

**MINUTES OF THE SEPTEMBER 2016 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, September 13, 2016, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Lisa Heddens [by teleconference], Megan Jones, Rick Olson, and Guy Vander Linden were present.
- Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:05 a.m.
- Fiscal overview** Christin Mechler presented the LSA fiscal report.
In response to a question from Sen. Chelgren regarding ARC 2681C, Ms. Mechler stated that she will follow up to confirm that general fund revenue will decrease each year because more solar projects will be eligible for the renewable energy tax credit, not because of increased costs.
- ARCHITECTURAL EXAMINING BOARD** Lori SchraderBachar represented the board.
- ARC 2674C No action on amendments to chs 1 and 2 regarding the roster of business ethics, administrator duties, board meetings, registration and fees.
- HUMAN SERVICES DEPARTMENT** Paige Thorson, Theresa Armstrong and Katharine Sherer represented the department.
- ARC 2680C Proposed amendments to ch 22 pertain to the autism support program. In response to questions from Rep. Pettengill, Ms. Armstrong explained that funds for the board-certified behavior analyst and board-certified assistant behavior analyst grants program were transferred to the department of public health and, as a result, that department is promulgating the rules for the grants program. In addition, Ms. Armstrong stated that the department will ensure that the categories of autism service providers included in the definition of “autism service provider” in Iowa Code chapter 225D will be reflected in ch 22.
- ARC 2684C No questions on proposed amendments to chs 40, 41 and 46, regarding the family investment program (FIP), that pertain to the use of an electronic access card to access benefits at a prohibited location.
- ARC 2702C Proposed amendments to ch 99 concern child support establishment and suspension. In response to an inquiry from Rep. Olson, Ms. Sherer explained that child support does not accrue during a temporary, six-month suspension of child support and that, if there is no request for reinstatement of the order for suspension during the six-month period, the order becomes final.
- CHIEF INFORMATION OFFICER, OFFICE OF THE** Bob von Wolfradt represented OCIO.
- ARC 2699C No questions on proposed chs 20 and 21 pertaining to targeted service areas and project certification related to broadband infrastructure.
- REVENUE DEPARTMENT** Victoria Daniels represented the department.
- ARC 2703C No questions on proposed amendments to 80.31 concerning the property tax exemption for broadband infrastructure.
- ARC 2681C No questions on proposed amendments to 42.28 and 52.27 regarding tax credits for purchasers and producers of renewable energy.
- ARC 2691C No action on 40.81 and 86.5(16) pertaining to the Iowa ABLE savings plan trust. In response to a request from Rep. Heddens, Ms. Daniels will provide information regarding the age or age limit of individuals who are eligible to participate in the savings plan trust.
- ARC 2696C No action on amendments to chs 27 and 78 pertaining to the five-year review of rules, specifically, the automobile rental excise tax rules and the replacement tax and statewide property tax on rate-regulated water utilities rules.

Revenue Department (continued)

ARC 2698C Amendments to 68.2(1) pertain to the excise tax rate on motor fuels. The amendments implement changes to the tax rates on motor fuels effective July 1, 2016.

Discussion focused on the source of the data used to calculate the tax rate annually. In response to a question from Rep. Pettengill, Ms. Daniels explained that, by rule, the department has the authority to indicate the source of the data, which is currently the motor fuel suppliers' report. She explained that because of changes in the industry, including the blending of fuel at the pump, the retailers' report would perhaps provide a more accurate representation. However, Ms. Daniels stated that the source of the data might more appropriately be changed through legislative action rather than by rule. Rep. Pettengill and Sen. Chelgren expressed concern regarding the projected \$9.1 million decrease in revenue to the road use tax fund that may be caused by inconsistencies between the suppliers' and retailers' data reports. In response to an inquiry from Sen. Chelgren about the effect of a delay on the rule making, Ms. Daniels stated that she would need to consult department legal counsel.

Motion to delay Sen. Chelgren moved a 70-day delay on ARC 2698C.

Sen. Costello pointed out that since July 1, 2016, the excise tax has been collected based on the new rate and that the legislature could address the issue for future implementation.

Motion fails On a roll call vote of four to four, the motion failed. [Two members were absent at the time of the vote.]

Ms. Daniels offered to schedule a meeting at which department fiscal staff would discuss with the committee, or a subcommittee thereof, information about the motor fuel sales data reporting and its history. Rep. Pettengill and Sen. Chelgren agreed to participate in the discussion.

ALCOHOLIC BEVERAGES DIVISION Stephanie Strauss represented the division.

ARC 2679C Proposed amendments to 4.6(5) pertain to the filling and selling of beer in a container other than the original container by class "C" beer permit holders. In response to a question from Sen. Horn, Ms. Strauss explained the process by which the amendments allow for tastings from the original container. In response to a question from Rep. Pettengill, Ms. Strauss stated that a person may be offered no more than two 2-ounce tastings per brand of beer.

EDUCATIONAL EXAMINERS BOARD Darcy Hathaway and Joanne Tubbs represented the board.

ARC 2689C Proposed amendments to 13.7 pertain to evidence of successful teaching experience for a standard teaching license. In response to a question from Sen. Horn, Ms. Hathaway explained that the purpose for the amendments is to expand to other educational settings the experience required for a standard teaching license.

ARC 2690C Proposed amendments to chs 13 and 22 concern a transitional authorization and certificate of CPR training related to coaching. In response to questions from Sen. Horn, Ms. Hathaway stated that CPR training is included in the applicant's coursework or is provided by the applicant's school district. Ms. Tubbs added that before adopting the amendments, the board will discuss whether applicants whose CPR certification was granted in the past would be required to update their CPR certifications.

At the conclusion of the review, Ms. Hathaway introduced Dr. Ann Lebo, the new executive director of the board.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 2677C No questions on proposed amendments to chs 8 and 35 pertaining to the all Iowa opportunity scholarship program and to the Iowa teacher shortage loan forgiveness program.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 2643C Amendments to 57.19(3), 62.15(2) and 63.18(2) pertain to training requirements for certified medication aides and medication managers who work in residential care facilities.

Inspections and Appeals Department (continued)

At the August meeting, Mr. Doug Struyk, representing the Iowa Council of Health Care Centers (ICHCC), stated that, in ch 57, the requirements for a certified medication aide (CMA) employed in a residential care facility are different from those in ch 58 for a CMA employed in a nursing facility. The committee imposed a 70-day delay to provide time for further department review and requested that the rule making be reviewed again in September.

Mr. Werning reported that the department had discussed with Mr. Struyk his client's request that identical language regarding the requirements for CMAs proposed in ch 57 be proposed in ch 58. Mr. Werning stated that the department sent a draft of the changes to Mr. Struyk. At the same time, according to Mr. Werning, the department informed Mr. Struyk of an inherent conflict related to federal regulations which require that an individual who distributes medications in a federally certified facility be a certified nursing assistant (CNA). Mr. Werning stated that the department is awaiting a response from Mr. Struyk, who is in conversation with ICHCC.

Rep. Pettengill expressed appreciation to the department for working with Mr. Struyk on a resolution.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

ARC 2686C No questions on proposed amendments to 5.4(10) regarding calculation of adjusted gross receipts.

STATE PUBLIC DEFENDER Kurt Swaim represented the state public defender.

ARC 2685C Proposed amendments to 12.2(1) pertain to the submission of attorney fee claims through an online system.

In response to a question from Rep. Pettengill, Mr. Swaim stated that, to prevent overbilling, the online system enables hours worked to be monitored. In response to a question from Sen. Horn, Mr. Swaim explained the public defender qualification standards that correspond to specific levels of crime. Rep. Jones commended the new online system.

CITY FINANCE COMMITTEE Ted Nellesen represented the committee.

ARC 2687C Proposed amendments to 2.5(5) concern a change in calculating a surplus balance in city utility and enterprise funds. In response to a question from Rep. Pettengill, Mr. Nellesen stated that the amendments do not change the Governmental Accounting Standards Board (GASB) Statement No. 68 reporting. In response to a question from Sen. Horn, Mr. Nellesen stated that the amendments pertain to cities, not to townships.

DENTAL BOARD Jill Stuecker and Phil McCollum represented the board.

ARC 2700C Proposed amendments to 12.1 to 12.4 pertain to clinical examinations for dentistry and dental hygiene. Mr. McCollum summarized the amendments. Discussion pertained to the relationship between the proposed amendments and the 2016 legislation requiring a joint study by the University of Iowa and the board regarding alternative and improved testing methods; testing agencies; and the required score for passing an examination.

In response to concerns expressed by Rep. Pettengill, Mr. McCollum explained that the amendments contribute to compliance with the 2016 legislation. Ms. Stuecker added that, over several years, the University of Iowa has requested of the board alternative and improved testing mechanisms and is supportive of the proposed amendments. She explained that the University of Iowa and the board are exploring other specific issues related to the 2016 legislation, which will lead to a joint year-end report to the legislature. In response to question from Sen. Horn, Ms. Stuecker stated that the amendments represent agreement between the University of Iowa and the board.

In response to a question from Sen. Chelgren, Ms. Stuecker explained that the amendments allow an applicant to take a proctored jurisprudence examination out of state. In response to questions from Reps. Pettengill and Vander Linden regarding the standard for passing an examination, Mr. McCollum explained that the board cannot dictate the reporting of scores by national testing agencies and that some examinations are scored as pass-fail.

Dental Board (continued)

However, Ms. Stuecker explained that for written examinations scored pass-fail, the score attained must be 75 percent or higher and affirmed that the national standard for passing is 75 percent. Rep. Vander Linden expressed the opinion that the 75 percent standard for passing should remain in the rules.

ARC 2701C No questions on proposed amendments to ch 11 regarding licensure to practice dentistry or dental hygiene.

PAROLE BOARD Steve Clark represented the board.

ARC 2678C No action on amendments to chs 9 and 11 pertaining to certificates of employability, parole revocation hearings, and automatic revocation of parole for conviction of an aggravated misdemeanor. In response to inquiries from Sens. Horn and Courtney, Mr. Clark stated that there is a trend toward reintegration of supervised parolees into the community, allocation of more resources for community-based correctional facilities, and assistance to parolees through substance abuse treatment and other support.

Sen. Courtney commended the work of the board and requested that the board keep the committee apprised of the progress, based on 2016 legislation, of the case-by-case early release of nonviolent offenders incarcerated under mandatory minimum sentences.

UTILITIES DIVISION Cecil Wright and Brenda Biddle represented the division. Other interested parties included Josh Mandelbaum on behalf of the Environmental Law and Policy Center (ELPC).

ARC 2673C Proposed amendments to ch 45 concern electric interconnection of distributed generation facilities.

In response to an inquiry from Rep. Pettengill, Mr. Wright stated that anticipated changes from the Notice would more likely be technical rather than substantive because input from stakeholders was received before the Notice was submitted for publication.

Mr. Mandelbaum commended the utilities board for its thorough review of the rules and for the development of consensus with stakeholders. However, he stated that for transparency and for ease of use by all stakeholders, the preapplication report, supplemental review process and interconnection fees should be incorporated into the filed rules.

REGENTS BOARD Paula DeAngelo and Aimee Claeys represented the board.

ARC 2672C No action on amendments to 13.8 pertaining to the delegation of contracting authority for Iowa State University. In response to a question from Sen. Horn, Ms. DeAngelo stated that, with these amendments, the process for contracts and agreements will be available on the university's Web site. In response to an inquiry from Rep. Pettengill, Ms. DeAngelo stated that the contracting authority at the University of Iowa and the University of Northern Iowa is similar to that adopted in this rule making, which applies only to Iowa State University. In addition, Ms. Claeys explained the process by which the board makes decisions regarding real estate transactions.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT John Benson represented the department.

Committee review of emergency rule making After describing the overall process for the annual disbursement of collected wireless E911 surcharge revenues, Mr. Benson explained that any unspent funds, not to exceed \$4.4 million, may be spent in the following order of priority: grants for public safety answering points (PSAPs) to consolidate physical facilities and technology, funding of public awareness and educational campaigns, and funding to the PSAPs for communications equipment related to receiving and dispatching 911 calls and costs to access the statewide interoperable communications system. Because applications for 21 projects have already been received and the funds must be spent within the 2017 fiscal year, Mr. Benson requested that the committee approve an emergency rule making, to become effective October 1, 2016, which will allow the projects to progress and be completed in a timely manner.

Homeland Security and Emergency Management Department (continued)

In response to a question from Sen. Chelgren, Mr. Benson stated that the \$100,000 allocation for education and outreach is set by statute and its use is determined by the E911 communications council.

Motion to approve Rep. Pettengill moved approval of an emergency filing.

Motion carried On a voice vote of nine to zero, the motion carried. [One member was absent at the time of the vote.]

NATURAL RESOURCE COMMISSION Paul Tauke, Andrew Norton and Todd Coffelt represented the commission. Other interested parties included Chuck Semler and David Bartemes of the Iowa Woodland Owners Association, Carole Teator of Trees Forever, Shane Morris of Northeast Iowa T.R.E.E.S., Bob Petrzelka of Geode Forestry, and Mike Brandy.

ARC 2693C No action on amendments to 71.3 pertaining to nursery stock prices. Mr. Tauke stated that of the 58 comments received that were germane to the amendments, 80 percent were favorable (i.e., to approve price increases and to keep the nursery operational) and 20 percent were unfavorable (i.e., to maintain or lower prices).

In response to an inquiry from Rep. Pettengill, Mr. Tauke explained that the nursery revenue must cover expenses and described the study of expenses related to staff, infrastructure needs, and aging equipment through which the price increases were determined. He also discussed the analysis of the changes in costs, revenue and competition over time.

Mr. Semler and Mr. Bartemes expressed support for the increase in fees in order to maintain the state nursery and commended the quality of the nursery stock. Ms. Teator expressed support for the price increases of the nursery's quality stock to keep the nursery operational now and sustainable in the future. Mr. Morris also commended the quality of the stock and that of customer service, including packing, labeling and shipping, and stated that the price increase is not an issue. Mr. Petrzelka stated that because of the loss of 7,000 acres of forest in Iowa, there has never been a more important time to keep the state nursery viable. Mr. Brandy asserted that the cost of the plant material is only one component of planting trees and emphasized the importance of starting with quality nursery stock adaptable to Iowa and available through the state nursery.

Sen. Chelgren commended Mr. Tauke and the state nursery for the quality of the operation and the obvious satisfaction of its customers, as evidenced by the commenters' support of the amendments.

ARC 2697C No action on an amendment to 106.6(6) pertaining to antlerless-deer-only license quotas for 2016. In response to a question from Sen. Chelgren, Mr. Norton stated that a department of transportation Web site provides links to deer-related traffic accident data.

ARC 2694C Paragraph 61.7(2)"e" pertains to an alcoholic liquor, beer, and wine ban at beaches in Lake Macbride State Park and Pleasant Creek State Recreation Area. Mr. Coffelt stated that 23 comments were received: 17 in support, 4 in opposition and 2 neutral. He stated that the comments in support included concern for public safety, the desire for a more family- and elderly-friendly environment, the desire for the rescission of the early closing time implemented in 2015, and the desire that peace officers and park staff focus their time elsewhere. He stated that the comments in opposition asserted that the ban unfairly punishes persons who abide by the law and drink alcohol responsibly, that the commission should enforce existing public intoxication laws rather than create new ones, and that the ban is arbitrarily limited to the beach.

Discussion pertained to the consequences of violating the rule, including penalties; the method for informing the public of the rules; the physical parameters of the banned area; the effect of the ban on persons who occupy the beach, rental facilities and the campground; the number of peace officers needed to enforce existing laws; and the policy regarding consumption of alcohol at other state beaches.

Natural Resource Commission (continued)

In response, Mr. Coffelt stated that the violation of the rule would be a civil infraction with a monetary penalty and that removal of the violator from the premises would be discretionary and depend on the totality of the circumstances; that the rules would be posted on premises; that the area where the 200-foot buffer ends would not be staked off; that persons from the campground and in rental facilities could not consume alcohol on the beach; that rental facilities may be used with or without a reservation and that the alcohol policy for the facilities is based on the event, including the requesting and obtaining of a permit for use of alcohol in a large container; that law enforcement would address violations anywhere in the park; that, at a minimum, four peace officers would be needed in these parks; and that alcohol consumption is not banned at any other state park beach.

Rep. Olson stated that the issue is insufficient personnel to enforce existing laws and agreed with the commenters who stated that the rule unfairly punishes people who abide by the law and drink responsibly. Sen. Chelgren questioned the fairness of distinguishing between persons who pay to consume alcohol (in a rental facility or campground) and persons who may not consume alcohol (on the beach) and asserted that the staff should not penalize persons who exhibit good behavior but instead arrest more people who violate existing rules in order to discourage poor behavior. Rep. Pettengill expressed concern about the safety of and equity for persons who frequent the state parks. Sen. Jochum concurred with Rep. Olson that the issue is insufficient staff to enforce existing laws. Sen. Horn agreed that more enforcement, rather than a ban on alcohol consumption, is needed.

Motion to delay
Motion carried

Rep. Olson moved a session delay on 61.7(2)“e.”

On a roll call vote of seven to one, the motion carried. [Two members were absent at the time of the vote.]

At the request of Rep. Olson, Mr. Coffelt will provide the committee with the dollar amount of the monetary penalty for a civil infraction.

ENVIRONMENTAL PROTECTION COMMISSION Theresa Stiner and Jon Tack represented the commission. Other interested parties included Josh Mandelbaum on behalf of the Environmental Law and Policy Center (ELPC).

ARC 2692C

No action on amendments to 105.1 and 113.8(1)“b”(13) pertaining to yard waste, specifically, disposal at landfills and separate collection by municipalities. In response to a question from Sen. Jochum, Ms. Stiner stated that five landfills in the state operate methane collection systems that produce energy.

ARC 2695C

No action on amendments to 61.2(2)“e,” 64.2(9)“a,” and 64.7(2)“f” pertaining to the Iowa antidegradation implementation procedure.

Mr. Tack stated that the original antidegradation procedure took effect in 2010 after a multiyear, multistakeholder collaborative process and that the interpretation of that implementation procedure was unilaterally revised through litigation earlier this year. In response to that litigation, he continued, organizations representing municipal utilities, cities and businesses developed a petition for rule making and presented the petition to the commission on April 9, 2016. He stated that in response to the petition, the commission approved a Notice of Intended Action (ARC 2579C, IAB 6/8/16) and, in response to public comment, made clarifying changes regarding three topics. Mr. Tack stated that the amendments were Adopted and Filed Emergency After Notice because it is the commission’s belief and intent that the amendments confer a benefit of regulatory certainty and clarity on the regulated public.

Mr. Mandelbaum stated that ELPC was actively involved with the department and other stakeholders in the development of the antidegradation rules that were adopted in 2010. He explained that ELPC sued the department because, in the opinion of ELPC, the rules were not being enforced as written, specifically, in the case of a wastewater treatment project in Clarion, Iowa. Mr. Mandelbaum expressed disappointment that the department is unwilling, in light of the court ruling, to implement the ruling or to convene a stakeholder group to work with ELPC and other stakeholders, as Mr. Mandelbaum had requested at the July committee meeting, to address ELPC’s concerns while continuing to protect water quality.

Environmental Protection Commission (continued)

Mr. Mandelbaum expressed the opinion that the amendments create a one-size-fits-all approach to regulation and that, based on the amendments, affordable, less polluting alternatives can be arbitrarily eliminated from consideration without the specific circumstances having been taken into account.

Discussion based on questions from committee members followed. Sen. Chelgren, in expressing support for the amendments, questioned Mr. Mandelbaum about the reason for ELPC's opposition to the 2010 rules that ELPC and other stakeholders had assisted to develop and for ELPC's opposition to the department's amendments in response to the court ruling, which attempt, through rule, to address future financial difficulty for cities such as Clarion. In response, Mr. Mandelbaum stated the opinion that the court ruling did not dictate a specific outcome and that other environmental alternatives could have been considered.

In response to questions from Sen. Jochum, Mr. Tack stated that the rules do not undermine the nutrient reduction strategy and are consistent with the Clean Water Act. He added that Iowa's neighbors, Missouri and Wisconsin, have adopted the 120 percent and 115 percent bright-line standards, respectively. Mr. Tack also explained that the department has consulted with U.S. Environmental Protection Agency (EPA) throughout the rule-making process and that the rules are consistent with those of other states. In addition, he stated that to benefit the public, the department has incorporated the procedure in rule even though incorporation is not required by a new EPA rule adopted in 2015. Mr. Tack stated that there was less collaboration during the rule-making process primarily because the department was uncertain about to implement the court ruling and, in turn, how to collaborate with interested parties, given the required time line for moving forward after receipt of the petition for rule making. Mr. Tack stated that if a workable proposal for modification of the adopted amendments were made, the department would be willing to present the proposal to a larger group of stakeholders. In response to the same questions Sen. Jochum had for Mr. Tack, Mr. Mandelbaum stated that the petition for rule making did not artificially limit the time line for the promulgation of rules and that ELPC can provide guidance regarding environmental benefits, alternative strategies and other concerns.

TRANSPORTATION DEPARTMENT Stu Anderson represented the department.

Committee review of emergency rule making Mr. Anderson explained that the surface transportation block grant program is authorized by the federal government primarily to fund city and county road and bridge projects and that, because this program is considered to be a federal block grant program, Iowa Code section 8.41 requires that the funds be deposited into a special fund in the state treasury and then be appropriated by the legislature to the department and that administrative rules be promulgated to expend the money as appropriated during the 2016 legislative session. Because the federal fiscal year begins on October 1, 2016, the department requests emergency rule making so that the moneys may be allocated to projects statewide.

Motion to approve Rep. Vander Linden moved approval of an emergency filing.

Motion carried On a voice vote of seven to zero, the motion carried. [Three members were absent at the time of the vote.]

Committee business The minutes of the August 5, 2016, meeting were approved.

The next meeting was scheduled for Tuesday, October 11, 2016, at 9 a.m.

Adjourned The meeting was adjourned at 12:40 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill