



Iowa General Assembly

2016 Committee Briefings

Legislative Services Agency – Legal Services Division <https://www.legis.iowa.gov/committees/committee?endYear=2016&groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [December 13, 2016](#) | [December 8, 2016](#) | [October 21, 2016](#) | [September 22, 2016](#) | [August 5, 2016](#)
| [July 12, 2016](#) | [June 14, 2016](#) | [May 10, 2016](#)

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.*

ADMINISTRATIVE RULES REVIEW COMMITTEE

December 13, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

PUBLIC HEALTH DEPARTMENT, *Vital Records, 11/23/16 IAB, ARC 2821C, NOTICE.*

Background. This notice of intended action filed by the Department of Public Health (DPH) seeks to amend rules relating to restrictions on obtaining vital records from county officials, alternative systems for the vital record registry, and publication of vital record information.

Commentary. Ms. Susan Dixon, Agency Rules Administrator, and Ms. Melissa Bird, Bureau Chief for the Bureau of Health Statistics, spoke on DPH's behalf. Ms. Bird explained that the current law prohibits distribution of "plain paper copies," as opposed to certified copies, of vital records requested over the phone and does not allow county recorders to answer questions by telephone. This rulemaking would remove those restrictions and would allow a county recorder to mail plain paper copies of records. Ms. Bird noted that the in-person requirements were added to the rules at a time when the person looking for the records would personally search for them, which is no longer done.

A committee member asked what information a person could receive by way of a telephone request. Ms. Bird replied by explaining that currently, a person needs to go to a county recorder's office to obtain a vital record, where the recorder cannot ask who the person is or why they want the record. The change to allow distribution of records requested by telephone is being made to comply with Iowa Code chapter 22, which restricts prohibiting the distribution of vital record information and requiring in-person requests.

Another committee member asked if these proposed rule changes impact certified copies. Ms. Bird answered that they do not; a person looking for a certified copy of a vital record would still need to obtain it in person. Ms. Bird also stated that noncertified copies are limited to a cost of \$5 each, though specific costs are set by each county.

Action. No action taken.

EDUCATIONAL EXAMINERS BOARD, *Coaching—Transitional Authorization, Certificate of CPR Training, 11/9/16 IAB, ARC 2793C, ADOPTED.*

Background. This rulemaking implements the transitional coaching authorization established by 2016 Iowa Acts, House File 228. The rulemaking also added language requiring athletic coaches to obtain certified Cardio Pulmonary Resuscitation (CPR) training.

Commentary. Discussion centered on the language relating to CPR training. Committee members questioned why the board included language on a CPR training requirement when such a requirement had been considered in legislation

during the 2016 Legislative Session that was not enacted. Board representatives Ms. Joanne Tubbs and Mr. Phil Wise explained that the board believes that it has the authority to establish such a requirement by rule and that the possibility of establishing such a requirement by rule was discussed during the 2016 Legislative Session. They also noted that various interested stakeholders including state athletic associations support the inclusion of a CPR training requirement in this rulemaking. Committee members expressed concern regarding the possible implementation by rule of legislation that failed to be enacted, regardless of the merits of the proposal.

Action. A motion for a session delay on the portions of ARC 2793C relating to CPR training passed on a short-form vote (seven votes required to pass).

NATURAL RESOURCE COMMISSION, *Turtle Harvesting*, 11/9/16 IAB, ARC 2802C, NOTICE.

Background. This notice of intended action filed by the Natural Resource Commission (NRC) implements 2016 Iowa Acts, House File 2357 by modifying rules relating to the harvesting of turtles. Through these rules, NRC seeks to restrict the harvesting period to July 16 through May 14 and establish daily catch limits of four for common snapping turtles, one for painted turtles, and one for spiny or smooth softshell turtles.

Commentary. Mr. Bruce Trautman, Deputy Director of the Department of Natural Resources (DNR), spoke on behalf of NRC. He noted that in 2015, there were 101 licensed turtle harvesters in the state. Those harvesters caught 10,210 wild turtles, which were sold for a total of \$53,845, bringing an average value of about \$0.75 per pound.

Mr. Trautman noted that NRC held five public meetings on this issue dating back to 2014. A committee member asked how many state employees were at each meeting. Mr. Trautman replied that one or two employees would have attended each meeting. The committee member stated a constituent had reported seeing “seven armed guards” at one meeting, producing an intimidating environment. Mr. Trautman stated that one conservation officer attended one of the meetings.

A committee member expressed concern that the catch limits are low enough that they will force commercial harvesters out of business, demonstrating a disregard for DNR’s position during the legislative process that these changes would not put anyone out of business. Another committee member commented that this rulemaking proposal appears to be carrying out exactly what the legislature instructed NRC to do.

Ms. Neila Seaman of the Iowa Chapter of the Sierra Club spoke in support of the rules in general. She stated the rules fall short in protecting turtles during their breeding season and their semi-hibernation period. She stated that closing harvesting from January 1 through July 15 would better protect turtles, and that an initial draft of these rules did so but was rejected by the governor’s office.

Mr. Mike Delaney spoke on behalf of the Iowa chapter of the Izaak Walton League. He also voiced support for the rules and noted that the decline in turtle populations has been noticeable.

Mr. Jim Obradovich, representing the Iowa Trappers Association, told the committee that some turtle harvesters will be forced to close their businesses, which in some cases serve as a primary source of income. Mr. Obradovich stated that his organization is hoping to work with NRC to make these rules more friendly to those commercial turtle harvesters. A committee member asked Mr. Obradovich what would allow such entities to remain in business. Mr. Obradovich suggested that NRC could issue different licenses for those who harvest turtles for commercial gain than for those who are “non-traditional” or hobby harvesters.

Action. No action taken.

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Friday, January 6, 2016, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 14, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

ADMINISTRATIVE SERVICES DEPARTMENT, *Out-of-State Travel by State Employees*, 10/26/16 IAB, ARC 2789C, NOTICE.

Background. This rulemaking updates language in the department’s rules concerning out-of-state travel procedures. In language describing the approval authority for out-of-state travel, an outdated reference to the Executive Council is replaced with approval “by the proper authority.”

Commentary. A committee member questioned what the phrase “proper authority” means in this rulemaking. Department representatives Ms. Tami Wiencek and Ms. Karen Gregor explained that in practice, out-of-state travel is

approved by the head of the traveling employee's department. A committee member asked why the rule language does not say that, and Ms. Gregor explained that this language would not require further amendments in the future if the approving authority is changed again. A committee member asked where one could locate a definition of "proper authority." Ms. Gregor explained that it is defined in Iowa Code section 8A.512. Committee members urged the department to include language specifically defining who has the authority to approve out-of-state travel claims. A committee member also asked the department to provide the committee with an update on the department's ongoing review of its rules, which Ms. Gregor cited as the reason this outdated reference in the department's rules was discovered.

Action. No action taken.

EDUCATION DEPARTMENT, *Standards for Practitioner and Administrator Preparation Programs*, 10/12/16 IAB, ARC 2761C, NOTICE.

Background. This rulemaking updates the standards and program requirements that all traditional educator preparation programs must meet in order to be accredited to prepare educators in Iowa. Compliance with these standards is required and evaluated during each educator preparation program's accreditation review. The standards are also applied in an annual reporting system. The rulemaking will update the current standards to conform with recent legislative changes and will keep the rules current with national standards for educator preparation.

Commentary. Department representative Ms. Nicole Proesch explained that the department received many public comments on these proposed rules urging the department to add language specifically addressing dyslexia. She explained that such language was not included in the proposed rules because the subject could instead be addressed via departmental guidance.

Public comment was heard from Ms. Katie Greving of Decoding Dyslexia. She urged the department to include language specifically addressing dyslexia in the rules, not only in its guidance. She stated that other states include such language in statute. She asserted that the language in the proposed rules is too vague to lead to any change relating to dyslexia response in practice. She also urged the department to include language relating to the concept of "structured literacy," a process which she said is highly effective in promoting literacy in students both with and without dyslexia. She cited figures that she said indicate that Iowa children in fourth grade have a troublingly high rate of literacy problems. She also stated that current standards for dyslexia response used by the department are inadequate.

A committee member asked why the department is only including language on dyslexia in its guidance and not in the proposed rules. Department representative Mr. Larry Bice explained that the language in the proposed rules is closely tied to recent legislation that did not include such language on dyslexia, that the requested language on dyslexia is outside the scope of the Administrative Code chapter being amended, and that the department feels this subject would be better addressed legislatively. A committee member suggested that, under the definition of "rule" in Iowa Code chapter 17A, such language on dyslexia may need to be included in rules rather than in guidance.

Committee members expressed concern regarding the high rate of literacy problems in Iowa children described by Ms. Greving. Department representative Mr. Phil Wise noted that the General Assembly passed legislation on this subject in 2012 which is being implemented. He also stated that improving such literacy rates is a top priority of the Governor and the director of the department.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Water Quality – Criteria for Copper*, 10/12/16 IAB, ARC 2757C, NOTICE.

Background. This proposed Environmental Protection Commission (EPC) rulemaking would give National Pollutant Discharge Elimination System (NPDES) permit holders flexibility to comply with water quality standards. It amends regulations on these entities by adding the option to use the Biotic Ligand Model (BLM) to determine water quality criteria for copper or use the Water-Effect Ratio (WER) to adjust the existing criteria. According to the Department of Natural Resources (DNR), 21 or 22 of the 297 permit holders that are subject to current criteria for copper are out of compliance with requirements. DNR estimates these changes will allow 7 to 10 of those facilities to come into compliance without the need for expensive infrastructure modifications.

Commentary. Mr. Matt Dvorak and Ms. Connie Dou of DNR's Water Quality Bureau spoke on behalf of DNR. A committee member asked whether the entities currently out of compliance were involved in or notified of this rulemaking. Ms. Dou stated that while they were not individually notified, DNR held several stakeholder meetings at which many of those entities were represented.

Another committee member asked whether these new standards are used in other states, and if so, why and whether they have been challenged legally. Ms. Dou stated the new standards have been adopted in several states. She

noted they have been adopted to add more flexibility for permit holders and was unaware of any challenges. She added that Oregon's Department of Environmental Quality is seeking to adopt the new standards statewide rather than as an alternative compliance method.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, December 13, 2016, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?groupID=705&ga=86>

ADMINISTRATIVE RULES REVIEW COMMITTEE

October 11, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Treasurer of State, *Unclaimed Property, 9/14/16 IAB, ARC 2716C, NOTICE.*

Background. This rulemaking rescinds and rewrites the Office of the Treasurer of State's rules relating to unclaimed property, primarily for the purpose of addressing changes that will be implemented to provide for an online claims process for Great Iowa Treasure Hunt claimants. The rulemaking also provides other revisions, updates, and clarifications to unclaimed property rules. These proposed rules address dormancy fees for unclaimed property; reporting requirements for various forms of property; documentation, approval, and payment of claims; and other matters.

Commentary. The Treasurer of State was represented by Ms. Karen Austin and Mr. Adam Phillips. They explained that the Treasurer received public comments expressing concern regarding a number of provisions in the noticed language and would not be moving forward with certain provisions that proved controversial, such as provisions regarding life insurance. They described the specific provisions that will not be adopted. Committee members asked about the value of unclaimed property held by the Great Iowa Treasure Hunt. Ms. Austin stated that the program currently holds about \$320 million in unclaimed property and has paid out about \$220 million in unclaimed property.

Public comment was heard from Ms. Paula Dierenfeld on behalf of the Federation of Iowa Insurers (FII). She explained that FII had submitted public comments on the noticed language, which led the Treasurer to make some of the previously discussed modifications to the language. She expressed appreciation for the Treasurer's responses so far and added that she hoped to have additional discussions with the Treasurer regarding certain language pertaining to estimation techniques.

Action. No action taken.

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Monday, November 14, 2016, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354

Internet Site: <https://www.legis.iowa.gov/committees/committee?groupID=705&ga=86>

ADMINISTRATIVE RULES REVIEW COMMITTEE

September 13, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

EMERGENCY RULE FILING REVIEWS. Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered two filings:

Department of Homeland Security and Emergency Management - E911-Surcharge. EMERGENCY FILING APPROVED BY COMMITTEE.

Department of Transportation -Surface Transportation Block Grant Program. EMERGENCY FILING APPROVED BY COMMITTEE.

REVENUE DEPARTMENT, *Excise Tax Rate on Motor Fuels, 8/31/16 IAB, ARC 2698C, ADOPTED.*

Background. This rulemaking implements changes to the tax rates on motor fuels effective July 1, 2016. The changes

in the tax rates on motor fuels reflect changes in the ethanol distribution percentage for calendar year 2015. Under Iowa Code section 452A.3(1) and department rules, the rate of excise tax on motor fuels for the fiscal year is based on the ethanol distribution percentage as measured in the previous calendar year.

Commentary. Discussion centered on the source of the data used by the department to calculate the new tax rate. Department representative Ms. Victoria Daniels explained that the department has the authority to determine the source of the data it uses by rule, and the department's current rules use a report from motor fuel suppliers. Ms. Daniels suggested that, in light of changes in the motor fuel industry relating to blending ethanol at the pump, using a report from motor fuel retailers might provide more accurate data. Ms. Daniels also indicated that the department is hesitant to change the report it uses by rule and that the matter would be more appropriately considered through legislative action. Committee members noted that this rulemaking is estimated to reduce revenue to the Road Use Tax Fund by \$9.1 million and expressed concern regarding the loss of revenue due to data that may not be as accurate as possible. Committee members asked about the possible consequences of imposing a delay on this rulemaking, and Ms. Daniels said she would have to consult department legal counsel to determine that.

Action. A motion for a 70-day delay failed on a four-to-four vote with two members absent (seven votes required to pass).

NATURAL RESOURCE COMMISSION, *Nursery Stock Prices, 8/31/16 IAB, ARC 2693C, ADOPTED.*

Background. This adopted and filed rulemaking increases the nursery stock prices of tree and shrub seedlings and specialty packets sold by the State Forest Nursery (Nursery) of the Department of Natural Resources (DNR). It also removes the price for black walnut tree seeds because those are no longer sold by the Nursery. This rulemaking is identical to the noticed version published in the June 8, 2016, bulletin and was adopted by the Natural Resource Commission on August 11, 2016.

Commentary. State Forester Mr. Paul Tauke explained that Iowa Code section 455A.13 requires the Nursery to establish prices by rule that will cover all expenses related to the Nursery's operations. Mr. Tauke stated the Nursery received 58 comments. Of the germane comments, about 80 percent supported the price increases to maintain the operation of the Nursery going forward. The comments against the rulemaking sought to lower or maintain the prices at past levels.

Mr. Tauke received questions from committee members about alternatives to raising prices. Mr. Tauke indicated that he, along with the director and deputy director of DNR, reviewed the Nursery's operational costs and the costs of some long-needed upgrades. He noted that the last price increase for small stock occurred in 2004 and in 2009 for large stock. He explained that demand for seedlings has declined as use of the federal Conservation Reserve Program has decreased since around the mid-1990s. Before increasing these prices, the Nursery decreased staff, consolidated some positions, and closed one of its nurseries. It also reduced these increased prices after an internal review before initiating the rulemaking process. Mr. Tauke explained that the Nursery's new seedling prices are still somewhat lower than out-of-state alternatives and the product is generally considered to be better than offerings from other states.

Mr. Chuck Semler, President of the Iowa Woodland Owners Association, spoke in favor of the rulemaking. He was joined by a board member of that association, Mr. David Bartemes, who also operates a tree farm. Mr. Bartemes expressed the importance of supporting the Nursery, citing the impending need for farmers to establish or improve riparian zones on their farmland. He cited that aside from the Nursery, there are very few available sources of good seedlings from Iowa-based seed stock.

Ms. Carol Teator, Director of Programs for Trees Forever, spoke in favor of the rulemaking, as did Mr. Shane Morris, the owner of Northeast Iowa Trees. Mr. Morris described the Nursery's products as "outstanding." Also speaking in favor of the price increases was Mr. Bob Petrzelka, President of Geode Forestry from southeast Iowa, as well as a private landowner and farmer from the Boone area.

Action: No action taken.

NATURAL RESOURCE COMMISSION, *Alcoholic Liquor, Beer, and Wine Ban at Beaches in Lake Macbride State Park and Pleasant Creek State Recreation Area, 8/31/16 IAB, ARC 2694C, ADOPTED.*

Background. These rules ban alcoholic liquor, beer, and wine at the beaches located in Lake Macbride State Park and Pleasant Creek State Recreation Area. The commission cited the disproportionate number of arrests made and citations issued at these locations relating to alcohol, the high number of personnel needed to respond to such incidents, and increasing the safety and enjoyment of park users as reasons for this rulemaking.

Commission rules define "beach" as "that portion of state parks or recreation areas designated for swimming activity including the sand, a 200-foot buffer of land surrounding the sand or a designated area which is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines." However, the alcohol ban would not apply to any rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the Department of Natural Resources (DNR).

Commentary. Commission representative Mr. Todd Coffelt noted that the commission had received 17 public

comments in support of this rulemaking, four opposed, and two neutral. He stated that no changes had been made to the noticed language.

Committee Members asked what the penalty would be for violating this rule. Mr. Coffelt was initially uncertain, but explained by e-mail after the meeting that a violation would be a simple misdemeanor and result in a \$50 fine. Committee members asked if a violator would be ejected from a park, and he said it would depend on the totality of the circumstances. Committee members asked if there would be a demarcation placed where the 200-foot buffer ends, and Mr. Coffelt said there would not. Committee members asked how many officers DNR has for state parks, and Mr. Coffelt stated that DNR has approximately 34 officers total for all state parks. He explained that each park may need multiple officers, particularly when an officer spends several hours processing an arrest.

Committee members stated that increased enforcement of existing alcohol laws and regulations would be a better approach than an alcohol ban and that such a ban would unfairly penalize responsible drinkers. Committee members also questioned whether the distinction between where a person could drink (a rental shelter if the person pays to reserve it) and where a person could not (the water, sand, and buffer) is appropriate.

Action. A motion for a session delay passed on a seven-to-one vote with two members absent (seven votes required to pass).

ENVIRONMENTAL PROTECTION COMMISSION, *Iowa Antidegradation Implementation Procedure, 8/31/16 IAB, ARC 2695C, FILED EMERGENCY AFTER NOTICE.*

Background. This Department of Natural Resources (DNR) rulemaking revises the Iowa Antidegradation Implementation Procedure. DNR received a petition for rulemaking on April 25, 2016, from the Iowa Association of Municipal Utilities, the Iowa League of Cities, and the Iowa Association of Business and Industry. The petition asked the Environmental Protection Commission (EPC) to modify the process used by DNR in making cost-benefit analyses for its Iowa Antidegradation Implementation Procedure. Specifically, the petition requested EPC to replace a flexible cost-benefit comparison with a bright-line rule for determining when to allow for less degrading wastewater treatment alternatives. The new rule would state that “[a]lternatives costing less than 115 percent of the base cost of the minimum level of

pollution control are considered economically efficient.” The noticed rulemaking was published in the June 8, 2016, bulletin. DNR received numerous written comments and held a public hearing on June 29. DNR made three changes to the noticed rulemaking but did not modify the substance of the rule amendments. The amended rules became effective August 12. DNR made the rulemaking effective prior to the normal 35-day effective date because it believes these amended rules provide clarity to the Antidegradation Implementation Procedure.

Commentary. Mr. Jon Tack, DNR Water Quality Bureau Chief, provided a brief summary of the rulemaking process. He was followed by Mr. Josh Mandelbaum of the Environmental Law and Policy Center (ELPC). According to Mr. Mandelbaum, ELPC was heavily involved when the initial Antidegradation Implementation Procedure rules were adopted in 2010 and remained interested in the rules after their adoption, most notably by suing DNR for not enforcing them. That lawsuit, involving a wastewater treatment project in the city of Clarion, Iowa, led to the petition for rulemaking DNR received. Mr. Mandelbaum noted his appearance at the committee meeting in July to request that DNR convene a stakeholder group to hear concerns about the proposed rulemaking, which DNR declined to do. He described the new rules as a “one size fits all” approach to regulation, and lamented past regulatory efforts in that vein.

A committee member asked Mr. Mandelbaum why ELPC now opposes a rule that it helped write and “imposed” on a community while DNR is seeking to prevent future hardships for cities like Clarion. Mr. Mandelbaum explained that he and ELPC did not see the court’s ruling in the Clarion case as imposing any particular system and that other options were still available.

Another committee member asked Mr. Tack whether the amended rules undermine the federal Clean Water Act or the state’s nutrient reduction strategy. Mr. Tack replied that DNR sees the new rules as fully compliant with the Clean Water Act. He mentioned that other states, including neighboring Wisconsin and Missouri, have adopted bright-line standards just as DNR is doing here. He also noted that DNR has worked with the federal Environmental Protection Agency and was advised that the Antidegradation Implementation Procedure does not need to be adopted in rules, but DNR feels that doing so is beneficial for the public. Similarly, Mr. Tack stated that this rulemaking will protect the nutrient reduction strategy by avoiding a cost-benefit consideration for smaller pollutants.

A committee member also asked why DNR’s rulemaking process appears to have been less collaborative than usual in this instance. Mr. Tack stated that the agency was unsure of how to work with all parties once the petition for rulemaking was filed. He noted that DNR’s main goal with this rulemaking was to resolve uncertainty and that the agency would be open to convening a group to discuss proposals for future amendments if all participants are willing to be flexible. Mr. Mandelbaum noted that the rulemaking petition did not necessarily impose a timeline for adoption of rules.

Action: No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, October 11, 2016, beginning at 9:00 a.m.

ADMINISTRATIVE RULES REVIEW COMMITTEE

August 5, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

INSPECTIONS AND APPEALS DEPARTMENT, *Residential Care Facilities—Training Requirements for Certified Medication Aides, 8/3/16 IAB, ARC 2643C, ADOPTED.*

Background. This rulemaking rescinds rules requiring that an individual first be a certified nursing assistant (CNA) before becoming a certified medication aide (CMA) in residential health care facilities. Eliminating this requirement will permit an individual to become trained as a CMA without first being trained as a CNA.

Commentary. Public comment was heard from Mr. Doug Struyk on behalf of the Iowa Council of Health Care Centers. Mr. Struyk suggested that residential health care facilities would have difficulty verifying the qualifications for CMAs under the standard set out in this rulemaking. Department representative Mr. David Werning explained that CMA qualifications could be verified but stated that the department is still analyzing Mr. Struyk's feedback to determine the potential impact of this rulemaking on the facilities at issue. Committee members expressed a desire for this rulemaking not to go into effect until the department has had a chance to review Mr. Struyk's comments and determine if any further action is necessary. This rulemaking will be subject to review further at the committee's September 13 meeting.

Action. A motion for a 70-day delay passed on a short-form vote (seven votes required to pass).

PUBLIC HEALTH DEPARTMENT, *Practice of Tattooing, 8/3/16 IAB, ARC 2656C, ADOPTED.*

Background. This rulemaking includes various updates to the Department of Public Health (DPH) rules on the practice of tattooing. The rulemaking updates definitions; updates application requirements and fee schedules; establishes deactivation and reinstatement fees to encourage timely renewals; increases fees for temporary tattoo establishments; adds instructions for completing an online application that will be available January 1, 2017; clarifies general provisions for tattoo artists and tattoo establishments; clarifies and updates sanitation and infection control provisions; clarifies tattoo equipment requirements and tattooing procedures; clarifies establishment permit requirements; provides that no new mobile tattoo units be permitted effective July 1, 2016; clarifies inspection and inspector requirements; and clarifies permit revocation and other enforcement actions. The rulemaking resulted from discussions held with a tattoo artist stakeholder group.

DPH received 27 comments from licensed tattoo artists, county sanitarians, and Committee members. The department made changes to the noticed language in response to feedback, including removing the concept of guest tattoo artists, modifying documentation used to determine proof of age, and clarifying the definition of "disinfectant."

Commentary. DPH described the comment period for this rulemaking as "very active." In response to the comments, DPH revised the noticed rulemaking to remove all references to "guest tattoo artists," thereby maintaining that all tattoo artists operating in Iowa hold a high school diploma or GED. DPH also modified the definition of "disinfectant," modified a list of acceptable disposable gloves, and removed a requirement that applicants provide a photocopy of a birth certificate as proof of age.

Mr. Steve Barjonah, the owner of Crossroads Tattoo in Coralville, read aloud a written statement. Mr. JayR Wilson, owner of Neon Dragon Tattoo and Body Piercing in Cedar Rapids, also spoke, primarily in response to a question about tattoo removal. Next to speak was Mr. Jacob Helm from True Vision Tattoos and Fine Arts in Dubuque. He was followed by Mr. Earl Ramey, owner of Sacred Diamond Tattoo in Des Moines.

All four parlor owners offered support for this rulemaking and spoke about the need for sufficient regulation to ensure their profession is held to a high standard and respected by the public. Mr. Helm, a felon and former parolee, discussed the challenges felons face in opening their own small businesses and mentioned that tattooing can be one of the few available fields of work for felons upon their release from prison. Mr. Ramey opined that requiring a high school diploma or GED for licensure is unnecessary and may prevent otherwise qualified individuals from opening businesses. Several parlor owners expressed concern that body piercing is unregulated by the state of Iowa and encouraged legislative action to regulate such businesses. One Committee member agreed with that sentiment.

There was also discussion, prompted by a Committee member's question, regarding tattoo removal. DPH made clear that tattoo removal is regulated by the Board of Medicine, so it was unable to provide much specific detail regarding the regulation of tattoo removal.

Action: No action taken.

NATURAL RESOURCE COMMISSION, *Alcoholic Liquor, Beer, and Wine Ban at Beaches in Lake Macbride State Park and Pleasant Creek State Recreation Area*, 7/6/16 IAB, ARC 2612C, NOTICE.

Background. These proposed rules ban alcoholic liquor, beer, and wine at the beaches located in Lake Macbride State Park and Pleasant Creek State Recreation Area. The commission cites the disproportionate number of arrests made and citations issued at these locations relating to alcohol, the high number of personnel needed to respond to such incidents, and increasing the safety and enjoyment of park users as reasons for this rulemaking.

Commission rules define “beach” as “that portion of state parks or recreation areas designated for swimming activity including the sand, a 200-foot buffer of land surrounding the sand or a designated area which is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines.” However, the alcohol ban would not apply to any rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the Department of Natural Resources.

Commentary. Commission representative Mr. Todd Coffelt explained the commission’s rationale for this rulemaking. In response to a committee member’s question, he explained that this would be the first alcohol ban at any state park or recreation area. He suggested that the number of alcohol-related incidents at the two locations at issue may have increased after alcohol bans at certain federally regulated areas nearby took effect.

Committee members questioned if this issue could be solved through better enforcement of current legal requirements in these locations, including more enforcement personnel, rather than banning alcohol. Mr. Coffelt explained that these locations have a disproportionate number of citations and that increased enforcement would not be an efficient use of resources. He did note that each location only has one enforcement officer present. Committee members questioned if the commission had accurately analyzed the number of citations at these locations relative to all state parks and recreation areas. He explained that when all the numbers are analyzed, the disproportionate number of alcohol-related citations at these two specific locations stands out.

Action. No action taken.

IOWA STATE FAIR BOARD, *Weapons, Rule 2.5, SPECIAL REVIEW.*

Background. This rule prohibits carrying or possession of any weapon, including firearms, by any person other than a peace officer on the state fairgrounds unless authorized by the Fair Board. This rule was subject to a special review by the committee.

Commentary. Committee members explained that this special review was brought at the request of a constituent who opposed prohibiting the carrying of weapons during the Iowa State Fair. Mr. Gary Slater, CEO of the Iowa State Fair, noted that the rule in question has been in effect since 1980. Mr. Slater explained in response to a committee member’s question that if a person is found to possess a weapon on the state fairgrounds, they will be escorted from the premises if they have a permit for the weapon, and relevant legal processes will be followed if they do not have a permit for the weapon.

Mr. Richard Rogers spoke in opposition to the rule on behalf of the Iowa Firearms Coalition. He questioned whether the board had the legal authority to adopt the rule in question and whether the rule makes the fairgrounds safer. He asserted that the board lacks specific statutory authority to adopt this rule, that the rule was not enforced until changes in Iowa’s gun permit law in 2011, that the rule unfairly covers persons holding lawful gun permits, and that a gun prohibition will generally make an area less safe. He urged the board to issue a blanket authorization to carry guns under the process provided in the rule.

Several members of the public spoke in support of the rule as currently applied. They generally asserted that allowing guns at the fairgrounds would make the state fair less safe and expressed particular concern about an active shooter situation. They also discussed the number of gun-related deaths in the United States. Several stated that they would not attend the state fair in the future if guns were allowed there.

Committee members stated that it would be more appropriate to seek a legislative solution than to address this rule specifically and questioned whether the committee could resolve the issue. Committee members also questioned whether it would be safe to allow guns at the state fair given the number of people who attend and the ease of access to alcohol.

Action. No action taken.

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, September 13, 2016, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site <https://www.legis.iowa.gov/committees/committee?groupID=705&ga=86>

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 12, 2016

Chairperson: Senator Wally Horn

Vice-Chairperson: Representative Dawn Pettengill

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT, *Renewable Fuel Infrastructure Program, 6/8/16 IAB, ARC 2577C, ADOPTED.*

Background. These rules expand the Renewable Fuel Infrastructure Program for retail motor fuel sites by allowing funds to be used for the storing and dispensing of E-15 fuel. The rules also establish a minimum size for a renewable fuel pump decal and update label requirements for ethanol flex fuels. The requirements include replacing the current “Cleaner Air for Iowa” sticker with a new “American Ethanol” sticker. The new decals must be in place by January 1, 2018.

Changes were made to the noticed language, including language that specified that the label includes the name of the renewable fuel and language relating to labels requiring the use of flex fuel cars.

Commentary. Discussion centered on whether labeling requirements for gas pumps contained in these rules conflict with labeling regulations of the Federal Trade Commission (FTC) and the Environmental Protection Agency. Committee members expressed concern regarding the possibility of such a conflict. One committee member received informal guidance from FTC personnel prior to the meeting indicating that rules conflict with and are preempted by federal regulations. Such concerns were also raised by Ms. Kellie Paschke on behalf of the Petroleum Marketers and Convenience Stores of Iowa and Mr. David Scott on behalf of the American Petroleum Institute. They stated that violation of the federal regulations can result in significant financial penalties.

Department representatives Ms. Margaret Thomson and Mr. Matt Gronewald responded that the labels described in the rules are different from the labels governed by federal regulations. They stated that the department does not believe the rules conflict with federal regulations. They suggested that there may be some confusion regarding which specific labels these rules pertain to. They also stated that some of the confusion may relate to certain sample labels that were shared with committee members. They explained that the labels shared with committee members were obtained through a public records request and have not been approved by the department for distribution. Committee members asked the representatives if the department had discussed the possible conflict with the FTC or the Iowa Attorney General’s Office, and they stated that the department had not.

In addition to Ms. Paschke and Mr. Scott, public comment was also heard from Mr. Bob Hemesath on behalf of the Iowa Corn Growers Association (ICGA), Mr. Grant Menke and Mr. Monte Shaw of the Iowa Renewable Fuels Association, and Mr. Jim Pirolli on behalf of Kum & Go. Mr. Hemesath expressed support for the rules and explained that the ICGA had requested the change from the current “Cleaner Air for Iowa” sticker to a new “American Ethanol” sticker. He also asserted that it would be problematic for the ethanol industry in Iowa if the rules do not move forward, as grant funding would be delayed and ICGA members would not be able to plan effectively for the future in light of the resulting regulatory uncertainty. Mr. Menke and Mr. Shaw also expressed support for the rules. Mr. Shaw questioned the guidance received from the FTC regarding the rules and asserted that the FTC does not have regulatory authority over this matter. Mr. Pirolli offered suggestions as to the minimum requirements the rules should contain.

Other topics discussed included the sale of E-85 fuel, including certain statutory changes relating to E-85 that the department plans to pursue in the 2017 Legislative Session; whether the State Fire Marshal currently has regulatory authority relating to this rulemaking; storage and blending of E-15 in nonsummer months; and whether it is appropriate for gas pump labels to be approved by a three-person state board as they currently are.

Action. A motion for a session delay on this rulemaking failed by a 4-6 vote. A motion for a 70-day delay failed by a 5-5 vote. A motion for a session delay on Item 13 of this rulemaking failed by a 5-5 vote. (All three motions required seven votes to pass.)

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 14, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

EMERGENCY RULE FILING REVIEWS. Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under

this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered two filings:

Department of Public Health—*State Plumbing Code*. EMERGENCY FILING APPROVED BY COMMITTEE.

Workers' Compensation Division—*2016 Payroll Tax Tables*. EMERGENCY FILING APPROVED BY COMMITTEE.

HUMAN SERVICES DEPARTMENT, *Mental Health Advocates*, 3/16/16 IAB, ARC 2438C, ADOPTED, HELD OVER FROM APRIL.

Background. These rules establish standards for mental health advocates who provide services under Iowa Code chapter 229, as amended by 2015 Iowa Acts, HF 468. Prior to July 1, 2015, mental health advocates were appointed by the judicial branch and paid by the counties. HF 468 made mental health advocates county employees effective July 1, 2015. Prior to July 1, 2015, procedures varied from judicial region to judicial region and from county to county. The rules establish statewide requirements for hiring the advocate and for performance standards. They include standards for definitions, appointment and qualifications, assignments, advocate and county responsibilities, data collection requirements, and quality assurance.

At the committee's April meeting, the committee placed a 70-day delay on a portion of this rulemaking, rule 441—25.106 relating to data collection, and scheduled additional review for the June meeting. Committee members questioned the purpose of collecting the data described in the rule, how the data would be used, the cost of collecting the data, and whether such data collection should be retroactive. The rest of ARC 2438C became effective on May 1, 2016.

Commentary. Department and Mental Health and Disability Services Commission representatives Ms. Nancy Freudenberg, Mr. Rick Shults, Mr. Patrick Schmitz, and Ms. Theresa Armstrong explained that the department and the commission, in consultation with stakeholders including the Iowa State Association of Counties, will be proposing new rules on this subject in response to feedback the department has received on ARC 2438C. The new rules will provide for aggregate data collection and a modified reporting date. The representatives noted that the department and commission will need to begin a new rulemaking process, so resolution of this matter will not be immediate.

Public comment was heard from mental health advocates who urged the department to allow advocates to have input in the new rulemaking. Committee members urged this as well. Mr. Shults stated that advocates would have the opportunity to offer public comments during the rulemaking process.

A motion was made for a session delay on rule 441—25.106 to ensure that it would not take effect before the new rulemaking is completed.

Action. A motion for a session delay on rule 441—25.106 passed on a short-form vote (seven votes required to pass).

HUMAN SERVICES DEPARTMENT, *Process for Approving Subacute Mental Health Care Facility Licensing Applications to the Department of Inspections and Appeals*, 5/25/16 IAB, ARC 2550C, NOTICE.

Background. These proposed rules establish the process by which the Department of Human Services (DHS) will approve licensing applications to the Department of Inspections and Appeals (DIA) for subacute mental health care facilities. The rules also establish the process to determine the disbursement of 75 beds to the most qualified providers. Under Iowa Code chapter 135G, DIA is responsible for licensing subacute care facilities, and DHS must approve the licensing application based on the established process, which must identify the most qualified providers and geographically disperse no more than 75 beds.

Subacute services are one of the additional core services to be provided by Mental Health and Disability Services (MHDS) regions when public funds become available. Some MHDS regions and providers are interested in developing subacute services provided in a subacute care facility.

Commentary. After DHS representative Ms. Freudenberg explained the background of this rulemaking, the committee heard public comment from Mr. Doug Struyk on behalf of the Iowa Council for Health Care Centers. He expressed concern that these rules might require facilities to take individuals who might be challenging or even dangerous to care for. He questioned whether facilities would receive higher reimbursement rates for taking these challenging individuals. He also questioned whether facilities would be required to have psychiatrists on the premises at all times for individuals requiring medication on an as-needed basis.

Department representative Mr. Shults responded that DIA is responsible for licensing these facilities and for setting standards for services provided by the facilities, so DIA would be the appropriate department to address some of these concerns. Committee members asked him who sets the reimbursement rates for these facilities, and he explained that they are set either through Medicaid or through negotiation with the MHDS regions. Regarding challenging individuals, he explained that a facility has the responsibility to make safety determinations and to not accept individuals it cannot safely care for. He also noted that subacute facilities would not admit individuals who require higher levels of care. Committee members asked what subacute facilities there are currently in Iowa, and he replied that there are none and that patients requiring subacute care are currently placed in other facilities.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Child Care Centers, 5/25/16 IAB, ARC 2554C, NOTICE; Child Development Homes, 5/25/16 IAB, ARC 2553C, NOTICE; Child Care Homes, 5/25/16 IAB, ARC 2552C, NOTICE; Child Care Assistance Eligibility—In-Home Care, Nonregistered Providers, 5/25/16 IAB, ARC 2551C, NOTICE.*

Background. These proposed rules implement changes to the federal Child Care and Development Block Grant (CCDBG), which was reauthorized in November 2014. As a result of the changes, there are new federal laws outlining health, safety, and fire standards for child care providers that receive child care assistance dollars.

ARC 2553C rewrites requirements for child care providers that receive subsidy dollars and are required by state law to register with the department to provide child care. ARC 2552C outlines new requirements for child care providers that receive subsidy dollars but are not required by state law to register with the department. ARC 2554C and 2551C include additional conforming amendments relating to the CCDBG, as well as other technical changes and updates to the department's rules on child care providers.

Commentary. Committee members had questions regarding the training described in ARC 2554C. Department representatives Ms. Freudenberg and Ms. Ryan Page explained that training content and providers must be approved by the department. They stated that training will be phased in for existing provider staff and required for all new staff beginning October 1, 2016. They also stated that training is available online at no cost, takes 12 hours, and is divided into different modules that can be taken separately. Committee members asked how training requirements would apply to child care centers located in schools, and the representatives replied that they would follow up with that information.

During discussion of ARC 2552C, committee members asked if these proposed rules exceed federal requirements. Ms. Page replied that these rules are a combination of existing state requirements and the new federal requirements. She stated that the department has cut unnecessary requirements where possible. She also stated that these rules are not intended to push unregistered providers to register with the department.

Discussion was also had regarding language on cribs and other child sleeping arrangements. Public comment was received from providers praising the department's work on this matter and urging the department to pay attention to the needs of high-risk children and rural communities.

Action. No action taken on any of these rulemakings.

PUBLIC HEALTH DEPARTMENT PROFESSIONAL LICENSURE DIVISION, *Specific Minimum Standards for Appropriate Supervision of a Physician Assistant by a Physician, 5/11/16 IAB, ARC 2531C, AMENDED NOTICE.*

MEDICINE BOARD, *Specific Minimum Standards for Appropriate Supervision of a Physician Assistant by a Physician, 5/11/16 IAB, ARC 2532C, ADOPTED.*

Background. 2015 Iowa Acts, SF 505, section 113, required the Board of Physician Assistants (BPA) and the Board of Medicine (BM) to "jointly adopt rules... to establish specific minimum standards or a definition of supervision for appropriate supervision of physician assistants by physicians."

BM filed its Notice of Intended Action on this joint rulemaking as ARC 2372C, published in the January 20, 2016, bulletin. BM voted to adopt and file the rules with several changes from the noticed version on April 15, 2016. The rules were set to become effective June 15, 2016.

On behalf of the BPA, the Department of Public Health's Professional Licensure Division filed its noticed rules as ARC 2417C, published on February 17. BPA filed this amended notice for rulemaking.

The joint rules, as published in ARC 2531C and ARC 2532C, are now essentially identical.

Commentary. Ms. Sarah Reisetter, Bureau Chief, Professional Licensure Division, spoke on behalf of BPA. She stated that the only positive comments BPA has received have come from the Iowa Medical Society. The majority of comments have expressed opposition to the rules, generally related to the perception of a resulting overall negative impact to patient care in rural areas. Some commenters wondered why these rules are needed in tandem with BM, as the prior rules were viewed as satisfactory for several years. Ms. Reisetter also cited a claim from the American Academy of Physician Assistants that these rules would impose a \$2.9 million "burden" on the state's health care system.

Mr. Mark Bowden, Executive Director, BM, spoke regarding ARC 2532C. He commented that the rules as proposed are generally the same as those currently in effect for BPA, even though BPA is now resistant to these proposed rules. Mr. Bowden expressed doubt as to whether BM would be willing to renegotiate these joint rules with BPA if BPA does not adopt them in their current form.

A committee member asked what would happen if BPA chooses not to adopt the rules in their current form. Committee legal counsel commented that the BM rules would be in effect, except for the amendment and waiver provisions, since those would require approval by both BM and BPA. Another committee member requested that committee legal counsel study whether current BPA rules are in compliance with what BM has adopted and would satisfy the requirements of SF 505.

Action. No action taken on either rulemaking.

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, July 12, 2016, beginning at 9:00 a.m.

ADMINISTRATIVE RULES REVIEW COMMITTEE

May 10, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

HUMAN SERVICES DEPARTMENT, *Habilitation and Brain Injury and Intellectual Disability Waiver Programs—Prevocational and Supported Employment Services*, 3/30/16 IAB, ARC 2471C, SPECIAL REVIEW.

Background. These adopted rules were reviewed by the committee at its April 2016 meeting and became effective May 4, 2016. The committee's review of this rulemaking began with a review of the Notice of Intended Action at its September 2015 meeting. Since then, committee members have expressed concern regarding the department's use of \$750,000 of the amount appropriated for the state's Medicaid program in 2015 Iowa Acts, SF 505, section 12. Language stating that those funds were to be used to increase supported employment rates, which was included in earlier drafts of the bill and in the final Notes on Bills and Amendments (NOBA) for the bill, was erroneously omitted from the final text of the bill. Due to that omission, the department used those funds for purposes of addressing a Medicaid funding shortfall. Committee members questioned whether the department should instead have used those funds as directed in the omitted language. A special review of ARC 2471C was held for purposes of discussing this issue further.

Commentary. The department was represented by Department Director Chuck Palmer, as well as Ms. Nancy Freudenberg and Ms. Deb Johnson.

Committee members asked Director Palmer to explain when he became aware of the omission of the language from SF 505. He explained that he became aware of the omission after the bill was signed by the Governor. He acknowledged receiving a letter from the co-chairpersons of the joint appropriations subcommittee on Health and Human Services explaining the omission and urging the department to implement the omitted language. He stated that he found no direction regarding a funding increase for supported employment in the bill itself. He then explained that such an increase in funding could be implemented in multiple ways, but the bill offered no guidance as to how such an increase should be implemented. As an example, he cited a question of whether such a funding increase should be implemented in a budget-neutral manner. He explained that he was concerned about exceeding the department's legal authority given the lack of guidance in the bill. Given that uncertainty, he said he chose to use the funds at issue for purposes of addressing a Medicaid funding shortfall instead.

Committee members questioned whether the resulting reduced funding for supported employment caused a loss of federal matching funds. Director Palmer explained that, due to the way funds were allocated in SF 505 and 2016 Iowa Acts, HF 2460, no federal funding was lost. Committee members questioned whether this conclusion was correct.

Committee members asked if additional funding, guidance, or other provisions relating to this issue were included in HF 2460. Further discussion led to the conclusion that while additional funding was included in earlier versions of HF 2460, this issue was not addressed in the final bill.

Committee members asked if Managed Care Organizations (MCOs) are responsible for supported employment. Director Palmer stated that they are. Committee members asked him to provide the committee with information on whether supported employment providers have signed up with MCOs, and he agreed to do so.

Committee members asked when the department had last had an independent audit. Director Palmer explained that the department is audited by the Auditor of State each year, and the federal government regularly audits department programs when federal funding is involved, but no nongovernmental audit has occurred.

Additional discussion regarded how agencies can discern legislative intent. Committee members suggested that including more legislative intent in the text of bills may be appropriate. Director Palmer stated that in his experience, situations similar to the omitted language in SF 505 are rare.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Record Check Evaluations for Certain Employers and Educational Training Programs—Deferred Judgment*, 4/27/16 IAB, ARC 2504C, NOTICE.

Background. This rulemaking adds a definition of "deferred judgment" to the department's rules on record checks and specifies that deferred judgments will be considered in criminal background checks. The rules apply to personnel employed by health care facilities and other programs and for students in educational training programs for nurses and certified nurse aides.

The rulemaking states that "deferred judgment" means the same as defined in Iowa Code section 907.1 and is considered an admission of committing an act. The rulemaking further states that the admission of committing an act

must be considered a conviction for purposes of public protection.

Commentary. Department representative Ms. Nancy Freudenberg explained that this proposed rule codifies existing practice and that such codification is intended to help attorneys and judges advise defendants regarding the possible consequences of deferred judgments. She stated that by considering deferred judgments to be convictions, the department is complying with statutory requirements. She distributed copies of an Iowa Supreme Court decision on the subject.

Committee members asked what criteria the department had developed regarding how it would consider a deferred judgment during a background check and whether the department's analysis would vary depending on the crime involved. Ms. Freudenberg explained that the department has criteria in place for such analysis and that certain felonies would automatically result in a failed background check. Committee members asked Ms. Freudenberg to provide the committee with additional information regarding the criteria, and she agreed to do so.

Public comment was heard from Ms. Toya Johnson of Iowa Citizens for Justice who stated that treating deferred judgments as convictions unfairly punishes people for past mistakes and disproportionately affects African Americans. Additional public comment expressing concern regarding the rulemaking was also received.

Action. No action taken.

EDUCATION DEPARTMENT, *Preschool Funding*, SPECIAL REVIEW.

Background. The committee held a special review of three subrules of the Department of Education: 281-16.3(10), and 281-98.76(2) and (3). The subrules concern permissible uses of funding for the statewide voluntary preschool program.

Commentary. Department representatives Mr. Jeff Berger and Ms. Nicole Proesch explained the department's categorical funding methodology for the statewide voluntary preschool program. Mr. Berger stated that while individual providers may vary in how they define their costs, funding decisions by the department are based on statutory requirements and supplemented by generally accepted accounting principles. Mr. Berger noted that under Dillon's Rule, costs that are not specifically listed as eligible for funding are ineligible for funding. He also stated that changes to specific categories of funding would require legislative action.

Public comment was heard from Ms. Carol Earnhardt and Ms. Deb Gustafson on behalf of YMCA Child Care and Family Services in Scott County, Iowa, which participates in the statewide voluntary preschool program. They distributed copies of the department's handbook on standards for the program. They explained that the standards require providers to assist children with activities such as toileting and washing hands and to engage in other activities for which sanitary products are necessary. They stated that their annual costs for such products have been about \$800, which is currently categorized as an administrative expense. They explained that administrative expenses are subject to a cap, and therefore they do not receive sufficient funding to fully cover those costs. They asserted that such costs should be considered direct costs, which are eligible for full funding, because they are part of the required standards for the program.

Mr. Berger agreed that the costs at issue have been considered administrative costs by the department. He said he was willing to discuss the matter further with the commenters. Committee members urged the department to develop clearer standards regarding appropriate and inappropriate costs for the program.

Action. No action taken.

IOWA FINANCE AUTHORITY, *Title Guaranty Division*, 4/27/16 IAB, ARC 2506C, ADOPTED.

Background. This rulemaking strikes and rewrites the Iowa Finance Authority's rules for its Title Guaranty Division. The division's rules are reorganized, updated, and aligned with statutory authority and current practice. The process for obtaining a title plant waiver is revised. The division prepared a regulatory analysis of this rulemaking in response to a request from the Iowa Land Title Association (ILTA) pursuant to Iowa Code section 17A.4A, which was published in the November 25, 2015, Administrative Bulletin.

The authority made a variety of changes to the noticed language in response to public comments, including adding a definition of abstractor, changes in terminology, and changes to criteria for granting a title plant waiver.

Commentary. Authority representative Mr. Mark Thompson reviewed the history of the Title Guaranty Division, noting that it serves as a substitute for title insurance, which is illegal in Iowa but permitted in the other 49 states. He also explained the history of the division's 40-year title plant requirements, which were statutorily created in 1992 and which are revised in this rulemaking. He then explained the history of the division's statutory criteria for waiving the 40-year title plant requirements, which were the subject of a decision by the Iowa Supreme Court in 2009 known as the Hendricks case. He explained that this rulemaking includes the division's interpretation of the requirements of that case and acknowledged that ILTA has disagreed with that interpretation. He noted that the division placed a moratorium on all title plant waivers in 2014 in light of questions raised regarding the waiver process.

Committee members questioned whether the definition of "abstractor" in the rules is too broad because it includes corporate entities as well as individuals. Mr. Thompson explained that the definition is based on a legal definition used elsewhere and that there are no individual abstractors, only corporate ones.

Committee members had various questions regarding the rules for title plant waivers, particularly the definition of “hardship.” Mr. Thompson expressed openness to discussion of some possible changes regarding title plant waivers, but stated that the division feels that the definition of “hardship” is limited by the Hendricks decision. Additional discussion occurred regarding the Hendricks case and title plant waivers. Mr. Thompson was joined in this discussion by Division Director Ms. Tara Lawrence.

Public comment was heard from Mr. Andrew Nordstrom, president of ILTA. He praised the division for its work in rewriting these rules and for working with ILTA during the rulemaking process. He noted improvements that had been made to the rules. He then expressed concern with the definition of “abstractor” due to its inclusion of corporate entities. He also expressed concern regarding the title plant waiver criteria. He stated that ILTA disagrees with the division’s interpretation of the Hendricks case and feels the waiver criteria could be further clarified.

Action. A motion for a Session Delay on ARC 2506C passed by a nine-to-one vote (seven votes required to pass).

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, June 14, 2016, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>