

**MINUTES OF THE AUGUST 2014 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 5, 2014, 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 Mark Chelgren, Thomas Courtney, Pam Jochum [by teleconference], and Roby Smith; Representatives Rick Olson, Jeff Smith, and Guy Vander Linden were present. Representative Lisa Heddens was not 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 9:10 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.

TREASURER OF STATE Stefanie Dev in represented the treasurer of state.

- ARC 1464C At its June meeting, the committee reviewed this filed rule making (published in the 5/14/14 IAB), which pertains to public funds custodial agreement provisions. Ms. Devin explained that the treasurer of state had received post-publication comments from the Iowa League of Cities and the Iowa Association of School Boards that expressed concern about the effect of the rules. At the request of Ms. Devin on behalf of the treasurer of state, the committee imposed a 70-day delay on 15.1 to 15.3 and 15.5.
- Ms. Devin stated that the interested parties have since agreed that the 70-day delay will be allowed to expire and that the rules will become effective. In addition, the treasurer of state and the interested parties have reached a consensus on follow-up amendments to ch 15 in response to concerns regarding the effect of the rules.
- In response to an inquiry from Rep. Pettengill, Mr. Royce explained that the interested parties had agreed to the promulgation of follow-up amendments through the normal rule-making process rather than through emergency procedures.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Theresa Armstrong and Deborah Johnson represented the department. Other interested parties included Angela Davis on behalf of Caretech, Inc.

- ARC 1554C Proposed amendments to ch 24 pertain to standards for crisis services. In response to an inquiry from Rep. Pettengill, Ms. Armstrong explained that among the array of crisis services, mobile response would assist a caller at the caller’s location and that in larger municipalities, several types of services would be coordinated to provide assistance in crisis situations.

- ARC 1553C No questions on proposed amendments to 77.39 regarding HCBS brain injury (BI) waiver training.
- Ms. Davis expressed appreciation to the committee and commended the department for proposing amendments that remove barriers to service under the brain injury (BI) training requirements. However, she explained that the amendments cause BI training to remain mandatory for agencies (direct care staff) but create an exemption for personal care service workers. Ms. Davis requested that when consumer-directed attendant care (CDAC) is transitioned to the consumer choice option (CCO) in 2016, the exemption be amended so that personal care service workers will be held to the same standard as agencies (direct care staff); thus, BI training would be required not only of agencies (direct care staff) but also of personal care service workers.
- Ms. Johnson stated that the department believes training is important for anyone serving persons with a brain injury, but under CDAC, a member, not the department, has jurisdiction over and is the employer who determines the training requirements of the member’s personal care service worker. Ms. Johnson stated that the department could explore the possibility of a BI training requirement for personal care service workers under the CCO.

- ARC 1519C No action on amendments to 79.1(2) concerning a reimbursement rate increase for emergency medical service providers.

Human Services Department (continued)

- ARC 1521C No action on amendments to 79.1(25) pertaining to the Medicaid alternative reimbursement rate methodology for community mental health centers.
- ARC 1556C No questions on proposed amendments to 110.5(1)“a” regarding emergency contact records for child development homes.
- ARC 1555C Proposed amendments to 110.6 pertain to compliance checks for child development homes. In response to a request from Rep. Pettengill, the department will provide the committee with the number of child development homes in Iowa.
- ARC 1523C No action on amendments to 156.9 concerning minimum foster group care payment rates.
- ARC 1525C No action on amendments to 170.1 and 170.2 regarding eligibility for child care assistance.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks and Gail Kotval represented the authority. Other interested parties included Mark Joyce on behalf of the Technology Association of Iowa.

- ARC 1540C No questions on proposed amendments to ch 31 regarding economic development region initiatives.

Committee review of emergency rule making Ms. Hanks requested that the committee approve the emergency adoption of ch 110, STEM internship program, to implement 2014 Iowa Acts, House File 2460. Ms. Hanks explained that House File 2460 establishes an internship program with two components: the existing innovative businesses internship program and the STEM internship program for students in the fields of science, technology, engineering, and mathematics. She stated that the approval of the emergency rule making would confer a benefit on students who are seeking internships in STEM fields.

Reps. Smith, Pettengill, and Vander Linden and Sen. Chelgren expressed concern regarding the following: the reimbursement methodology and student eligibility for the program; the readiness of the rules for emergency filing; the statutory authority for certain provisions, such as setting the hourly wage at twice the minimum wage; the origin and meaning of the phrase “significant employment presence within the state of Iowa” in 110.5(1); the ineligibility of “a business engaged in retail sales” in 110.6(1); the apparent difference between the scoring criteria set forth in 104.12, which is referenced within 110.11, and the scoring criteria set forth in 110.12; in 110.3, how a major course of study in one of the STEM fields is determined; and the possibility that a STEM employer might benefit family and friends by paying unjustified wages.

Ms. Hanks explained the disbursement of awards that is based on a one-to-one match. She stated that a declared STEM major is the basis for student eligibility, e.g., a freshman student who declares a STEM major would be eligible for the program. Ms. Kotval explained that setting the pay at twice the minimum wage (\$7.25 x 2 or \$14.50 per hour) was modeled after Iowa State University’s engineering internship program whose pay ranges from \$14.50 to \$25.00 per hour. Ms. Kotval stated that the phrase “significant employment presence within the state of Iowa” is intended to include businesses of all sizes that would offer internships to students in declared STEM majors, and Ms. Hanks added that the phrase “significant employment presence” provides the authority the flexibility to ensure that the intent of the statute is fulfilled (e.g., a small engineering firm with a significant employment presence in the state could meet the eligibility requirements). Ms. Hanks explained that as is true of every authority program, retail businesses are excluded and, specifically, that retail businesses are not the intended target group for the STEM internship program. Ms. Hanks stated that the reference in 110.11 to the scoring criteria found in 104.12 will be corrected. Ms. Hanks explained that as stated in 110.8, students who are immediate family members of management employees or board members of the applicant business are ineligible for the program. Mr. Joyce stated that the intent of the STEM internship program is to offer participating Iowa employers an opportunity to provide internships to students early in their college tenure in order to retain the students after graduation as employees in specific STEM fields. He stated that he had requested some of the provisions included in the rules.

The committee took no action.

EDUCATIONAL EXAMINERS BOARD Darcy Lane and Joanne Tubbs represented the board. Other interested parties included Melissa Peterson of the Iowa State Education Association (ISEA).

ARC 1543C No action on amendments to 11.6 pertaining to the board’s decision to set a case for hearing. In response to an inquiry from Rep. Pettengill, Ms. Lane stated that if the board does not set a case for hearing, the complaint is dismissed.

ARC 1552C Proposed amendments to 22.2 pertain to the expansion of the authority of a substitute authorization to include the elementary classroom. Currently the board’s rules provide for the issuance of a substitute authorization, which grants an individual limited authority to act as a substitute teacher in a secondary classroom for no more than 5 consecutive days and no more than 10 days in a 30-day period in one job assignment for a regularly assigned teacher. An applicant must hold a bachelor’s degree, pass a background check and complete a minimum of 15 hours of coursework in classroom management, strategies for learning, diversity and ethics.

Ms. Lane stated that the amendments are proposed in response to reports from administrators regarding the difficulty in securing substitutes at the elementary level. Ms. Tubbs added that the shortage of available substitute teachers at the elementary level has occurred over the past two years, particularly in smaller school districts.

Ms. Peterson stated that the proposed amendments have the potential to impact student learning if noncertified individuals (i.e., those with a substitute authorization rather than a license) substitute teach for significant periods of time and requested that the amendments be approached with caution. She suggested that previously established parameters for shortage areas be applied to the shortage of elementary-level substitutes.

Ms. Tubbs, who, at the request of Sen. Chelgren, explained the current requirements for a substitute license in Iowa, stated that the requirements for a substitute license in Iowa are more restrictive than those of other states and that a teacher licensed in Iowa may substitute at any level (e.g., a licensed chemistry teacher could substitute for 90 days in a kindergarten classroom). Ms. Tubbs stated that the proposed amendments would permit an administrator to employ an individual who has a substitute authorization to substitute at a grade level commensurate with the individual’s education and experience (e.g., an individual with a degree in early childhood education could substitute in a kindergarten classroom).

Sen. Courtney questioned the claim that there is a shortage of substitute teachers at the elementary level and the need for the rule making and suggested that the rule making could negatively affect the wage level of elementary substitute teachers. He also stated that Iowa’s standards for a substitute teacher authorization should not be based on the lower standards of other states and expressed the hope that the board will reconsider the issue during and after the public hearing.

Sen. Chelgren recommended that a substitute teacher be paid at the same rate as the teacher whom the substitute is replacing. He also requested that the board provide the committee with recent records of the number of times a certified substitute could not be secured and the number of times a noncertified instructor, an administrator or other employee substitute taught when a certified substitute could not be secured. Sen. Courtney requested that the board provide the committee with the number and location of elementary schools, as reported by administrators during the most recent school year, where a substitute teacher could not be secured and the pay ranges of substitute teachers statewide.

ARC 1551C No questions on a proposed amendment to 22.3(6) that would make the school business official authorization valid for two years from the date of issuance rather than from the date of employment.

ARC 1542C No action on an amendment to 22.6(5) pertaining to the addition of an experience requirement for conversion of an initial school administration manager (SAM) authorization to a standard SAM authorization.

EDUCATION DEPARTMENT Nicole Proesch, Sandra Dop and Max Christensen represented the department.

ARC 1527C Proposed amendments to 12.5(4)“P” pertain to secondary credit granted for a course taken by students in a grade that precedes ninth grade.

Discussion pertained to the preamble, which states that only students in the seventh and eighth grades would be permitted to take a course for secondary credit.

Education Department (continued)

- Rep. Pettengill pointed out that 2014 Iowa Acts, Senate File 2230, section 2, allows a student at any grade level that precedes ninth grade to take a course for secondary credit and requested that the preamble be corrected.
- ARC 1529C No questions on proposed ch 27, workforce training and economic development funds.
- ARC 1528C Proposed amendments to 43.15 pertain to a requirement that an applicant for a school bus driver's authorization undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners.
- Rep. Pettengill expressed concern regarding mandatory state compliance with a federal regulation, the medical professional's investment of time and money to become certified, and the availability of certified medical examiners statewide. Mr. Christensen stated that compliance with the federal regulation is mandatory and that truck drivers are already subject to the same regulation. Regarding the availability of certified medical examiners, he stated that in the Des Moines area, 31 medical professionals are listed on the registry. In response to an inquiry from Sen. Horn, Mr. Christensen explained that because mental health is not covered by state or federal regulations, local school districts are responsible for addressing mental health issues on a case-by-case basis. In response to an inquiry from Sen. Chelgren, Mr. Christensen stated that the cost of a biennial physical examination is approximately \$85.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- ARC 1547C No action on amendments to chs 67 and 70 related to verification of a conviction or entry of a record of founded abuse for employees of elder group homes, assisted living programs, and adult day services; to the rescission of rules regarding dementia training; and to admission and retention of participants in an adult day services program.

IOWA FINANCE AUTHORITY Mark Thompson and Amber Lewis represented the authority.

- ARC 1539C Amendments to ch 41 concern the shelter assistance fund (SAF). Mr. Thompson explained that the amendments bring the authority's SAF rules into conformance with the regulations set forth in the federal Emergency Solutions Grant Program. In response to an inquiry from Rep. Pettengill, Ms. Lewis stated that the stipulations in 41.10(7) regarding requirements for religious organizations and in 41.10(8) regarding the prohibition against involuntary family separation conform to federal regulations. Regarding 41.10(11), Ms. Lewis explained that contracts are granted once a year and that the authority may, in its discretion, impose other requirements due to ongoing changes in federal regulations.

Committee review of emergency rule making Mr. Thompson requested that the committee grant the authority approval to propose under Notice of Intended Action and simultaneously to adopt by Emergency amendments to ch 27, military service member home ownership assistance program. The purpose of the amendments is to bring ch 27 into compliance with 2014 Iowa Acts, Senate File 303, section 55, and to clarify related provisions of the rules. Mr. Thompson reported that the authority worked with Sen. Smith in aligning the rules with the statute.

Sen. Smith discussed the primary changes in the rules and expressed appreciation to the authority for considering the best interests of veterans.

- Motion to approve Sen. Smith moved approval of the emergency rule making.
Motion carried On a voice vote of 8 to 0, the motion carried.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 1531C No action on amendments to 10.20 and 26.1 regarding the adoption by reference of changes to occupational safety and health standards related to electrical protective equipment and electrical power generation, distribution and transmission.
- ARC 1560C Proposed amendments to chs 71 to 73 pertain to the adoption by reference of the national electrical code and portions of the ASME safety code for elevators and escalators. In response to a request from Sen. Courtney, Ms. Uehling will provide the committee information about the process by which automated remote daily testing of elevator telephones is conducted.

Labor Services Division (continued)

ARC 1550C No questions on proposed amendments to 90.6 that establish by rule an internal inspection schedule of up to four years for certain utility objects.

NURSING BOARD Kathy Weinberg represented the board.

ARC 1541C Amendments to 1.3 and 1.4 concern the description and organization of the board and to the board’s newsletter. Discussion pertained to the rationale for removing from 1.3(2)“i” the requirement that Robert’s Rules of Order, Revised, be used for the governance of the proceedings of the board.

Ms. Weinberg stated that to avoid litigation, the board’s assistant attorney general in consultation with the attorney general’s office advised the board to remove the reference to Robert’s Rules of Order, Revised. Sen. Chelgren suggested that the board set forth its rules for proceedings and default to Robert’s Rules of Order on occasions when specific procedural questions arise.

PROFESSIONAL LICENSURE DIVISION Judy Manning represented the division.

ARC 1558C Proposed amendments to 31.2, 31.6 and 31.8 pertain to licensure of marital and family therapists and mental health counselors. In response to inquiries from Sen. Horn and Rep. Pettengill, Ms. Manning explained the requirements for licensure by endorsement and stated that a candidate must successfully complete the examination before a temporary license may be issued.

ARC 1559C No questions on proposed amendments to chs 200, 203 and 207 regarding licensure and continuing education for physical and occupational therapists.

PUBLIC SAFETY DEPARTMENT Roxann Ryan and Dwight Kramer represented the department.

ARC 1557C Proposed amendments to 504.1 pertain to the adoption by reference of the 2014 edition of the national electrical code with specified exceptions. Ms. Ryan explained the three exceptions to the electrical code, which are related to the accessibility of an under-sink ground-fault circuit-interrupter (GFCI), the accommodation of local energy codes, and the modification of GFCI requirements for new products that are not yet widely available. In response to an inquiry from Sen. Chelgren, Mr. Kramer clarified that the requirement that a GFCI outlet be readily accessible does not apply to an electrical outlet hidden within a gas-operated, electrically started fireplace.

REVENUE DEPARTMENT Jim McNulty and Victoria Daniels represented the department.

ARC 1545C No action on amendments to chs 5, 7, 8, 10, 42, 52 and 86 to 89 regarding the research activities credit and the applicability dates of and the elimination of references to the estate tax and the generation skipping transfer tax.

ARC 1544C No questions on proposed 231.4(2) pertaining to candy subject to sales and use tax.

TRANSPORTATION DEPARTMENT Craig Markley and Mark Lowe represented the department.

ARC 1516C No questions on the rescission of ch 122, keep Iowa beautiful program.

ARC 1526C Proposed 634.11 and amendments to 604.31 pertain to driver education by a teaching parent and to driving tests. Mr. Lowe summarized the requirements and process for parent-taught driver education set forth in 634.11, which is intended to implement Iowa Code section 321.178A. Mr. Lowe also explained the status of the department’s driving course vendor selection process.

In response to an inquiry from Sen. Courtney, Mr. Lowe stated that a teaching parent must be the parent, guardian or custodian of the student and have a clear driving record. In response to questions from Sen. Chelgren, Mr. Lowe clarified the definition of “clear driving record,” explained the components of the required driving log, and discussed the process for department selection of driving course vendors. Mr. Lowe clarified for Rep. Pettengill how the 40-hour behind-the-wheel instruction is calculated. Mr. Lowe assured the committee that the rules afford a balance between the course standards and the expectations of teaching parents.

Committee business The minutes of the July 8, 2014, meeting were approved.
The next meeting was scheduled for Tuesday, September 9, 2014, at 9 a.m. If an additional meeting day is required, the tentative date is Wednesday, September 10, 2014, at 9 a.m.

Richard Thornton, representing the Motion Picture Association of America, distributed to the committee for consideration copies of proposed amendments to revenue department rule 54.7, the apportionment of income of transportation, communications, and certain public utilities corporations.

Adjourned The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill