRETARY OF STATE Sarah Reisetter represented the secretary of state.

ARC 9762B No action on the amendment to 22.2 relating to voting system standards.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.

ARC 9810B Proposed ch 12 pertains to voter notifications. Ms. Reisetter explained that the rule standardizes the process for notifying a voter when the voter's primary or general election polling place is permanently changed. Discussion pertained to the costs involved in, and more cost-effective means for, notification. Ms. Reisetter stated that the commission attempts to minimize costs wherever possible and agreed to provide the committee with information regarding the projected cost of notification and with a summary of public comment received prior to Election Day, November 8, 2011. Sen. Courtney expressed the opinion that voter notification is a legitimate government obligation and expense.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Ann Wiebers represented the department.

ARC 9804B Proposed amendments to 75.12 concern Medicaid eligibility for elderly or disabled inmates of public institutions. 2011 Iowa Acts, Senate File 482, mandates suspension rather than cancellation of Medicaid eligibility when an elderly or disabled person enters a public institution. Ms. Wiebers reported that the Centers for Medicare and Medicaid Services (CMS) has recently clarified that, pursuant to federal regulations, other coverage groups must be included in addition to elderly and disabled persons. She reported that the department will revise the rules after receipt of final CMS guidance and will seek a technical statutory change during the next legislative session.

Committee members expressed concern about the potential conflict between the federal regulations and the statute that limits the coverage group to elderly and disabled persons. Sen. Bartz requested that the department provide the committee with an attorney general opinion on the statute.

ARC 9778B No action on amendments to ch 156 pertaining to an increase in maintenance payment and initial allowance for supervised apartment living placements.

ARC 9779B No action on amendments to ch 158 relating to the foster home insurance fund.

ARC 9776B Proposed amendments to 202.12(2) concern conditions that are required for the department to decline release of a foster child's location to the child's parents. Ms. Freudenberg confirmed for Sen. Bartz that actual cases were the impetus for the amendments and confirmed for Sen. Kibbie that public comment is being compiled.

PUBLIC EMPLOYMENT RELATIONS BOARD Jan Berry represented the board. Other interested parties included Wayne Sawtelle on behalf of Iowa Professional Fire Fighters, Danny Homan on behalf of AFSCME Council 61, and Jan Laue on behalf of the Iowa Federation of Labor, AFL-CIO.

Public Employment Relations Board (Cont'd)

ARC 9795B

Proposed amendments to 5.4(1) pertain to a tie vote in a decertification election. Currently, the rule provides that, in an election upon a petition to decertify the bargaining representative of a bargaining unit of public employees, the bargaining representative retains its certification in the event of a tie vote. The amendments propose that the bargaining representative be decertified if a tie vote occurs.

Mr. Berry stated that based on a fundamental principle of collective bargaining, a majority of the valid votes by the bargaining unit must support the bargaining representative, and for that reason a tie vote means that a majority of the bargaining unit does not support the bargaining representative and the bargaining representative should be decertified. Mr. Berry stated that a tie vote that occurred last year provided the basis for the rule making.

Committee members observed that the statute is silent in regard to tie votes. In addition, they expressed concern about changing a longstanding policy through rule making and stated that the issue should be addressed by the legislature.

Mr. Sawtelle stated that a tie vote cannot support certification and should not support decertification and that the rule should not be changed. Mr. Homan stated that the party moving the action, whether to certify or decertify, must have the majority as has been the practice since 1977. Ms. Laue concurred with Mr. Homan regarding past practice and expressed opposition to the rule.

Rep. Heaton moved a general referral of the rule to the legislature. Following discussion, Rep. Heaton withdrew the motion, and the committee delayed further action until the rule is adopted.

Rep. Pettengill moved to reconsider the general referral of ARC 9794B. Following discussion, Rep. Pettengill withdrew her motion.

Committee business

The minutes of the October 11, 2011, meeting were approved.

The next meeting was scheduled for Tuesday, December 13, 2011, at 9:30 a.m. In addition, the January meeting was tentatively scheduled for Wednesday, January 4, 2012, at 9:30 a.m.

Mr. Johnson explained that the five-year rolling sunset is a five-year review of administrative rules. In preparation, the Governor's office staff will meet with rules coordinators to introduce the review. Mr. Johnson explained that the term "sunset" does not mean that rules will expire.

Sens. Horn, Courtney, and Kibbie and Rep. Pettengill expressed concern regarding the confusion that might be caused by the term "sunset," and all concurred with Sen. Courtney's request that the term be changed to "review."

The committee agreed that at the December meeting, Glen Dickinson, director of LSA, be permitted to demonstrate a prototype of a new search engine currently in development for the legislature's Web site.

Adjourned

The meeting was adjourned at 2:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill