

**MINUTES OF THE JANUARY 2012 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Wednesday, January 4, 2012, in Room 22, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton and Guy Vander Linden were present. Senator Merlin Bartz and Representatives Jo Oldson and Rick Olson were 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 9:35 a.m.
- Fiscal overview** Aaron Todd presented the LSA fiscal report. In response to an inquiry from Sen. Seymour, Sen. Kibbie discussed the estimate of the reduction in the present value of future IPERS benefits. Rep. Pettengill expressed appreciation for the clarity of the IPERS report.
- Joint Resolution At the December meeting, Mr. Ewing presented to the committee a draft of a joint senate/house resolution nullifying 571 IAC, rule 97.6, fifth sentence, prohibiting the use of lead shot for hunting mourning doves and providing an effective date. Following the presentation, the committee voted to place the review of the resolution on the January agenda.
- Mr. Ewing stated that a motion would be required to file the resolution as a committee bill. Discussion focused on clarification of the resolution.
- Marty Ryan, on behalf of Lead Is Poison, asserted that the resolution should be rejected or amended not only to prohibit any shot other than nontoxic shot but also to prohibit the hunting of Eurasian collared-doves.
- Sen. Kibbie acknowledged that the committee had requested the draft resolution and should follow through on that request but urged caution about setting a precedent by introducing resolutions to nullify administrative rules.
- Motion Sen. Kibbie moved that the senate/house joint resolution be filed as a committee bill.
- Motion carried On a voice vote of 7 to 0, the motion carried.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 9940B No questions on proposed amendments to ch 78 pertaining to Medicaid payment for vaccines.

ARC 9898B Proposed amendments to ch 109 pertain to child care centers. Ms. Freudenberg stated that Item 1 implements 2011 Iowa Acts, House File 649, section 92, and that the public health department had requested that amendments regarding specific levels of physical activity and limits on television and computer screen time be included in the rule making (Items 2 and 4). Rep. Heaton questioned the inclusion of Items 2 and 4 without apparent statutory authority. Rep. Vander Linden questioned the department’s inclusion of amendments requested by the public health department but not addressed in the legislation. Rep. Pettengill concurred and questioned the practicality of requirements related to television and computer use. In response, Ms. Freudenberg stated that the department did not intend to overstep legislative authority and agreed to participate in further discussion with Rep. Heaton about legislative changes to address the issues in Items 2 and 4.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 9920B No questions on proposed ch 14, health care professional recruitment program.

EDUCATION DEPARTMENT Jeff Berger and Roger Utman represented the department.

ARC 9909B Proposed amendments to ch 12 pertain to accreditation standards for all Iowa school districts and accredited nonpublic schools. In response to Rep. Pettengill, Mr. Berger agreed to provide the committee with information to explain why Item 4 specifies the grade level of a student who may be allowed to take a course for secondary credit even though the statute does not specify the grade level.

Education Department (continued)

- ARC 9901B Amendments to 21.31 relate to approved providers of an instructional course for drinking drivers. Mr. Utman clarified for Rep. Heaton that the amendments enable the department to approve a provider of a course for drinking drivers that is offered outside Iowa.
- ARC 9902B No action on amendments to ch 22 concerning student proficiency standards and expansion of regional academies under the senior year plus program.
- ARC 9899B No questions on the termination of proposed 22.12 pertaining to transportation to and from concurrent enrollment courses.
- ARC 9900B No questions on the termination of proposed amendments to ch 24 concerning community college accreditation.
- ARC 9907B No questions on proposed amendments to ch 24 regarding community college accreditation. Mr. Utman stated that this rule making includes at the request of the Iowa Association of Community College Presidents (IACCP) the addition of an amendment regarding standards for libraries and library materials.
- ARC 9903B No action on amendments to ch 32 related to test scoring and fees for the high school equivalency diploma.
- ARC 9904B No action on amendments to 64.15 pertaining to grantees' use of moneys for child development programs for at-risk children. Mr. Berger clarified for Rep. Heaton that these grants used by the child development coordinating council to fund shared vision programs are distinct from funding for the statewide voluntary preschool program for four-year-olds.
- ARC 9908B Proposed amendments to ch 97 concern funding for regional academies that is generated by supplementary weighting. In response to an inquiry from Sen. Kibbie, Mr. Berger stated that interest in regional academies is increasing and clarified that multiple school districts may participate in a regional academy.
- ARC 9916B Proposed ch 99 pertains to business procedures and deadlines. In response to an inquiry from Sen. Horn, Mr. Berger confirmed that school districts receive multiple types of advance notification prior to deadlines for reports.
- ARC 9905B No action on amendments to 102.5 relating to duties of school authorities in cases of alleged physical or sexual abuse of a student by a school employee.

INSURANCE DIVISION Jim Mumford and Matt Hargrafen represented the division. Other interested parties included Scott Sundstrom of the Federation of Iowa Insurers.

- ARC 9941B No questions on proposed amendments to ch 15 which conform the rules to the annuity disclosure model regulation adopted by the National Association of Insurance Commissioners (NAIC).
- ARC 9926B No action on ch 96, synthetic guaranteed investment contracts. In response to an inquiry from Sen. Kibbie, Mr. Mumford clarified that the buyer of a synthetic guaranteed investment contract would be a pension or retirement plan, and Mr. Sundstrom described the contract and its purpose and explained the process by which a contract is negotiated and executed.

IOWA FINANCE AUTHORITY Carolann Jensen and Dave Vaske represented the authority. Other interested parties included Matt Eide on behalf of Weinberg Investments.

- ARC 9950B The amendments to ch 12 pertain to the 2012 qualified allocation plan (QAP) for the low-income housing tax credit (LIHTC) program. Ms. Jensen addressed the two issues that have been raised regarding the 2012 QAP: (1) the exclusion of a tax exemption as an eligible local government contribution, and (2) the apparent lack of LIHTC projects in rural areas.
- Ms. Jensen asserted that a tax exemption is not local in nature but is granted by the legislature; the local governmental entity is not contributing any resources and therefore is not entitled to that revenue. By contrast, Ms. Jensen continued, a local governmental entity contributes to a project by foregoing tax revenue in granting tax abatement. Ms. Jensen pointed out that since the purpose of the local government contribution criterion is to ensure that a local government has a direct investment in a project, allowing tax abatement but not tax exemptions accomplishes that purpose.
- Ms. Jensen added that the authority, in specifying that tax abatement does not mean tax exemption, clarified the definition but did not change it. The only stakeholder using the tax exemption as a local government contribution to earn more points for projects is currently in litigation with the authority regarding the tax exemption.

Iowa Finance Authority (continued)

In regard to the second issue, Ms. Jensen stated that the authority has provided incentives and eliminated barriers for rural projects to encourage development.

Mr. Eide reiterated that a tax exemption and tax abatement both require a local government entity to forego revenue and that in excluding a tax exemption as local government contribution, the authority is exceeding the scope of the statute. In addition, Mr. Eide expressed the opinion that this criterion should not be changed while it is being litigated. Mr. Eide requested that the committee impose a session delay on the addition of “(not tax exemption)” in the QAP criteria for a local government contribution to allow a focused review by the appropriate legislative committee.

In response, Ms. Jensen stated that a change in this 2012 QAP criterion would result in a delay in the granting of all tax credit awards to approximately 15 projects. She also stated that tax exemptions would continue to be excluded despite a session delay.

Committee members expressed concern about the authority’s proceeding with the rule making during ongoing litigation, legislative intervention regarding an issue under court consideration, and the effect of a session delay on any of the projects in the 2012 round.

Motion to delay Sen. Seymour moved a session delay on Section 6 of the 2012 qualified allocation plan (QAP), local government contribution, specifically, the exclusion of a tax exemption.

Motion failed On a roll call vote of 4 to 3, the motion failed.

(Note: The passage of a motion to impose a session delay requires an affirmative vote of two-thirds of the committee.)

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM Donna Mueller and Kelly Lovell represented IPERS.

ARC 9951B Proposed amendments to chs 2, 4, 7, 11, 12 and 14 pertain to benefits and vesting. Ms. Mueller stated that the amendments increase the contribution rates for regular and special service members, incorporate IRS requirements, and set forth the calculation of specific benefits.

Discussion focused on the actuarial soundness of the fund. In response to an inquiry from Sen. Kibbie, Ms. Mueller stated that the plan, including all three membership groups, is 79.9 percent fully funded; that the updated mortality tables have added to the unfunded liability; and that the return for the fiscal year was 19.9 percent. In response to an inquiry from Sen. Seymour, Ms. Mueller suggested that an incremental increase in contribution rates and changes in the benefit structure applied to new and current members will help to offset the unfunded liability. In response to an inquiry from Rep. Heaton, Ms. Mueller stated that Iowa should continue the drive toward full funding with a diversified portfolio that balances safety with risk, thereby affording downside protection. Sen. Kibbie pointed out that the increase in contribution rates by the regular membership will decrease the unfunded liability. Mr. Lovell expressed appreciation for the legislature’s reasonable approach to changes in benefits.

STATE PUBLIC DEFENDER Mark Smith represented the state public defender.

ARC 9938B No action on amendments to chs 1, 4, 10 and 12 concerning indigent defense fee claims and administration.

VETERANS AFFAIRS, IOWA DEPARTMENT OF Jodi Tymeson represented the department.

ARC 9939B No questions on the proposed amendments to chs 11 and 14, the proposed rescission of ch 12, and the proposed adoption of ch 17, all of which pertain to programs and funds for veterans.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.

ARC 9943B No action on ch 12, voter notifications. Ms. Reisetter reported that as noted in information sent to the committee at the request of Sen. Bartz, the rule has caused no unintended fiscal impact to counties.

ENVIRONMENTAL PROTECTION COMMISSION Catharine Fitzsimmons, Jim McGraw, Christine Paulson, Diane Moles and Brian Tormey represented the commission.

ARC 9914B No questions on the termination of proposed amendments to chs 22 and 33 and proposed ch 30 related to the scope, services and funding options for the air quality program. Mr. McGraw reported that the department continues to work with stakeholders regarding options for funding the air quality program and described a variety of department actions intended to provide regulatory relief and improve the permitting process.

ARC 9906B Amendments to 22.100, 33.1 and 33.3(1) pertain to carbon dioxide (CO₂) emissions. Ms. Paulson confirmed for Sen. Kibbie that these amendments would apply to cellulosic facilities, which, during the three-year deferral period, would not be required to count toward emissions limits the CO₂ emissions from the burning of biomass.

ARC 9915B No action on amendments to chs 40 to 43 and 83 regarding drinking water.

ARC 9919B No questions on proposed ch 111, annual reports of solid waste environmental management systems.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 9910B No action on amendments to 6.14 relating to patient counseling and instruction.

ARC 9911B No action on 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. Ms. Witkowski clarified that the rules pertain to hospitals for human and animal patients.

ARC 9912B No action on amendments to chs 8, 10, 21 and 23 pertaining to pharmacy practice.

ARC 9913B No action on ch 24, pharmacy Internet sites. In response to an inquiry from Rep. Heaton, Ms. Witkowski stated that an Internet pharmacy must display on its Web site the seal of the National Association of Boards of Pharmacy (NABP) to verify inspection and appropriate licensing by NABP.

ARC 9921B No questions on proposed amendments to 37.2, 37.4 and 37.9 concerning the prescription monitoring program.

RACING AND GAMING COMMISSION Jack Ketterer represented the commission.

ARC 9897B No action on 8.6, advance deposit wagering.

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

The next meeting was scheduled for Friday, February 10, 2012, at 8 a.m.

Adjourned The meeting was adjourned at 1:45 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill