

**MINUTES OF THE APRIL 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 Monday, April 9, 2012, at 8 a.m. 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, Rick Olson, and Guy Vander Linden were present. Representative Jo Oldson was not present.

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

Convened Sen. Horn convened the meeting at 8:05 a.m.

**Fiscal overview** Aaron Todd presented the LSA fiscal report.

**FAIR BOARD** Gary Slater and Stacy Jorgensen represented the board.

ARC 0049C Proposed amendments to chs 1 and 3 to 8 pertain to general practices and year-round activities related to the state fair. Ms. Jorgensen stated that the amendments update the rules and highlighted three substantive changes: the appeal procedures, policy related to employment of former fair board members, and the addition of new buildings subject to the rules.

Discussion focused on membership of and balance on the board, waivers, appeal procedures, gross sales at interim events, and the cost of copies. Sen. Bartz requested that the board consider granting greater leeway for minor violations in Item 14 and that the board provide the justification for increasing the percentage of gross sales charged at interim events in Item 50.

**EDUCATION DEPARTMENT** Jason Glass and Carol Greta represented the department.

ARC 0016C No action on amendments to ch 12 pertaining to accreditation standards for all Iowa school districts and accredited nonpublic schools. (This rule making was held over from March.) Ms. Greta stated that based on the observations of Rep. Pettengill, the reference to grade level for secondary credit has been changed in Item 4, and the components of financial literacy in Item 5 now mirror those in statute.

ARC 0014C No action on amendments to ch 97 concerning funding for regional academies that is generated by supplementary weighting. (This rule making was held over from March.) Discussion pertained to the purpose of, interest in and operation of regional academies by school districts. In response to an inquiry from Sen. Kibbie, Ms. Greta agreed to provide the committee with the total amount of supplementary weighting moneys in the education budget.

ARC 0012C No action on amendments to ch 98 relating to the uses of categorical funding, including the home school assistance program and the physical plant and equipment levy (PPEL). (This rule making was held over from March.) Ms. Greta clarified for Rep. Pettengill that whether the PPEL is a lower amount approved by the school board or a higher amount approved by the registered voters in a school district, the same requirements apply for use of funds and record keeping and for inclusion of a use statement.

ARC 0013C No action on ch 99, business procedures and deadlines. (This rule making was held over from March.)

ARC 0019C Review of proposed ch 63, funding for instructional programs for children residing in juvenile homes, was held over from March. Ms. Greta reported that given new issues raised by stakeholders, the department has determined that further study and discussion are needed. The board has terminated this rule making.

At the conclusion of the review, Ms. Findley emphasized the importance of the relationship of the agencies to the committee and thanked Mr. Glass and Ms. Greta for appearing at the meeting to present rules for which no department representative was available in March. In response, Mr. Glass expressed appreciation for the opportunity to speak and affirmed the department's commitment to the committee. Sens. Horn and Courtney also thanked Mr. Glass for appearing at the meeting.

**EDUCATIONAL EXAMINERS BOARD** George Maurer represented the board.

- ARC 0026C No action on amendments to chs 1, 3, 5, 10, 11, 13, 15, 17, 20, and 25 pertaining to cleanup of citations and outdated language.
- ARC 0025C No action on 11.35(2) and 25.3(1) concerning disqualifying criminal convictions.

**ENVIRONMENTAL PROTECTION COMMISSION** Christine Paulson, Dan Olson and Jon Tack represented the commission.

- ARC 0051C Proposed ch 17 pertains to compliance and enforcement procedures. Ms. Paulson clarified for Sen. Kibbie that the proposed compliance and enforcement procedures apply to all environmental program areas. In response to an inquiry from Sen. Courtney, Ms. Paulson stated that business, environmental and other entities may suggest concepts for rule makings and file petitions for rule making and that the department is open to suggestions from the public. Rep. Pettengill expressed appreciation for the proposed chapter and stated that the rules increase public awareness of the available remedies for environmental violations.

- ARC 0046C Proposed amendments to chs 68 and 69 pertain to commercial septic tank cleaners and private sewage disposal systems. In a summary of the amendments to both chapters, Mr. Olson highlighted the main change in ch 68: the option of land application as a means of wastewater disposal for small-scale, on-farm food processing operations, such as cheese-making, winery and other similar operations. Mr. Olson reported that 2012 legislation repeals the requirement that the land application be completed by a commercial septic tank cleaner and instead allows the on-farm food processor to land-apply the wastewater; the rules will be revised accordingly before adoption.

Discussion pertained to issues related to NPDES General Permit No. 4, determination of flow rates, minimum wall thickness for septic tanks, maintenance contracts, inspection intervals, and prevention of scams.

Sen. Kibbie expressed concern that the exemption from the requirement to upgrade systems on foreclosed properties creates problems for people who live in unsewered communities. Rep. Heaton expressed the opinion that in 69.14 there appears to be a built-in bias against and denial of viable technology related to aerobic treatment systems. Sen. Bartz observed that under Iowa law, a person may pump the person's own septic tank and requested that the department amend the rules to reflect the statute, to which Mr. Olson concurred.

- ARC 0041C No action on ch 111, annual reports of solid waste environmental management systems.

**NATURAL RESOURCES DEPARTMENT** Jon Tack represented the department.

- ARC 0045C No questions on the proposed amendment to 9.2(1) pertaining to groundwater hazard statements.

**PHARMACY BOARD** Susie Sher represented the board.

- ARC 0053C No questions on proposed amendments to ch 100 regarding the pseudoephedrine tracking system.

**PROFESSIONAL LICENSURE DIVISION** Sharon Dozier represented the division.

- ARC 0032C No action on amendments to 124.2 pertaining to discipline of hearing aid dispensers. In response to an inquiry from Sen. Kibbie, Rep. Pettengill stated that the House has sent a bill regarding deferred judgments to the state government committee in the Senate.

**PUBLIC HEALTH DEPARTMENT** Ken Sharp represented the department. Other interested parties included Andy Roberts on behalf of Plumbers & Steamfitters – Local Union 33, Tom Fey on behalf of the Iowa State Building and Construction Trades Council, Jamie Cashman on behalf of the Mechanical Contractors Association of Iowa, and Denny Marchand.

- ARC 0042C Proposed 28.1(5)“c” pertains to licensure fees required by the plumbing and mechanical systems board.

- ARC 0043C Proposed amendments to 29.7(2) relate to renewal of a lapsed license as stipulated by the plumbing and mechanical systems board.

## Public Health Department (continued)

Because ARCs 0042C and 0043C are directly related, Mr. Sharp addressed them concurrently. Mr. Sharp explained the initial licensure process (established in 2007), including the granting of initial licenses without examination to persons who had worked in the field for a minimum of five years at a trade level. He stated that in the past seven months, at a rate of 12 to 15 requests per month, the board has received requests for waivers of the examination required to reinstate a lapsed license from licensees who have missed the 60-day renewal deadline. To address the requests for waivers, Mr. Sharp continued, the board has examined the procedures of other licensure boards regarding lapsed licenses and has proposed to change the period permitted for a lapsed license without reexamination to be “more than 60 days but not more than 365 days.” According to Mr. Sharp, the board is not in agreement about the change to 365 days and continues to seek input from stakeholders and from the committee to reach a consensus. He added that public comment is evenly divided regarding the change to 365 days.

Discussion focused on the reasons for the lapses in licenses and requests for waivers, an appropriate number of days required for renewal, and the renewal notification process.

In response to an inquiry from Rep. Pettengill, Mr. Sharp stated that the main reason for requests for waivers has been missed deadlines for license renewal and that, though other professions and trades have different renewal and examination requirements, the basis for the current 60-day period for plumbing and mechanical license renewal has been industry tradition and standard of practice. In response to an inquiry from Rep. Olson, Mr. Sharp explained the need to find common ground on the issues, including the length of the renewal period, reexamination, and public health and safety. Mr. Sharp clarified the process for renewal of a license for Rep. Heaton. Mr. Johnson expressed support for the rules and thanked the board and the department for their effort in developing the rules.

Mr. Roberts expressed opposition to the rules and concern about the potential threat to public safety if a licensee allows a license to lapse for up to 365 days and is granted a renewed license without demonstrating competence through reexamination. Mr. Fey noted that licensing ensures the health of the public and stated his opposition to the rules. Mr. Cashman, in expressing opposition to the rules, stated that the change in the rules will erode licensing standards. Mr. Marchand expressed support for the 365-day renewal period.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou and Brian Young represented the department.

ARC 0038C Proposed amendments to chs 502 and 552 pertain to reciprocal licensing and the failure to pay fees required by the electrical examining board. In response to an inquiry from Rep. Olson, Mr. Young stated that Iowa currently has reciprocity with South Dakota, Nebraska and Minnesota, and Mr. Coveyou clarified that by statute, there is no reciprocity without an agreement between the participating states.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department.

ARC 0048C Proposed amendments to chs 40, 41 and 65 relate to determination of self-employment income for participants in the family investment and food assistance programs. Sen. Bartz expressed the opinion that self-employment income and the income of wage earners should be treated equally in determining eligibility for the food assistance program. In response, Ms. Freudenberg stated that the department will examine the issue.

ARC 0047C Proposed amendments to 75.1(39)“b” pertain to premiums and reopening of cases canceled for nonpayment for recipients of Medicaid for employed people with disabilities. Rep. Heaton clarified for Rep. Pettengill the basis for the monthly premium assessed for Medicaid calculated on an individual’s income as a percentage of the federal poverty level and, for Sen. Kibbie, the basis for proposed legislation to address differences in reimbursement to providers of medical care for recipients covered by both Medicaid and Medicare.

ARC 0039C No questions on proposed amendments to 76.2(1) regarding telephone scheduling of interviews for determination of Medicaid eligibility.

Human Services Department (continued)

- ARC 0029C No action on amendments to 79.1 pertaining to an increase in the dispensing fee for prescribed drugs.
- ARC 0028C No action on amendments to chs 79 and 85 relating to maximum reimbursement for care in non-state-owned psychiatric medical institutions for children.
- ARC 0030C No action on the amendment to 109.1 concerning child care centers. Rep. Pettengill thanked the department for consideration of the committee's comments before adopting the amendment.

**INSURANCE DIVISION** Tom Alger and Susan Voss represented the division. Other interested parties included Scott Sundstrom on behalf of the Federation of Iowa Insurers, Steve Morain on behalf of the Iowa Insurance Institute, Mike St. Clair on behalf of the Property and Casualty Insurers of America, and Merle Pederson on behalf of the Principal Financial Group.

**Special Review** A special review of proposed amendments to ch 20 relating to certificates of insurance for commercial lending transactions was requested (see ARC 0070C, IAB 4/4/12). Because the division intends that these amendments be Adopted and Filed Emergency After Notice, the amendments would be in effect before the May meeting. The special review ensures ample opportunity for review and revision.

Mr. Alger explained that the proposed amendments clarify what information an insurance company regulated by the division may provide its customer in connection with a commercial real estate transaction between the customer and a lender.

Mr. Sundstrom expressed support for the rules. Mr. Morain stated that the rules are a good start but noted additional definitions and stipulations that are needed. In response to Mr. Morain, Rep. Olson suggested that a definition of "primary collateral" is needed. Mr. St. Clair expressed concern about the national implications posed by the rules. Mr. Pederson expressed support for adoption of the rules and appreciation to Reps. Pettengill and Soderberg for their work on the rules.

Rep. Pettengill expressed concern that the changes suggested by Mr. Morain would affect the consensus reached by interested parties during the two-year development of the rules. In response, Mr. Morain stated the opinion that the issues can be resolved before adoption. Ms. Voss assured those present that the rules are not finalized, that a public hearing has yet to be held, and that additional comment will be considered before adoption of the rules.

**Committee business** The minutes of the March 12, 2012, meeting were approved.

The next meeting was scheduled for Tuesday, May 8, 2012, at 9 a.m.

Sen. Seymour requested an update on the lawsuit brought by the Sierra Club relating to the action by the committee placing a session delay on the portion of the rule related to lead shot in dove hunting. Ms. Findley reported that Gov. Branstad wishes to file an amicus brief in support of the role of the committee and added that Gov. Branstad supports the committee in the rules review process. Sen. Bartz inquired about the committee's securing legal representation, specifically regarding constitutional issues. In response to Sen. Bartz, Mr. Royce stated that he has learned indirectly that the attorney general will represent the committee.

Sen. Kibbie requested an update regarding the litigation associated with the rules promulgated by the Iowa capital investment board concerning verification of tax credits for investment in a fund of funds (see ARC 0076C, IAB 4/4/12). Ms. Findley reported that Regents Bank and the Bank of Oklahoma had filed a lawsuit and requested in an emergency hearing that a state court judge throw out the rules, which are intended to clarify the documentation required to claim a state tax credit that has never been claimed before. Ms. Findley reported that the district court judge ruled against the banks on all four points on the balancing test for securing a temporary injunction; however, at least two actions are still before the district court. She stated that transparency and proper process are important to ensure that the law and rules are fair to all involved. Ms. Findley stated that she and the board are available to provide the committee information regarding the rules.

Committee Business (continued)

Adjourned                    The meeting was adjourned at 10:59 a.m.

Respectfully submitted,

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Stephanie A. Hoff

APPROVED:

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Chair Wally Horn

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Vice Chair Dawn Pettengill