

**MINUTES OF THE NOVEMBER 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, November 13, 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; Larry Johnson, Deputy Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Horn convened the meeting at 9:05 a.m.

Fiscal overview Kent Ohms presented the LSA fiscal report.

REVENUE DEPARTMENT Jim McNulty and Victoria Daniels represented the department.

ARC 0398C No action on amendments to chs 8, 40, 42, 52, 53, 58, and 89 pertaining to administration and to individual, corporation, franchise, and fiduciary income tax.

ARC 0414C No action on 12.19 relating to sales and use tax refunds for eligible businesses.

ARC 0399C No action on amendments to 68.2(2) concerning excise tax rates on motor fuel.

ARC 0400C No action on amendments to 71.1 pertaining to housing development property and assessment of platted lots. In response to an inquiry from Rep. Vander Linden, Ms. Daniels stated that she will contact the property tax division administrator to address the property tax assessment of Rep. Vander Linden's constituent. At Rep. Heaton's request, Ms. Daniels will research the 2011 standings bill and provide a report to the committee on the legislation, which did not originate from the department but was the impetus for the amendments.

ARC 0407C Proposed amendments to ch 224 pertain to telecommunications sourcing, prepaid wireless E911 surcharges, and the central office equipment exemption. In response to a request from Sen. Kibbie, Ms. Daniels agreed to provide the committee with a summary of public comment. In response to an inquiry from Sen. Bartz, Ms. Daniels stated that the fiscal impact of the state sales tax exemption in 224.9 would have been addressed in 2006 and that the department will continue to accept public comment.

ARC 0403C No action on 225.7 pertaining to certain inputs used in taxable vehicle wash and wax services. Rep. Heaton suggested that in the interest of fairness to businesses, primary use and secondary use by stand-alone and secondary vehicle wash and wax facilities be defined. Sen. Bartz suggested that a uniform standard for all facilities be applied. Rep. Olson inquired about the type of documentation used to prove primary or secondary use and to whom the documentation is to be provided. In response to members' concerns, Ms. Daniels stated that with input from the industry, the rule might be revised to address these issues.

Motion to refer Sen. Bartz moved a general referral of ARC 0403C (225.7).

Motion carried On a voice vote of 10 to 0, the motion carried.

ARC 0402C No action on 235.2 regarding the sanctioned baseball and softball tournament facility and movie site.

ARC 0415C No action on amendments to 240.7 pertaining to effective dates of taxation rate increases or decreases when certain services are furnished.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department.

ARC 0401C Amendments to chs 50 to 54, 56 to 61, and 63 pertain to the human resources enterprise of the department. Mr. Hunter explained that this rule making is part of a comprehensive review of existing department rules and that amendments revise definitions, eliminate unnecessary terms and make various grammatical and technical changes. Mr. Hunter also noted changes made since the Notice of Intended Action was published and stated that no public comments had been received.

Administrative Services Department (continued)

Committee members expressed concern that amendments in Items 44 to 46 change policy and thus are more substantive than technical. The language in these items provides that an employee with more retention points who receives a rating of less than “meets expectations” on the most recent performance review or has a disciplinary suspension or demotion within the last 12 months may be subject to a reduction in force before an employee with fewer retention points is subject to a reduction in force. Members also expressed concerns regarding the phrase “meets expectations,” which is not defined in the rule, and found the description of the performance review process and of the method for scoring performance reviews to be unclear. There was concern that despite an employee’s positive performance reviews, as evidenced by a cumulative record of retention points, a supervisor could remove an employee based only on the most recent performance review. In addition, members stated that the retention point system is intended to be a form of job protection and that these changes would undermine that protection, possibly to the point of nullifying previous performance reviews and abolishing the retention point system through rule making. Members also suggested that the absence of public comment may have resulted because the change is a small part of a larger, more technical rule making and questioned whether the inclusion of a change in policy in a largely technical rule making is appropriate. Other committee members expressed support for the amendments, which would enable a supervisor to retain during a reduction in force the most effective employees in lieu of being compelled to retain less effective ones. Members also emphasized that the amendments would apply to new and current employees, that the policy does not change the current grievance process related to performance evaluations, that no public comments were received, and that the essential functions of state government would be maintained.

Mr. Hunter explained that the purpose for the change in policy regarding the use of retention points during a reduction in force is to employ the best people. He stated that an employee with the greater number of retention points would be protected because “meets expectations” is based on a predetermined point system used for performance reviews, that removal is not summarily determined by the employee’s immediate supervisor, and that performance reviews are subject to a grievance process before the public employment relations board (PERB). Mr. Hunter emphasized that this policy would be implemented only in a reduction in force and even then is not mandatory because approval of the director of the department is required.

Motion to delay Sen. Kibbie moved a session delay on Items 44, 45 and 46 (60.3(3), 60.3(4), 60.3(5) “b” and “c”).

Motion failed On a roll call vote of 5 to 5, the motion failed.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 0396C No action on the rescission of ch 16, Washington, D.C., internship grant program. In response to an inquiry from Sen. Bartz, Mr. Royce stated that the commission could adopt new rules should the legislature appropriate funds for the program in the future.

ARC 0397C No action on ch 23, skilled workforce shortage tuition grant program.

ARC 0394C No action on amendments to 27.1 pertaining to the Iowa grant program.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks and Tim Whipple represented the authority.

ARC 0404C No questions on proposed amendments to ch 20 relating to the accelerated career education (ACE) program.

ARC 0408C No questions on proposed amendments to chs 101, 103 to 105, 107, 109, 111 and 114; the adoption of chs 102, 106, and 108; and the rescission of ch 112 concerning innovation and commercialization activities.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

ARC 0427C No action on amendments to ch 12 pertaining to the 2013 qualified allocation plan (QAP) for the low-income housing tax credit (LIHTC) program.

Iowa Finance Authority (continued)

ARC 0430C No action on amendments to 15.4 regarding the posting of solicitations for formal bids and requests for proposals (RFP) on the Internet in lieu of advertising in a newspaper. Discussion pertained to the effect of Internet-only posting of bids and RFPs. Mr. Thompson agreed to propose to the authority Rep. Olson's suggestion of a one-time, one-cost print notification of the change to Internet-only bids and RFPs.

ARC 0431C No action on the amendment to 26.5(2)"c" concerning the annual loan servicing fee related to the water pollution control and drinking water state revolving funds.

PAROLE BOARD Jason Carlstrom, chair, represented the board. Other interested parties included Karl Schilling on behalf of the Iowa Organization for Victim Assistance and Larry Wohlgemuth.

ARC 0421C The amendments to ch 8 pertain to parole and work release decisions. Under the current rules, an inmate with a risk assessment score of one through six needs three affirmative votes for release; with a score of seven or eight, four affirmative votes; and with a score of nine, five affirmative votes. Mr. Carlstrom explained that, of the two full-time members and three part-time members, only three are present and vote at any board meeting. Thus, when a decision regarding release of an inmate requires more than three votes, a delay occurs until two other members vote based on notes from the meeting. Mr. Carlstrom stated that the purpose of the amendments is to remove the four- and five-vote requirements that are tied to a single risk assessment tool and to change to three the number of votes required for the release of any individual inmate. He also noted that any vote must be unanimous. The score from a single risk assessment tool will no longer be tied to the number of affirmative votes needed for parole or work release. Mr. Carlstrom explained that the board will use several risk assessment tools, including a newly developed board of parole risk assessment tool that incorporates evaluative language rather than numerical scores. Mr. Carlstrom stated that these up-to-date risk assessment tools will enable the board to preserve public safety and to be more productive and efficient.

Committee members expressed concern about the procedures of the parole board and the risk assessment tools, specifically, that changing the voting requirements will make parole and work release easier to obtain and impair public safety by allowing release of potentially dangerous inmates. Other members expressed support for the use of several risk assessment tools to determine eligibility for release in conjunction with the unanimous three-vote decision by the board to ensure public safety and the rehabilitation of inmates who are released.

In response, Mr. Carlstrom stated that the board's goal is to enhance and protect public safety and that the risk assessment tools will provide a more thorough review and greater security to ensure that an inmate is an appropriate candidate for release. He stated that a recommendation for release must originate from the department of corrections and added that the board approves only about 1 percent of approximately 15,000 annual requests for release.

Sen. Kibbie suggested that the legislature review mandatory sentences, and Sen. Bartz requested that the legislature review the number of members and the procedures of the parole board. In addition, Sen. Bartz suggested that the risk assessment tools be made available to the public for review.

Mr. Schilling stated that public safety should override convenience, monetary savings, and efficiency afforded by the change in policy. Mr. Wohlgemuth stated that the purpose for the amendments appears to be a reduction in the prison population for budgetary reasons and suggested that legislation be pursued to reduce the prison population by the release of inmates who pose the lowest threat to society.

PROFESSIONAL LICENSURE DIVISION Susan Reynolds and Pierce Wilson represented the division. Other interested parties included Lois Leytem on behalf of the Iowa Cosmetology Schools Association.

ARC 0437C Proposed amendments to ch 61 pertain to cosmetology. The amendments establish rules to allow a cosmetology school to teach a single-course curriculum and prescribe minimum physical and equipment requirements for schools. Schools that teach only one course of study for nail technology, esthetics or electrology must have a minimum floor space of 1,000 square feet, and when the enrollment of the school exceeds 10 students, additional floor space of 30 square feet will be required for each additional student.

Professional Licensure Division (continued)

Discussion pertained to the square footage requirements for cosmetology schools (3,000 square feet) and for schools with one course of study (1,000 square feet). Sen. Bartz questioned the rationale for and accommodation of the 30 square feet for each additional student. Ms. Reynolds clarified for Rep. Olson that 3,000 square feet is all-inclusive, to which, in response, Rep. Olson suggested further review of square footage requirements to clarify the use of space allocated for instruction, offices, restrooms, and laundry rooms.

Ms. Leytem expressed opposition to the decrease in square footage for schools with one course of study. She expressed concern that the change is not in the best interest or safety of students and suggested that oversight of the increasing number of small schools would require more staff and a larger budget.

ARC 0405C No action on 361.2(1)“d” regarding examinations for licensure of sign language interpreters and transliterators.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Machir represented the board.

ARC 0395C No action on the amendment to 1.8 concerning fees for neutrals. Ms. Machir stated that \$1,200 per day is the maximum compensation, payment of which is split between the employer and the union; that no comments were received from stakeholders; and that the increase is necessary to retain qualified neutrals.

Discussion pertained to the maximum rate, rates in contiguous states, and qualifications of neutrals. Ms. Machir stated that some neutrals have indicated they will charge the current rate while others have indicated that they will increase their rates at varying amounts. Ms. Machir explained that no contiguous states have maximum rates, which has resulted in Iowa’s rates being 25 to 50 percent below the regional market rate. Ms. Machir stated that qualifications include educational requirements, relevant knowledge and skills, a minimum number of years of experience or decisions or awards issued, and the submission of a writing sample.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.

ARC 0423C Proposed ch 7 pertains to voter registration mailing address maintenance. In response to an inquiry from Sen. Horn, Ms. Reisetter clarified the coexistence of a person’s legal (residential) address and mailing address.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department. Other interested parties included Matt Eide on behalf of Leading Age Iowa.

ARC 0420C No action on amendments to 9.7(1)“b” pertaining to forms to obtain client information for public assistance programs. Ms. Freudenberg agreed to research for Sen. Bartz the reason for the change in the name of Form 470-1631 from “Financial Institution” to “Bank or Credit Union.”

ARC 0432C No questions on proposed amendments to ch 75 regarding income attributable to social security cost-of-living adjustments related to Medicaid eligibility.

ARC 0434C No questions on proposed amendments to ch 77 concerning Iowa Medicaid enterprise compliance with the Affordable Care Act. Ms. Freudenberg stated that the department will address the concerns that providers have already expressed. Mr. Eide distributed to the committee a summary of concerns and stated that he would work with the department to reach consensus.

ARC 0436C Proposed amendments to ch 79 pertain to rate caps and units of service related to home- and community-based habilitation services. Ms. Freudenberg clarified for Rep. Heaton the rationale for the change in hours of direct service from 14 hours to more than 8 hours. At the request of Sen. Bartz, Ms. Freudenberg will provide the committee with information to explain whether the savings cited in the fiscal impact statement are attributable to payment of the daily rate cap based on 8 hours of service.

ARC 0433C No questions on proposed amendments to ch 82 pertaining to the updating of terminology to “intellectual disability.”

ARC 0435C No questions on proposed amendments to ch 88 regarding consent for a state fair hearing related to managed care.

ARC 0418C No action on 109.6(6)“g”(4) and 110.7(3)“c”(4) pertaining to exemption from reevaluation of employees’ record checks related to child care centers and child development homes.

Human Services Department (continued)

- ARC 0419C No action on amendments to 156.6 relating to the basic rate of maintenance for foster family care.
- ARC 0417C No action on amendments to ch 202 pertaining to supervised apartment living and eligibility for the independent living program.
- Special Review In compliance with 2012 Iowa Acts, Senate File 2336, section 18, amendments to chs 51 and 52 pertaining to the implementation of a 1.7 percent cost-of-living increase to several state supplementary assistance program categories were reviewed by the committee prior to emergency adoption of the amendments.
- Committee business** The minutes of the October 9, 2012, meeting were approved.
The next meeting was scheduled for Tuesday, December 11, 2012, at 9 a.m.
- Adjourned The meeting was adjourned at 12:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill