

**MINUTES OF THE JUNE 2015 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, June 9, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren and Mark Costello and Pam Jochum [by teleconference]; Representatives Lisa Heddens, Megan Jones, Rick Olson, and Guy Vander Linden were present. Senator Thomas Courtney was not present.
- Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 9:05 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Wendy Rickman represented the department.
- ARC 1997C Proposed amendments to chs 112, 113, 117, 175 and 202 pertain to the implementation of the federal preventing sex trafficking and strengthening families Act. In response to an inquiry from Sen. Jochum, Ms. Rickman explained the development and implementation of and time frame for training of staff by the department based on federal guidance.
- ADMINISTRATIVE SERVICES DEPARTMENT** Caleb Hunter represented the department.
- ARC 2000C No action on amendments to chs 54, 61 and 63 to 65 pertaining to promotional lists, grievances, appeal of disciplinary actions, educational leave, a sick leave insurance program and the application of the Hatch Act.
- AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Margaret Thomson represented the department.
- ARC 1998C No questions on proposed amendments to 43.6 concerning national safety standards for the storage and handling of anhydrous ammonia. Ms. Thomson distributed an article that illustrates the importance of the safety standards.
- ENVIRONMENTAL PROTECTION COMMISSION** Roger Bruner, Matt Dvorak and Adam Schnieders represented the commission.
- ARC 1988C No action on amendments to 61.3(5) pertaining to surface water classifications. Discussion pertained to the process by which a use attainability analysis (UAA) is performed and the most appropriate use classification determined; the effect of the classification on entities that discharge into streams; the relationship between the classification and NPDES permitting; and the fiscal impact of the rule making.
- NATURAL RESOURCES DEPARTMENT** Sherry Arntzen represented the department.
- ARC 1989C No questions on proposed ch 13, state lands volunteer program.
- DENTAL BOARD** Jill Stuecker and Phil McCollum represented the board.
- ARC 1995C No action on amendments to 27.11 pertaining to retention of study models and casts. Mr. McCollum stated that some dentists thought the amendments set forth a new requirement rather than reduce an existing requirement regarding the length of time dentists are required to retain study models and casts. In response to an inquiry from Sen. Horn, Mr. McCollum explained that practicing dentists requested that the requirement be examined and revised and that the board had determined that the revised retention time benefits dentists and the public. In response to a question from Rep. Jones, Ms. Stuecker stated that better communication between the board and stakeholders is needed to clarify requirements.
- INSPECTIONS AND APPEALS DEPARTMENT** Deborah Svec-Carstens and Sam Langholz represented the department. Other interested parties included Sara Allen on behalf of the Iowa Hospital Association.
- ARC 1993C No action on amendments to chs 10 and 11 pertaining to contested case proceedings.

Inspections and Appeals Department (continued)

In response to an inquiry from Rep. Olson, Ms. Svec-Carstens stated that the rules for service and filing of documents apply to any proceedings under Iowa Code chapter 17A brought before the administrative hearings division of the department. Mr. Langholz added that the rules promulgated pursuant to chapters 17A and 10A apply to any hearing conducted by the department but pointed out that if a rule of the agency or other entity on whose behalf the department is conducting a hearing conflicts with the department's rule, that agency's or entity's rule would supersede that of the department. Rep. Olson suggested that uniformity among agencies' rules be encouraged.

ARC 1994C No action on the rescission in 67.1 of the definition of "applicant or certificate holder," which has become obsolete.

ARC 1996C Proposed amendments to ch 71, related to subacute mental health care facilities, concern publicly funded facility beds and the treatment of persons involuntarily hospitalized under Iowa Code chapter 229. Ms. Svec-Carstens referred Sen. Chelgren to the human services department regarding his inquiry about the adequacy of 75 licensed, publicly funded subacute care facility beds and about the most common involuntary commitment process. Rep. Heddens offered to work with Sen. Chelgren on cross-chamber legislation during the next session to increase the number of and to provide an accompanying appropriation for mental health beds in publicly funded facilities.

Ms. Allen expressed support for the rules and stated that the rules will encourage hospitals to apply the subacute level of care. In response to questions from Sen. Chelgren, Ms. Allen explained the subacute level of care and distinguished between methods for payment to providers of subacute care and of inpatient care.

INSURANCE DIVISION Doug Ommen represented the division.

ARC 1999C No action on amendments to chs 20, 30, 35, 39 and 40 regarding delivery and receipt of notices of cancellation, suspension, forfeiture, nonrenewal and termination. Mr. Ommen stated that after 2015 Iowa Acts, House File 504, becomes effective July 1, 2015, the division intends to amend the rules to implement the provision in House File 504 that allows the commissioner to review and approve systems that verify delivery of notices.

Rep. Pettengill commended the division for the adoption of amendments regarding delivery and receipt of these types of notices and for the division's statement of intent to follow up with amendments to implement the new legislation.

IOWA PUBLIC INFORMATION BOARD Charles Smithson represented the board. Other interested parties included Sara Allen on behalf of the Iowa Hospital Association.

ARC 2012C Proposed amendments to 1.2 and 1.3 pertain to board advisory opinions. In response to an inquiry from Rep. Pettengill, Mr. Smithson explained in greater detail the purpose of and process for advisory opinions. In response to a question from Sen. Chelgren, Mr. Smithson stated that as he continues to work with the board, he will suggest other steps to consistently address ethics.

ARC 2013C No questions on proposed amendments to 1.4 regarding conflicts of interest.

ARC 2011C No questions on amendments to 2.1 pertaining to complaint investigation and resolution procedures.

ARC 2010C No questions on proposed ch 8, open meetings. Mr. Smithson suggested that the legislature may need to address whether 24 hours prior to the commencement of a meeting means 24 continuous hours.

Ms. Allen observed that the language in 8.1(2) regarding the location of posted notices is ambiguous and explained the effect of the ambiguity in certain situations (e.g., during hospital remodeling). In response, Mr. Smithson stated that as has been his practice after being informed by telephone or e-mail of extenuating circumstances, he would work with affected parties to find a solution to posting of notices.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2014C Proposed amendments to ch 32 pertain to child labor.

Labor Services Division (continued)

Rep. Pettengill requested that in 32.2(2), the division consider revising the requirements to allow a copy of a certified copy of a birth certificate and to change three calendar days to either three business days or to one week. Ms. Uehling agreed to suggest these changes to the board. In response to an inquiry from Sen. Chelgren, Ms. Uehling stated that for the purpose of the application/work permit, the definition of “child” is a person who is 14 or 15 years old. In response to a question from Sen. Jochum, Ms. Uehling explained that the definition of “other work” in 32.5 is being rescinded because the same definition is being added to 32.1. Sen. Chelgren expressed the hope that the regulations related to child labor would not encroach on a child’s opportunity to learn real-world skills from the child’s elders.

ARC 1987C

The proposed rescission of chs 61 and 62 and adoption of chs 61 to 63 pertain to standards for amusement rides and devices, concession booths, and bungee jump operations. In response to an inquiry from Rep. Pettengill, Ms. Uehling stated that the rules are intended to become effective January 1, 2016, and therefore would not affect the current carnival season. Ms. Uehling added that the effective date of the rules coincides with the renewal date for one-year permits. Addressing Sen. Chelgren’s question, Ms. Uehling stated that the permitting process applies to traveling and permanently located amusement rides and devices and to concession booths.

WORKERS’ COMPENSATION DIVISION Jennifer Gerrish-Lampe represented the division.

Committee review of emergency rule making Ms. Gerrish-Lampe stated that the division files an annual amendment to 8.8 to conform the rule to the federal update to the payroll tax tables effective July 1. The committee reviewed the emergency rule making.

Motion to approve Sen. Chelgren moved approval of the emergency rule making.

Motion carried The motion carried.

CORRECTIONS DEPARTMENT Michael Savala and Dan Clark represented the department. Other interested parties included Joe Bervid of the department of workforce development, Nicole Crain of the Iowa Association of Business and Industry, Tom Fey of the Iowa State Building and Construction Trades Council, and Brian Johnson of the Mechanical Contractors Association of Iowa.

ARC 1990C

Proposed amendments to ch 37 pertain to Iowa state industries. Mr. Savala introduced Mr. Clark, who delivered a PowerPoint presentation with general information about Iowa prison industries (IPI) and the basis for the amendments.

Mr. Clark stated that the goal of IPI is the successful reentry of offenders into society, facilitated by evidence-based programs that include work training, education and drug treatment. Noting the value of these programs, he stated that 90 percent or more of offenders are being or will be released and that Iowa’s 29.7 percent recidivism rate is one of the lowest in the nation.

Mr. Clark explained that the amendments pertain to two of the three IPI bases for employment: private sector partnerships and traditional industries. He stated that regarding private sector partnerships, concern has been expressed in public comment about the proposed replacement of “prevailing wages” with “wage range” and the impact of this change on labor. Regarding traditional industries, concern has been expressed in public comment about the proposal to allow sales of goods to private contractors when the goods will ultimately be used by a public agency or a nonprofit. Mr. Clark stated that as a result of these concerns, modifications of the proposed amendments in each area of employment are under consideration.

Discussion pertained to the change from “prevailing wage” to “wage range,” including the basis for and determination of the wage and the effect of the change on the availability, wages and benefits of jobs for civilians in the private sector; wage data provided to the department of corrections (DOC) by the workforce development department (IWD); the advertisement of jobs; the statutory authority for the sale of IPI products to private contractors for use by a public entity; the scope of the rule making; bidding requirements; and unfair competition.

Corrections Department (continued)

Mr. Clark explained the meaning of “wage range” as it relates to data from IWD and described the private sector oversight process. Mr. Bervid further explained IWD wage data. Mr. Savala stated that decisions regarding wage data are binding on but not determined by DOC. Regarding the scope of the rule making, Mr. Ewing stated that a delay could be imposed on specific sections of the filed rule making or, at the July meeting, the department might, on an informal basis, present to the committee the proposed changes to the Notice. Mr. Larry Johnson added that an Amended Notice of Intended Action would be required should the proposed amendments to the Notice exceed its original scope.

Sen. Chelgren requested that DOC provide the committee with a list of products produced by IPI. He also asked that the rules regarding wages and benefits for civilian workers in businesses that employ offenders be the same for union and nonunion companies. Mr. Ewing will include the rule making on the July agenda.

Ms. Crain expressed concern that Item 1 (37.2(5)), by allowing private sector contractors to purchase IPI products directly, expands the policy that precludes IPI from competition with the private sector and that the policy expansion will impact private sector jobs through direct competition with Iowa businesses. In addition, she suggested that Item 1 be removed from the rule making and the expansion of this policy be addressed by the legislature. Mr. Fey stated that the council is at present cautiously supportive of the “wage range” language after receiving from the DOC information by the bureau of justice assistance that construction firms are not included among the private sector partners of IPI. Mr. Brian Johnson also expressed cautious support for the rule making.

Committee business

The committee discussed recent changes to the committee rules of procedure, including quorum and telephonic participation requirements. Following discussion, Rep. Vander Linden moved that the quorum requirement be changed from three members from each chamber to six members present. The motion carried.

Sen. Chelgren suggested that at the July meeting, the committee discuss the rules regarding committee member absences for extraordinary circumstances. Mr. Ewing assured Mr. Johnson that committee rules of procedure already in place allow for approval of emergency rules by telephone.

Mr. Ewing reported that the development of a method for tracking implementation of legislation by rule making is in process and that he will update the committee in July.

The minutes of the April 10, April 15, and May 9, 2015, meetings were approved.

The next meeting was scheduled for Tuesday, July 14, 2015, at 9 a.m.

Adjourned

The meeting was adjourned at 11:58 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn