

**MINUTES OF THE AUGUST 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 Tuesday, August 14, 2012, at 9 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, 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 9:05 a.m.
- Fiscal overview** Aaron Todd presented the LSA fiscal report. Rep. Pettengill commended Mr. Todd's work.
- Kyrgyzstani delegation The committee hosted a delegation of five members of the parliament of Kyrgyzstan. Richard Johnson, LSA legal services division director, presented the delegation to the committee and noted the delegation's interest in administrative regulation. Sen. Kibbie, President of the Senate, welcomed the delegation and explained his role in the Senate, noted the importance of international relations to the Iowa legislature, and described the composition and purpose of the committee. Each member of the Kyrgyzstani delegation was introduced and presented with a commemorative gift by Sen. Kibbie. The Kyrgyzstani delegation presented gifts to Sen. Kibbie, Sen. Horn, and Rep. Pettengill. A question-and-answer session followed. Sen. Horn expressed appreciation to the delegation for choosing to visit Iowa.
- PUBLIC SAFETY DEPARTMENT** Roxann Ryan and Bruce Reeve represented the department. Other interested parties included Bill Sutton of Jefferson, John Fredrickson of Farnhamville, Ben Hollingshead of Ogden, Mark Buskohl of Grundy Center, and Darcy Maulsby of Lake City.
- ARC 0218C No action on ch 93, identification cards for former peace officers of the department.
- ARC 0219C Amendments to chs 95, 150, 156 and 157 pertain to operations related to the criminalistics laboratory. In response to an inquiry from Rep. Pettengill, Mr. Reeve explained the acquisition and storage of DNA profiles in the FBI's Combined DNA Index System (CODIS) database, which is a secure, searchable database that supports the state laboratory and ensures the privacy of records. He also stated that in Iowa, DNA samples are taken at the time of conviction and are maintained indefinitely in a secure area of the laboratory. Mr. Reeve verified for Rep. Heaton that the storage of DNA samples in a secure location within the laboratory prevents the samples from being compromised.
- Special Review Sen. Kibbie requested a special review of rules 661—551.2(103) and 661—552.1(103) pertaining to electrician and electrical contractor licensing and electrical inspections and of the department's order of June 18, 2012, terminating mandatory electrical inspections of farm facilities effective July 1, 2012. Sen. Kibbie stated that his concern is the department's decision not to enforce the rules requiring electrical inspections of farm facilities. Questioning the reason for the department's decision, Sen. Kibbie noted that the statute still stands after two years, though repeal has been sought to no avail and legislative compromises have been proposed without any further action. He pointed out that the program is self-funded and thus, the department did not cease enforcement because of budgetary constraints. In addition, he stated that no further inquiry about or action on the rules has come before the committee since the governor imposed an objection on the rules on January 23, 2012. Sen. Kibbie cited press reports stating that the number of fires has been reduced since inspections began. At the same time, he questioned the press reports that cited an average cost of \$500 per inspection, noting that the inspection of a shop building on his farm cost less than \$50. He reiterated that the department's decision not to enforce the rules is out of the ordinary and disturbing and requested that the department explain the action.

Public Safety Department (continued)

In response to Sen. Kibbie's inquiry, Ms. Ryan addressed the issues of statutory authority, the status of inspections, and the reported cost of inspections. Noting that litigation is pending, Ms. Ryan stated that the statute is not clear regarding the authority for the electrical inspection of farm facilities. She noted that Iowa Code section 103.22 sets forth the inapplicability of Iowa Code chapter 103 regarding the licensing of employees of farms and that Iowa Code section 103.23 does not include farms under the inspection and enforcement provisions. She stated that the electrical installations of all residential, commercial and industrial facilities continue to be inspected and that the focus of inspections is on dwellings, statistically where fires are most likely to occur and people are most likely to be injured. According to Ms. Ryan, history shows that inspections of electrical installations would have had no impact on farm fatalities or injuries and that no deaths due to fires have been connected with any type of building except dwellings or commercial or industrial facilities, which are subject to inspection. She added that since 1994, the only electrical-related fatalities have been accidental electrocutions. Addressing inaccurate costs of electrical inspections from press reports, Ms. Ryan stated that \$25 is the most common cost. Ms. Ryan pointed out that the director's order states that the department will not mandate inspections of electrical installations on farms but will continue to perform voluntary inspections.

Discussion pertained to the classification of farms as commercial, to electrical inspections, and to statistics regarding fires on farms. In response to an inquiry from Sen. Seymour, Ms. Ryan stated that inspections of new electrical installations are mandated when a building is by definition residential, commercial or industrial. Sen. Kibbie stated that he understood that since the November 24, 2009, issuance of an order from the attorney general to the electrical examining board, farm facilities are classified as commercial and subject to electrical inspections. Sen. Courtney concurred with Sen. Kibbie and stated that the issue of inspections of electrical installations in farm facilities should move in a legislative direction. Sen. Bartz asserted that the question is whether the board has the statutory authority to define farms as commercial and that the statute exempts farm facilities from inspections of electrical installations but requires inspections of electrical installations of commercial, industrial and residential structures. Sen. Bartz commended the decision by the department not to exceed its statutory authority. Sen. Bartz also stated that the order from the attorney general appears to be guidance but is not an official opinion, and because of the potential effect on property taxes, he asserted that the guidance should not be used as the basis for the reclassification of all agricultural property as commercial. Rep. Heaton concurred with the department order and stated the opinion that it was never the intent of the legislature to classify agricultural property as commercial and that an agency is responsible only for implementing statutes as passed by the legislature. In response to an inquiry from Sen. Courtney, Ms. Ryan stated that based on statistics from the fire marshal's office, a spike of 35 percent in the number of fire deaths and a drop by that same percentage as reported in the press is an anomaly and is not incorrect but is misleading because over time, the number of fire deaths has decreased.

Mr. Sutton questioned the effectiveness of the inspections. Mr. Fredrickson, citing an inspection cost of \$500 per visit, asserted that the inspections are a burden on farmers. Mr. Hollingshead stated that farmers already hire professional electricians for electrical work. Mr. Buskohl stated that his electrical work is handled by a longtime professional to ensure safety. Ms. Maulsby stated that the safety of her family's farm is ensured by use of a professional electrician and REC staff and that the board's rule is an example of over-burdensome regulation. Each interested party expressed support for the department's order and the governor's objection.

Ms. Findley expressed appreciation for the special review and noted that the Kyrgyzstani delegation was able to observe the checks and balances at work among the branches of Iowa government. She also thanked the interested parties who provided comments regarding the governor's objection and the department's order.

TRANSPORTATION DEPARTMENT Brooks Glasnapp, Steve Gent and Mark Lowe represented the department.

ARC 0187C

Chs 123 and 124 and a coordinating amendment to 25.2(8) pertain to rest area and highway helper sponsorship programs and to competition with private enterprise.

Mr. Glasnapp, noting that advertising is prohibited on a federal right-of-way, stated that the Federal Highway Administration issued a new policy order to allow rest areas to display acknowledgment signs that identify the sponsor in exchange for a monetary contribution. Mr. Glasnapp stated that through these sponsorship programs, the department will generate revenue to defray the annual operating costs of rest areas (\$3.7 million) and the highway helper fleet (\$400,000). Mr. Glasnapp described the signage, the upfront cost of installation, and the projected bids and explained the general bidding and sponsorship selection processes. Discussion pertained to the purpose, promotion and execution of the programs.

Sen. Courtney and Rep. Pettengill encouraged the department to generate sufficient revenue to make the programs worthwhile, specifically, more than the proposed \$2,500 per year minimum bid for a three-year sponsorship. Rep. Heaton requested that the department develop professional promotion of the programs to potential sponsors. Sen. Seymour stated that if the programs are more successful than anticipated, the rules may need to be revisited. In response, Mr. Glasnapp stated that the department estimates revenue of \$100,000 to \$200,000 per year, a projection based only on comparisons with billboard rentals. Mr. Gent added that the department anticipates higher bids in high-traffic areas, near casinos, and in urban areas. Regarding promotion, Mr. Glasnapp stated that the department’s media and marketing staff will develop a promotional package, and Mr. Gent added that the department expects to issue an RFP in September and have signs installed by November.

Rep. Olson expressed concern that for the sake of generating revenue, the state could potentially sell out by permitting the sponsor to advertise (e.g., company logo on department worker attire) and that the possibility exists for approval of inappropriate sponsors (e.g., the sponsor’s business is adult in nature). Sen. Kibbie anticipated complaints of unfair competition from second-highest bidders and subsequent requests from these bidders for statutory changes. Sen. Bartz expressed additional concerns, including the criteria for the approval of sponsors, the protection of the public interest, and sponsor assurance of compliance with all applicable laws. In response, Mr. Glasnapp and Mr. Gent stated that many of the committee members’ concerns had been raised during the development of the rules. Mr. Gent stated that the sign’s federal size limitation of eight square feet is intended to keep the focus of the program on the rest area and the acknowledgment sign by the sponsor, not on advertising, which is prohibited. In addition, Mr. Glasnapp cited ch 25 of the department’s rules regarding the prohibition on advertising and stated that the rules require that the department decline a proposal that may have a detrimental effect on the program. Mr. Gent stated that the attorney general would advise the department in regard to approval of sponsors, the protection of the public interest, and sponsor compliance with applicable laws. Mr. Glasnapp and Mr. Gent indicated that the department desires to comply with statute and to consider carefully the committee members’ concerns and suggestions.

Discussion followed regarding the committee’s options for action on the rules. Rep. Heaton encouraged the department to reexamine the rules in light of committee members’ concerns, including sponsor approval, the bidding process, and the appropriateness of sponsors.

Motion to delay

Rep. Heaton moved a 70-day delay on 25.2(8) and chs 123 and 124 (ARC 0187C).

During discussion, Sen. Bartz suggested that to protect the public interest, the department might examine its policy regarding the approval of vanity license plates in reexamining the sponsor approval process. Mr. Gent assured Sen. Bartz that the public had the opportunity to comment on the rules at the commission hearing. Sen. Seymour proposed that the department be allowed to implement the programs and then determine whether to curtail, change, eliminate or promote them.

Motion carried

On a roll call vote of 8 to 2, the motion carried.

Transportation Department (continued)

ARC 0201C Proposed amendments to chs 601, 605, 625 and 630 concern issuance of driver's licenses and identification cards and REAL ID. Mr. Lowe stated that the amendments are intended to establish Iowa's compliance with the federal REAL ID Act by ensuring that Iowa citizens and residents who seek access to federal facilities and commercial aircraft may obtain Iowa-issued driver's licenses or identification cards accepted by the controlling federal authority. In response to an inquiry from Sen. Bartz, Mr. Lowe stated that approximately one-half of states are in the process of complying with the Act.

ALCOHOLIC BEVERAGES DIVISION Stephanie Strauss and Heather Schaffer represented the division.

ARC 0204C No action on 4.5, mixed drinks or cocktails not for immediate consumption. Rep. Heaton expressed appreciation to the division for cooperating with industry in the development of the rule.

ENVIRONMENTAL PROTECTION COMMISSION Dan Olson represented the commission.

ARC 0208C No action on amendments to chs 68 and 69 pertaining to commercial septic tank cleaners and private sewage disposal systems. In response to an inquiry from Sen. Kibbie, Mr. Olson stated that these amendments do not affect unsewered communities.

NATURAL RESOURCE COMMISSION Sherry Arntzen, Tamara Mullen and Chuck Gipp, department director, represented the commission.

ARC 0190C No questions on the proposed rescission of ch 62 and amendments to ch 61 pertaining to state parks and recreation areas and state forest camping.

ARC 0225C The proposed amendments to ch 63 relate to gatherings with keg beer. In response to an inquiry from Rep. Vander Linden, Ms. Arntzen stated that the department will address the definition of "keg" and consider whether or not to continue the keg beer policy given that no permit is required of persons who bring cases of beer into state parks and recreation areas. In response to an inquiry from Sen. Kibbie, Ms. Arntzen stated that information about rule makings is provided to the public through a variety of means including press releases, the department's website, e-mail to camper mailing lists, and local newspapers.

ARC 0189C Amendments to ch 106 concern deer hunting by residents. In response to an inquiry from Rep. Vander Linden, Ms. Mullen stated that the reductions in deer quotas reflect a decrease in the deer population. Mr. Gipp added that the rule attempts to set reductions in deer quotas at acceptable levels, that the number of deer-motor vehicle collisions is down, and that depredation programs are available for management of higher deer populations in urban areas.

ARC 0188C Amendments to 108.7(3) pertain to quotas for bobcat and river otter trapping. In response to an inquiry from Rep. Pettengill, Mr. Gipp stated that the bobcat population is located in the southern two tiers of the state.

EDUCATIONAL EXAMINERS BOARD Beth Myers and Duane Magee represented the board.

ARC 0236C Proposed amendments to 13.26(5) relate to the addition of verification of highly qualified teacher status to the elementary endorsement for applicants from non-Iowa institutions. Ms. Myers clarified for Rep. Pettengill that these corrective amendments add to the rule verification of highly qualified teacher status that was inadvertently omitted from a previous rule making.

ARC 0235C No questions on the proposed amendment to 13.28(12) regarding the grade nine mathematics endorsement.

ARC 0229C Proposed amendments to 14.2 concern the update of terminology from "mental retardation" to "intellectual disability" in this special education rule. Ms. Myers confirmed for Rep. Olson that no practitioner's license or endorsement would need to be changed as a result of the update in terminology.

MEDICINE BOARD Mark Bowden represented the board.

ARC 0215C No action on amendments to ch 9, permanent physician licensure.

ARC 0216C No action on amendments to ch 10, resident, special and temporary physician licensure.

Medicine Board (continued)

ARC 0217C No action on amendments to ch 11, continuing education and training requirements. Rep. Heaton expressed appreciation for the board's 2013 regulatory plan distributed by Mr. Bowden. In response to an inquiry from Rep. Heaton, Mr. Bowden addressed the issue of whether the rules implement statute and elaborated on the descriptions of action in the regulatory plan, including telemedicine, physician assistant supervision and the role of administrative law judges in contested case proceedings.

PROFESSIONAL LICENSURE DIVISION Pierce Wilson, Judy Manning and Tony Alden represented the division.

ARC 0211C No action on amendments to 44.3(2)“a”(1) regarding continuing education for chiropractic physicians.

ARC 0223C No action on amendments to chs 206 and 209 pertaining to occupational therapists and occupational therapy assistants.

ARC 0221C No questions on proposed amendments to chs 262 and 265 concerning continuing education for respiratory care practitioners and setup and delivery of equipment related to the practice of respiratory care.

ARC 0228C Proposed 361.2(1)“d” relates to examinations for licensure of sign language interpreters and transliterators. Discussion pertained to the availability of interpreters and to licensure examinations. In response to inquiries from Sen. Seymour and Rep. Heaton, Mr. Wilson stated that interpreters are available through private services statewide and that these services also use electronic means such as Skype. In response to an inquiry from Rep. Pettengill, Mr. Wilson stated that all examinations are given through national testing services and that none of the examinations are based on 100 percent Exact Signed English.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Allan Lynch represented the department.

ARC 0226C No questions on proposed amendments to ch 76, maternal and child health program.

ARC 0227C Proposed amendments to ch 155 pertain to tuberculosis screening of staff and residents of substance abuse and problem gambling treatment programs. In response to an inquiry from Rep. Heaton, Mr. Lynch stated that the TB skin test is still used and noted that a blood test is more expensive but superior to the skin test. Mr. Lynch added that a hospital or facility may choose either test. In response to an inquiry from Rep. Pettengill, Mr. Lynch stated that in Iowa, there are approximately 45 TB cases and 2,000 TB infections each year.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 0155C No questions on the proposed amendment to 6.9(3) pertaining to transfer of prescriptions.

ARC 0172C Proposed amendments to ch 11 relate to drugs in emergency medical programs. In response to an inquiry from Rep. Olson, Ms. Witkowski stated that the amendments clarify the rules related to subjects such as record keeping and inspections in medical director-based programs, and she clarified the definitions of “pharmacist-intern” and “service director.”

ARC 0153C No action on amendments to ch 100 regarding the pseudoephedrine tracking system.

REGENTS BOARD Marcia Brunson and Diana Gonzalez represented the board.

ARC 0220C Proposed amendments to ch 2 pertain to admission requirements for state universities.

Discussion pertained to the removal from the rules of the admission requirements specific to each college and to student misconduct.

In response to an inquiry from Rep. Heaton, Ms. Gonzalez stated that removal of admission requirements specific to each college within a university is intended to provide more flexibility to the colleges. She explained that each college reviews requirements periodically and makes changes as appropriate and that the admission requirements will be made available by reference in the rules to the respective university catalogs and also online and in brochures. Rep. Olson also questioned the removal of requirements from the rules and expressed the opinion that the committee may lose oversight regarding the applicability of the rules if admission requirements are omitted from the rules.

Regents Board (continued)

Rep. Vander Linden added that removal of the specific admission requirements from the rules may afford universities latitude that the committee may or may not desire to confer and questioned the inclusion of the requirements in the rules if the universities, not the board, determine the requirements.

Ms. Gonzalez explained that a student's prior misconduct may disqualify the student from admission. Rep. Olson suggested that the stipulations regarding student misconduct be tailored to address more specifically the disclosure of criminal history. To prevent any discriminatory application of the student misconduct policy, Sen. Bartz requested that the board consider requiring every student to disclose information about prior academic disciplinary and criminal history information, define "significant safety risk" and "serious disruption to the academic environment," and require dismissal of any student for failure to disclose prior academic disciplinary and criminal history information.

Ms. Brunson and Ms. Gonzalez agreed to convey the committee's concerns to the board. Ms. Gonzalez agreed to provide the committee with information about the effect of President Obama's executive order on the admission of prospective students who are undocumented and about the history of the inclusion of admissions requirements in board rules.

Motion Rep. Vander Linden moved that ARC 0220C be placed on the September agenda for further review.

Motion carried On a voice vote of 8 to 0, the motion carried.

REVENUE DEPARTMENT Jim McNulty and Victoria Daniels represented the department.

ARC 0232C No questions on the proposed rule making pertaining to individual income, corporation income, and franchise tax.

ARC 0199C Proposed ch 223 relates to sourcing of taxable services. Ms. Daniels explained that sourcing refers to which state or jurisdiction should receive the sales or use tax on services performed on tangible personal property and on personal care services.

Discussion pertained to enforcement of the rules. In response to an inquiry from Rep. Pettengill, Ms. Daniels stated that enforcement presents challenges and that the process needs to be cost-effective for the department and be the least burdensome and least intrusive process for taxpayers. Ms. Daniels, in response to inquiries from Reps. Vander Linden and Olson, stated that the rules may appear unenforceable but are a necessary part of the state's compliance with the Streamlined Sales and Use Tax governing board agreement. She also stated that education of the public is the foundation of enforcement and noted that in 2012, the state netted \$14 million in taxes that would not otherwise have been collected.

FAIR BOARD David Dorff, assistant attorney general, represented the board.

ARC 0163C No action on amendments to chs 1 and 3 to 8 pertaining to general practices and year-round activities related to the state fair.

At the July meeting, the committee requested that the board and Mr. Dorff make a presentation at the August meeting to determine whether or not to remove the objection to rule 371—4.8(173), which was imposed by the committee on August 1, 1981. In a procedural history, Mr. Dorff explained that the committee retained the objection at its meeting held May 9, 1995, and referred it to the General Assembly, though according to Mr. Dorff, there is no record of that referral. Mr. Dorff added that the statute was amended in 1987 to allow the board's placement of liens, and as a result of the statutory change, he expressed the opinion that the objection is no longer appropriate.

Motion Sen. Courtney moved that the objection to rule 371—4.8(173) be lifted.

Motion carried On a voice vote of 8 to 0, the motion carried.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Vermeer represented the department. Other interested parties included Paula Feltner of the Iowa Speech-Language Hearing Association, Lynhon Stout of the Iowa Foster and Adoptive Parents Association, and Susan Salmon of Iowa KidsNet.

Human Services Department (continued)

- ARC 0192C No action on amendments to ch 75 regarding the annual update of statewide average costs and charges for nursing facility and institutional care services.
- ARC 0198C No action on amendments to chs 77 to 79 pertaining to health home services for Medicaid members with chronic health conditions. In response to an inquiry from Sen. Bartz, Ms. Freudenberg agreed to provide the committee with the rationale for using a BMI of 25 in 78.53(2)“f”(2) and whether this number indicates obesity.
- ARC 0191C No action on amendments to chs 77 to 79, 82, 83 and 88 regarding payment of nonfederal share of medical assistance costs; waiver services cap and reimbursement rates; and covered mental health services. Ms. Vermeer agreed to provide Rep. Heaton with information about the funding of the elderly waiver, specifically, whether the cap was raised.
- ARC 0231C No questions on proposed amendments to chs 77 to 79 pertaining to the enrollment of public health agencies as a new Medicaid provider type.
- ARC 0203C No questions on amendments to chs 77 to 79 relating to the enrollment of speech-language pathologists as a new Medicaid provider type. Ms. Feltner expressed appreciation to the department for drafting language to include as a provider the Wendell Johnson Speech and Hearing Clinic at the University of Iowa.
- ARC 0194C No action on 78.3 and 79.1(5)“g” regarding Medicaid reimbursement methodology for readmission for inpatient hospital care.
- ARC 0196C No action on amendments to 79.1 concerning Medicaid reimbursement rates for physician-administered drugs.
- ARC 0200C Amendments to 92.8(9) relate to reimbursement from IowaCare funding to Broadlawns Medical Center for certain services to IowaCare members. Ms. Vermeer clarified for Rep. Pettengill the budgeting/funding process for the IowaCare program and noted that the emergency rule making allows for the availability of funds effective July 1, 2012. In response to an inquiry from Rep. Heaton, Ms. Vermeer stated that the tax on durable medical equipment under the Affordable Care Act should not cause an increase in Medicaid costs.
- ARC 0202C Proposed amendments to chs 112 and 117 pertain to the two-year foster family home license and foster parent training. Ms. Stout and Ms. Salmon expressed support for the amendments.
- ARC 0206C Proposed amendments to ch 113 pertain to bedrooms and fire safety related to foster family home licensure. Ms. Stout and Ms. Salmon expressed support for the amendments.
- Committee business** Sen. Kibbie had requested that at the August meeting, a special review of 721—21.100(39A,47) and 721—28.5(47,48A) (ARC 0272C, IAB 8/22/12) be held in regard to complaints concerning violations of Iowa Code chapters 39 through 53 and noncitizen registered voter identification and removal process. The review was postponed until the September meeting.
- The committee briefly discussed the issue of voting and eligibility for voting. Regarding the emergency rule-making action by the secretary of state, Sen. Kibbie stated the opinion that the rule making is intended to deter voting and that the issue of voter eligibility should have been addressed through legislative action rather than an executive branch action. Rep. Pettengill stated that according to the secretary of state, emergency rule making was used to allow for timely voter challenges and that more than 1000 ineligible voters have been identified. Sen. Seymour expressed the opinion that proper identification of voters, much like identification required for other actions such as cashing a check, is acceptable. In response, Sen. Courtney stated that unlike identification required for other actions, voting is a right guaranteed by the U.S. Constitution. Sen. Kibbie requested that at the September meeting, the secretary of state and staff explain how the number of ineligible voters is determined and how the search for ineligible voters is being conducted.

Committee Business (continued)

The minutes of the July 10, 2012, meeting were approved.

The next meeting was scheduled for Tuesday, September 11, 2012, at 9 a.m.

Adjourned

The meeting was adjourned at 3:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill