



# Iowa General Assembly

## 2017 Committee Briefings

Legislative Services Agency – Legal Services Division <https://www.legis.iowa.gov/committees/committee?endYear=2017&groupID=705>

### ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [October 10, 2017](#) | [September 12, 2017](#) | [August 4, 2017](#) | [July 6, 2017](#) | [June 13, 2017](#) |

**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

October 10, 2017

**Chairperson:** Representative Dawn Pettengill

**Vice Chairperson:** Senator Mark Chelgren

**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 was originally scheduled to consider authorization of a third set of emergency rules from the Insurance Division on the Iowa Stopgap Measure, which relates to insurance available on the individual market through the federal Affordable Care Act. Mr. Chance McElhany appeared on behalf of the division to explain that approval of the Iowa Stopgap Measure by the federal Centers for Medicare and Medicaid Services (CMS) had not yet occurred and thus there was not a need to pursue further emergency rulemaking at that time. He stated that he did not know when or if the Iowa Stopgap Measure would be approved by CMS. He explained insurance options that would be available if approval does or does not occur. The Iowa Stopgap Measure was withdrawn by the division subsequent to the meeting.

### **DEPARTMENT OF WORKFORCE DEVELOPMENT, *Employer Records, Reports, Contribution and Charges—Fees, Collection of Covered Unemployment Compensation, 9/27/17 IAB, ARC 3325C, NOTICE.***

**Background.** This rulemaking establishes a new \$500 penalty for employers who fail to timely register with the department upon beginning business in the state of Iowa for purposes of determining liability for unemployment insurance. The rulemaking also imposes a \$200 fee for failing to register electronically, provides that the department shall utilize the federal Treasury Offset Program in order to collect covered unemployment compensation, and makes other technical changes.

**Commentary.** Discussion centered on the new penalty and fee for businesses. In response to questioning from committee members, department representative Mr. David Steen explained that the penalty is being added because employers currently face no consequence for failing to register with the department and thus some employers have no incentive to do so. He stated that an employer failing to register can lead to misclassification of employees and that this penalty is comparable to those imposed by other states. Regarding the fee for paper registration, he explained that the fee applies even if an employer timely registers and that Iowa is one of the few states that still accepts paper registration at all. He explained that moneys from the penalty and fee would be deposited in the department's fund for penalties and interest, for which the director of the department has spending authority.

Committee members asked if the department has statutory authority to impose the penalty and fee. Mr. Steen stated that while this penalty and fee are not specifically authorized by statute, Iowa Code section 96.11 provides the director of the department with broad, general authority to impose such penalties and fees. Committee members questioned whether a department should impose a penalty or fee by rule without specific statutory authority.

In communication with the committee subsequent to the meeting, the department indicated that it would not move forward with the penalty and fee by rule at this time and may pursue a legislative solution.

**Action.** No action taken.

**DEPARTMENT OF TRANSPORTATION, *Persons with Disabilities Special Registration Plates and Parking Permits*, 9/13/17 IAB, ARC 3304C, NOTICE.**

**Background.** This rulemaking rescinds and rewrites the department's rules on parking placards for persons with disabilities to conform with 2016 Iowa Acts, House File 588, which required the department to issue placards to expire every five years instead of permanent placards, and 2016 Iowa Acts, Senate File 2187, which permitted veterans to obtain a placard by providing a veterans disability rating from the U.S. Department of Veterans Affairs. The rules provide that a veteran can provide a certification of disability from the U.S. Department of Veterans Affairs in lieu of a veterans disability rating, as such ratings are not intended to meet applicable definitions under Iowa law.

**Commentary.** Public comment was heard from Ms. Stephanie Fawkes-Lee on behalf of Fawkes-Lee & Ryan Inc. She questioned the department's authority to replace a lost permanent parking placard for persons with disabilities obtained prior to the effective date of HF 588 with a five-year placard, as described in this rulemaking. Department representative Ms. Tracy George stated that replacing a lost permanent placard with a five-year placard is in keeping with the department's interpretation of the grandfathering provisions of HF 588. Ms. Fawkes-Lee disagreed with that interpretation, asserting that under HF 588, a lost permanent placard should be replaced with another permanent placard. Committee members agreed that the department's interpretation was correct.

**Action.** No action taken.

**SECRETARY OF STATE, *Fee Increases to Fund Technology Modernization Fund*, 9/27/17 IAB, ARC 3320C, NOTICE.**

**Background.** This rulemaking increases certain business-related fees collected by the Secretary of State for purposes of providing up to \$2 million per year in funding to the Secretary's Technology Modernization Fund as established in 2017 Iowa Acts, Senate File 516, section 23. The affected fees include the biennial report fees and the Uniform Commercial Code filing fees.

**Commentary.** Mr. Mark Snell, Chief Deputy Secretary of State, explained the statutory authorization in Senate File 516 for these fee increases to support technology upgrades and noted that the Secretary of State will be adding language to this rulemaking that reverts the increased fees back to their prior amounts upon the statutory sunset of the Technology Modernization Fund.

Committee members asked if these funds would be used for purposes other than business services, and Mr. Snell said they would not. Committee members asked if language to that effect will be added to the rulemaking. He said that the language of Senate File 516, when compared with other statutes, indicates that the funds should only be used for business purposes. He said the Secretary of State has pledged to use the funds only for business purposes. He also said that the Secretary of State would not include such language in the rulemaking.

Public comment was heard from Ms. Jessica Harder, Association of Business and Industry; Mr. Matt Everson, National Federation of Independent Business; and Mr. Doug Struyk, Iowa State Bar Association. They expressed concern regarding the lack of language limiting the use of the funds to business services and noted that the word of the current Secretary of State on this matter may not be sufficient if a new Secretary of State is elected before the fee increases sunset.

Committee members again urged the Secretary of State to include language in the rulemaking limiting the use of the funds to business purposes and questioned whether the Secretary of State's verbal commitment on the use of the funds is absolute.

In communication with the committee subsequent to the meeting, the Secretary of State indicated that he will include language in the adopted rule limiting the use of the funds to business purposes.

**Action.** No action taken.

**Next meeting.** The next committee meeting will be held in Room 116, Statehouse, on Tuesday, November 14, 2017, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, 515.281.6048.

Internet Site: [www.legis.iowa.gov/committees/committee?ga=87&groupID=705](http://www.legis.iowa.gov/committees/committee?ga=87&groupID=705)

## ADMINISTRATIVE RULES REVIEW COMMITTEE

September 12, 2017

**Chairperson:** Representative Dawn Pettengill

**Vice Chairperson:** Senator Mark Chelgren

**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 one filing:

Insurance Division—Iowa Stopgap Measure, Additional Rules. EMERGENCY FILING APPROVED BY COMMITTEE.

### **HUMAN SERVICES DEPARTMENT, *Elimination of Three-Month Retroactive Benefits*, ADOPTED AND FILED EMERGENCY, Mandatory ARRC Review, Approval Not Required.**

**Background.** This Department of Human Services (DHS) rulemaking eliminates the three-month retroactive benefit provisions for initial applications and applications to add new household members. As prescribed by 2017 Iowa Acts, HF 653, DHS requested a waiver from the Centers for Medicare and Medicaid Services (CMS) of the federal Department of Health and Human Services to eliminate the retroactivity provisions. Elimination of three-month retroactive eligibility would begin on October 1, 2017, if CMS approves the waiver request.

The Council on Human Services adopted this rulemaking on September 13, 2017. DHS presented this emergency rulemaking to the committee without needing committee approval in compliance with 2017 Iowa Acts, HF 653.

**Commentary.** Ms. Wendy Rickman, Administrator of DHS's Division of Adult, Children and Family Services, spoke on behalf of DHS. A committee member asked who this change will primarily impact. Ms. Rickman replied that it will mostly be hospitals feeling the effect of this change, but also other facilities such as nursing homes and community providers. She noted that CMS has never approved a waiver request from any state to eliminate benefits in this fashion.

**Action.** No action taken.

### **ADMINISTRATIVE SERVICES DEPARTMENT, *Terrace Hill Endowment for the Musical Arts*, 8/16/17 IAB, ARC 3262C, ADOPTED.**

**Background.** This rulemaking from the Department of Administrative Services (DAS) implements various updates to rules on the Terrace Hill Endowment for the Musical Arts (THEMA), which funds the Terrace Hill Piano Competition. Rules concerning Terrace Hill are adopted by the Terrace Hill Commission, but are listed under DAS in the Administrative Code.

**Commentary.** A committee member questioned whether the Terrace Hill Commission has the statutory authority under Iowa Code section 8A.326 to carry out THEMA and made a motion for a session delay on ARC 3262C. The motion carried. A committee member expressed hope that the matter can be resolved during the 2018 Legislative Session.

**Action.** A motion for a session delay passed on a 10-0 vote (7 votes required to pass).

### **INSURANCE DIVISION, *Iowa Stopgap Measure, Additional Rules, Emergency Filing, ARRC Approval Required.***

**Background.** This rulemaking makes changes to the Insurance Division's Iowa Stopgap Measure rules, first adopted on August 4, 2017. The division filed this as an emergency rulemaking because it views these amendments to the original rules as necessary to implement the Iowa Stopgap Measure in time for the 2018 open enrollment period beginning on November 1, 2017.

**Commentary.** Mr. Doug Ommen, the Iowa Insurance Commissioner, stated he is "less optimistic" that the Centers for Medicare and Medicaid Services (CMS) of the federal Department of Health and Human Services would approve the Iowa Stopgap Measure than he had been three weeks earlier because he had yet to hear back from CMS since a waiver request was submitted. Mr. Ommen said the division will move forward as if CMS will approve the plan.

Mr. Ommen noted that the rates submitted to the division by Wellmark to offer plans under the Iowa Stopgap Measure are about half the cost of those proposed by Medica, which is the only other option in Iowa that complies with the individual market requirements of the federal Patient Protection and Affordable Care Act. A committee member asked whether there is a “plan B” if CMS does not approve the Iowa Stopgap Measure. Mr. Ommen said the Medica proposal is the alternative. He noted that individuals just above 400 percent of the federal poverty level would have some very difficult choices to make if the Iowa Stopgap Measure is not approved due to the high cost of insurance options offered by Medica. Mr. Ommen added that “Medica is not to blame” for this situation.

**Action.** A motion to approve the emergency rulemaking was approved by a 10-0 vote.

**DEPARTMENT OF WORKFORCE DEVELOPMENT, *Unemployment Insurance Employer Contribution and Charges; Claims and Benefits*, 8/30/17 IAB, ARC 3280C, NOTICE.**

**Background.** This rulemaking includes changes relating to unemployment insurance employer contributions and claims and benefits. The rulemaking includes both substantive changes relating to job training funded through the Unemployment Insurance Program as well as a variety of technical updates.

**Commentary.** Discussion centered on changes made to the department’s rules on department-approved training under the Unemployment Insurance Program. A person receiving such training can receive payments similar to unemployment benefits while taking such training without being unemployed and looking for work.

Department representatives Mr. David Steen and Mr. Nicholas Olivencia noted that the department received public comments on the rule change and that a public hearing had been requested for the rulemaking but had not been scheduled yet. In response to questions by committee members, Mr. Steen and Mr. Olivencia explained that the department has recently determined that apprenticeship programs do not meet the requirements for department-approved training. They explained that the department has been overly flexible in its interpretation of the department-approved training requirements in the past, which has led to apprenticeship training programs being erroneously approved. They explained that because unemployment insurance taxes are not paid for workers receiving department-approved training for apprenticeship programs, this leads to the unemployment insurance trust fund, and hence Iowa employers, subsidizing the training. They noted that the department had already stopped approving apprenticeship programs for such training prior to starting this rulemaking and that the rule change at issue only clarifies the department’s rules. They acknowledged that the new requirement that department-approved training be completed in 104 weeks would negatively impact many apprenticeship programs, which can take five years to complete, but suggested that such programs could be reworked to comply with this requirement. They stated that allowing apprenticeship training to qualify for department-approved training likely violates federal law. They also stated that the department is willing to work with those affected by this change to help them meet the department’s requirements.

Public comment in opposition to this change was heard from Mr. Jason Shanks on behalf of Plumbers and Steamfitters Local 33; Mr. Patrick Wells, International Brotherhood of Electrical Workers Local 347 and State Conference; Mr. Kevin Hilton, Carpenters Union Local 106; Mr. Brian Johnson, Electrical Contractors Association and Mechanical Contractors Association; and Mr. Lynn Pickard, Iowa Laborers’ Training Fund. They generally expressed concern about the effect this change would have on apprenticeship programs, suggesting that it would lead to such programs being used less often, which would negatively affect worker training efforts in Iowa. They discussed the value that such programs have brought to the state and expressed willingness to work with the department to resolve this issue.

Ms. Sandi Conlin, speaking on behalf of Associated Builders and Contractors of Iowa, stated that her organization, which is the largest provider of apprenticeship programs in Iowa, may be negatively affected by this change, but she agreed that it is required by state law.

Committee members requested that the department provide the committee with additional information about this issue, including how much money has been provided for apprenticeship programs through department-approved training and how many of these programs exceed the new 104-week requirement.

**Action.** No action taken.

**MEDICINE BOARD, *Physician Supervision of a Physician Assistant*, 8/16/17 IAB, ARC 3264C, FILED.**

**Background.** The Board of Medicine (BM) adopted this filed rulemaking on July 19, 2017. The noticed version of these proposed rule amendments was published as ARC 3069C on May 24, 2017. Several changes were made to the noticed filing in response to public comments.

The adopted rulemaking states that a physician is ineligible to supervise a physician assistant if the physician does not have a written supervisory agreement in place with each physician assistant supervised by the physician. The rulemaking gives a physician 60 days to notify BM of a new supervisory relationship and provides a sample supervisory agreement to be used between physicians and physician assistants, rather than requiring approval by BM for each

agreement. BM made other changes regarding chart review and topics of conversation between a supervising physician and a physician assistant.

**Commentary.** Ms. Sandi Conlin spoke on behalf of the Iowa Medical Society (IMS). Like the noticed version of this rule, IMS supports this rulemaking. According to Ms. Conlin, the only change from current rules regarding physician-physician assistant relationships is the implementation of a supervisory agreement, which is required in most other states. Ms. Conlin cited a recent situation where both a physician and a physician assistant are under investigation regarding the death of a patient from a prescription error, which may have been prevented if the parties had been using a supervisory agreement.

Mr. Tom Cope spoke on behalf of the Iowa Physician Assistant Society and was joined by the society's president, Mr. Jim Earel. Mr. Cope noted that the Society appreciated the changes made by BM but was disappointed that BM did not meet with the society prior to adoption of the rules. According to Mr. Cope, the society's most significant concern is the difficulty in determining what the full impact of this change will be in three to five years. Mr. Cope noted concern about uncertainty in how BM will handle technical violations of rules rather than instances where patients are harmed. According to Mr. Cope, the society believes this rulemaking may have a chilling effect on the willingness of physicians to supervise physician assistants. Mr. Cope also contended that the amendment declaring physicians ineligible to supervise without written supervisory agreements is in direct violation of Iowa Code section 148.13(2), BM's governing statute. Mr. Earel noted that he has heard from physician assistants that have been told by supervisors that their employment contracts will not be renewed and that the physicians plan to hire nurse practitioners instead in light of these rule changes.

A committee member asked whether these agreements are amendable over time. Mr. Kent Nebel, legal counsel for BM, asserted that was correct. Mr. Mark Bowden, the Executive Director of BM, noted that physician-physician assistant relationships are not employment agreements. Another committee member asked how a physician can be deemed ineligible to supervise a physician assistant. Mr. Bowden noted that BM can make such determinations based on a lack of competency or if the physician has had prior disciplinary issues.

**Action.** No action taken.

**VOTER REGISTRATION COMMISSION, *Voter Registration; Status; Lists of Registered Voters; Election Registers*, 8/30/17 IAB, ARC 3283C, NOTICE.**

**SECRETARY OF STATE, *Election Administration; Voting; Voter Identification and Registration*, 8/30/17 IAB, ARC 3282C, NOTICE.**

**Background.** These two rulemakings implement certain provisions of Iowa 2017 Acts, House File 516, which concerned the administration of elections in Iowa and identification required to cast a ballot. These rulemakings implement provisions of the legislation that became effective July 1, 2017. Provisions becoming effective on or after January 1, 2018, will be implemented by rulemaking at a later date.

**Commentary.** Ms. Carol Olson and Ms. Dawn Williams, representatives of the Voter Registration Commission and the Secretary of State, noted that these rulemakings have been vetted by Iowa's 99 county auditors and explained how HF 516 will be implemented in tiers, with two additional tiers to come after the first tier implemented by these rules. They provided information about new voter identification cards that will be sent to voters that do not have a driver's license or nondriver identification cards and explained how various forms of identification can be used at polling places.

During questioning by committee members, Ms. Olson and Ms. Williams explained that the types of identification useable for election day registration have not changed; poll workers cannot ask for medical information from a voter, although a voter can voluntarily share such information if it is pertinent to identifying the voter; and persons who decline jury duty due to noncitizen status are automatically removed from the voter rolls. Some committee members questioned whether it is appropriate to allow local election officials the discretion to ask for two to six specified facts about a voter to determine the voter's identity if the voter fails to fully fill out an absentee ballot request form. Additional discussion occurred regarding how counties without electronic poll books will carry out election day registration and how the rejection of anonymous complaints of violations of voting requirements will be handled.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Room 116, Statehouse, on Tuesday, October 10, 2017, 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?ga=87&groupID=705>

## ADMINISTRATIVE RULES REVIEW COMMITTEE

August 4, 2017

**Chairperson:** Representative Dawn Pettengill

**Vice Chairperson:** Senator Mark Chelgren

**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:

Public Employment Relations Board—Elections, Collective Bargaining Updates. EMERGENCY FILING APPROVED BY COMMITTEE.

Insurance Division—Iowa Stopgap Measure. EMERGENCY FILING APPROVED BY COMMITTEE.

### **PUBLIC EMPLOYMENT RELATIONS BOARD, *Elections, Collective Bargaining Updates, Emergency Filing, ARRC Approval Required.***

**Background.** The Public Employment Relations Board (PERB) sought approval for emergency rulemaking in order to update the PERB's rules relating to elections for collective bargaining units. 2017 Iowa Acts, HF 291, required new retention and recertification elections for collective bargaining units beginning in fall 2017. The emergency rulemaking includes additional changes to the PERB's rules relating to HF 291.

**Commentary.** Public comment was heard from Mr. Mark Hedberg on behalf of American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61. He thanked the PERB for their work on this rulemaking and for incorporating some requested changes. He expressed a number of concerns with the rulemaking, particularly the requirement that recertification and retention elections be held at least every five years and language relating to the repayment of employee organizations for the cost of elections. He also asked that the election calendar found on the PERB's website be included in the rules, that the rules provide employees an opportunity to vote in the elections at work, and that the rules address accessibility of voting by employees with technological limitations.

Public comment was also heard from Mr. Charlie Wishman on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). He thanked the PERB for receiving input as reflected by the rules but also expressed a number of concerns. He agreed with the points raised by Mr. Hedberg and stated that there are many unanswered questions about the rulemaking and that the rulemaking should be delayed until the questions are answered. He stated that the duration of the elections is not specified in the rules and that the rules do not address voting during work hours and voting accessibility.

Committee members had a number of questions about the rulemaking that were addressed by PERB administrative law judge Ms. Diana Machir and PERB administrative law judge Ms. Amber DeSmet. Ms. Machir explained that the PERB has not yet heard from the federal Department of Transportation regarding the status of certain transit employees affected by HF 291. She explained that notice under these rules will be given through the PERB's electronic filing system or in accordance with Iowa Code chapter 17A, as applicable. She explained the PERB's statutory authority for decertification of an employee organization that fails to pay an election fee and that the PERB does not have the authority to require that voting during the workday be permitted. She stated that such decisions will be made by each department. Ms. DeSmet explained how the PERB will calculate the cost of elections and handle overpayments or underpayments by employee organizations. She noted there is some uncertainty about the future costs of these elections.

Ms. Machir and Ms. DeSmet provided information about the vendor for the elections selected by the PERB and the PERB's procurement process. They explained that the rules provide for both in-person and electronic voting, as well as an absentee voting process. They also explained that the basis for the requirement to hold a recertification and retention election every five years is a limitation on the term of collective bargaining agreements to five years in HF 291, although some committee members questioned that interpretation. Ms. DeSmet noted that this requirement will only apply to contracts going forward. Additional discussion included tallying of votes, when ballots will be mailed, and how the format of an election will be determined.

**Action.** Emergency rulemaking approved on a 6-4 vote.

### **PUBLIC HEALTH DEPARTMENT, *State Medical Examiner — Autopsy Fee, 7/19/17 IAB, ARC 3212C, NOTICE.***

**Background.** This notice of intended action from the Department of Public Health (DPH) seeks to raise the autopsy fee charged by the Office of the State Medical Examiner from \$1,400 to \$1,900. According to DPH, the increased fee will

help cover costs of medical supplies, staff, information management, and accreditation maintenance with the National Association of Medical Examiners.

**Commentary.** Several committee members questioned the necessity of this fee increase. One committee member mentioned never hearing problems about delays in dealing with the State Medical Examiner before this rulemaking was initiated but has since heard multiple complaints.

Another committee member noted that DPH has indicated it needs additional funding for the office. The committee member stated she would like to know how much money DPH needs and work to secure additional funding during the next legislative session instead of having DPH raise this fee. She requested DPH to “work on this” before the rulemaking comes before the committee in adopted and filed form.

One committee member asked what percentage a \$500 increase represents for this fee. DPH’s Administrative Rules Coordinator, Ms. Susan Dixon, noted the increase represents 4 percent for every year since DPH last raised the fee. Another committee member noted it represents a 37 percent increase at the present time. The committee member asked why this increase is necessary. Mr. Jon Thompson, an Assistant State Medical Examiner, noted that the increase would allow the office to hire an additional pathologist. Mr. Thompson stated that the office has not seen its general fund appropriation restored after a decrease in 2009, and it attempted to raise this fee by rule in recent years but was denied. Mr. Thompson also noted that only Johnson and Polk counties offer the same services as the office.

**Action.** No action taken.

**ADMINISTRATIVE SERVICES DEPARTMENT, *Human Resources Procedures*, 8/2/17 IAB, ARC 3215C, FILED EMERGENCY AFTER NOTICE.**

**Background.** This rulemaking makes numerous changes to the department’s rules relating to human resources. Some changes pertain to 2017 Iowa Acts, HF 291. Changes include modifying overtime rates for eligible employees to conform with the federal Fair Labor Standards Act (FLSA) rather than paying for each hour worked over 40 hours; eliminating various distinctions between contract and noncontract employees; striking rules relating to dues deductions for employee organizations; making various changes relating to calculation of pay; eliminating requirements that certain matters be negotiated through collective bargaining; making procedural changes relating to transfers, discipline, and grievances; and other matters.

**Commentary.** Public comment was heard from Mr. Hedberg on behalf of AFSCME Iowa Council 61. He opposed the change in overtime rates, which he said would remove eligibility for overtime from 3,000 employees. He stated that overtime compensation is an industry standard and that reliance on the standards in the FLSA would lead to increased litigation. He also stated that a rule change requiring that an employee in a grievance proceeding be represented by a peer would prevent employees from being represented by union stewards, which he said is in violation of Iowa Code section 20.8 and a U.S. Supreme Court decision, *NLRB v. J. Weingarten, Inc.* He stated that he had provided additional input on the rulemaking which was not included in the adopted rules.

In subsequent discussion, department representative Mr. Dave Heuton explained that the department used the FLSA standard for overtime because overtime is no longer subject to collective bargaining under HF 291 and there is no other state law that governs overtime. He explained that the department will grant waivers to the new overtime standards for specific positions when market conditions justify it. He stated that the overtime change will lead to \$5 million in savings. He also stated that *Weingarten* does not apply to grievance proceedings. Additional discussion occurred regarding the appropriate definition of “base wages,” job performance criteria, and the exemption of community-based corrections from the merit system.

Additional public comment was heard from Mr. Wishman on behalf of the AFL-CIO, who elaborated on the comments made by Mr. Hedberg that the requirement for peer representation in a grievance proceeding is in violation of *Weingarten*.

**Action.** No action taken.

**REGENTS BOARD, *Promotional and Lead Worker Pay; Grievance Procedure*, 8/2/17 IAB, ARC 3229C, FILED EMERGENCY AFTER NOTICE.**

**Background.** This rulemaking makes changes to the board’s rules relating to human resources. The rulemaking modifies certain procedures relating to pay increases for employees who are promoted or designated as lead workers. The rulemaking also modifies certain procedures relating to the grievance process, including striking step 2 of the grievance process, which provides for an appeal to an employee’s department head, and limiting the persons permitted to represent an employee in a grievance to the employee’s coworkers.

**Commentary.** Discussion centered on a rule change requiring that an employee in a grievance proceeding be

represented by a peer. Some committee members and Mr. Hedberg, speaking on behalf of AFSCME Iowa Council 61, asserted that this change is in violation of Iowa Code section 20.8 and a U.S. Supreme Court decision, *NLRB v. J. Weingarten, Inc.* They also stated that a peer may be reluctant to represent a peer in a grievance proceeding, as the peer may fear retaliation from the employer for participating. Board representatives Mr. Tim Cook and Ms. Aimee Claeys disagreed with this interpretation of state law and *Weingarten*, stating that *Weingarten* does not apply to grievance proceedings and that the board has authority for this change under HF 291, which removed grievance proceedings from the collective bargaining process.

**Action.** No action taken.

**Next meeting.** The next committee meeting will be held in Room 116, Statehouse, on Tuesday September 12, 2017, 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?ga=87&groupID=705>

## ADMINISTRATIVE RULES REVIEW COMMITTEE

July 6, 2017

**Chairperson:** Representative Dawn Pettengill

**Vice Chairperson:** Senator Mark Chelgren

### ADMINISTRATIVE SERVICES DEPARTMENT, *Terrace Hill Endowment for the Musical Arts, 6/7/17 IAB, ARC 3113C, NOTICE.*

**Background.** This notice of intended action from the Department of Administrative Services (DAS) seeks to implement changes to Iowa Code chapter 8A implemented in 2013. The rulemaking revises the DAS rules relating to organization of the Terrace Hill Endowment for the Musical Arts (THEMA) and removes references to the Terrace Hill Society, a nonprofit organization that merged with the Terrace Hill Foundation to become the Terrace Hill Society Foundation.

The Terrace Hill Commission is the Governor-appointed board created, according to Iowa Code section 8A.326, “to provide for the preservation, maintenance, renovation, landscaping, and administration of the Terrace Hill facility.” The Terrace Hill Partnership is a nonprofit organization for the purpose of raising funds for Terrace Hill distinct from the Terrace Hill Society Foundation.

**Commentary.** Mr. Joe Happe, a Terrace Hill Society Foundation board member, expressed opposition to the rulemaking on behalf of his organization because it was not provided any notice or opportunity to provide input. He stated this rulemaking is an unnecessary change and is the “hangover” from past issues between various interested groups.

Ms. Kaye Lozier, Chairperson of the Terrace Hill Commission, explained that the rule change is necessary to remove out-of-date language regarding the merged groups. She noted that the Terrace Hill Society Foundation is not being excluded from any interaction but is instead choosing not to participate and has rejected a proposed Iowa Code chapter 28E agreement relating to the Terrace Hill Society Foundation’s connection to Terrace Hill.

A committee member asked whether the issues between the two groups have prevented agreements in the past. Ms. Lozier said that the issue is a desire for autonomy on behalf of the Terrace Hill Society Foundation, that wants to remain a private foundation. The commission feels a written agreement should be in place stating how it would work with the Terrace Hill Society Foundation.

Another committee member asked Mr. Happe whether he believes the proposed rules fail to comply with the Iowa Code. Mr. Happe answered affirmatively. He noted that the proposed Iowa Code chapter 28E agreement contained a provision that provided that upon the agreement’s termination by either party, the Terrace Hill Society Foundation would change its name and transfer title of all property to the Terrace Hill Commission or the state.

The Assistant Attorney General representing DAS told the committee that the proposed rules are consistent with the statute. A committee member requested DAS to provide a comparison of the rulemaking and the related provisions in the Iowa Code.

**Action.** No action taken.

### UTILITIES DIVISION, *Public Utilities — Reorganization, 6/21/17 IAB, ARC 3120C, NOTICE.*

**Background.** This notice of intended action from the Iowa Utilities Board (IUB) seeks to amend rules regarding the reorganization of a public utility. The proposed amendments modify the revenue limits for utilities operating in more than one regulated line of business. They clarify that multiple corporate officers’ time may be accounted for and



allocated and change provisions regarding filing of testimony for hearings. The rulemaking would also require water, sanitary sewage, and storm water drainage utilities to provide notice to IUB of any acquisition or disposition of the whole or any substantial part of a public utility's assets.

**Commentary.** Mr. Tim Whipple, representing the Iowa Association of Municipal Utilities, asked IUB to withdraw Item 6 of the proposed rulemaking, relating to provision of notice to IUB prior to transfer of utility assets. Mr. Whipple noted that the Iowa League of Cities is concerned about Item 6 as well, though no one spoke on behalf of the League. Concern about Item 6 relates to IUB trying to assert jurisdiction over utilities the agency does not regulate through purchase agreements. Mr. Whipple cited a current issue occurring in the town of Blue Grass, Iowa.

A committee member asked Mr. Whipple whether Item 6 would give IUB authority to halt public utility transactions. Mr. Whipple stated that it would not, but that other parts of this IUB rule chapter would cover that issue. He noted that chapter 21 of IUB's rules is a better place for Item 6.

**Action.** No action taken.

#### **EDUCATION DEPARTMENT, *Community Colleges — Courses for Drinking Drivers*, 6/7/17 IAB, ARC 3087C, NOTICE.**

**Background.** This rulemaking provides revisions to the department's rules establishing requirements for certificate, diploma, and degree programs and instructional courses for drinking drivers offered by community colleges. Such programs are court ordered. The rulemaking includes terminology changes and increases tuition fees for in-state and out-of-state instructional courses as well as an administrative fee for such courses collected by the department.

**Commentary.** Committee members asked why the department is raising these fees and if the increase was legislatively mandated. Department representative Mr. Jeremy Varner explained that the fee increases were not legislatively mandated but are the result of complaints from the vendor of these courses that the current fees have not kept pace with costs, leading to the courses being operated at a loss. Mr. Varner stated that these complaints have increased recently. He noted that such operating losses can lead to courses being cancelled. He also explained that the department's administrative fee is currently not enough for the department to break even on its own expenses, and the department has been subsidizing the costs out of its general fund. He stated that the department considered fees charged by other states when setting the new fees, and committee members asked that the department provide that information to the committee.

**Action.** No action taken.

#### **EDUCATION DEPARTMENT, *Career and Technical Education*, 2/15/17 IAB, ARC 2947C, ADOPTED, SPECIAL REVIEW.**

**Background.** This rulemaking implements 2016 Iowa Acts, House File 2392, division II, by establishing new standards relating to career and technical education, including standards for career and technical education service areas, regional secondary career and technical education planning partnerships, career academies, and regional centers.

The committee placed a session delay on these rules at its March 2017 meeting. The rules will become effective at the end of the 2018 Legislative Session. Committee members stated at the March meeting that the language of HF 2392 had unintended consequences relating to agricultural education and that this rulemaking should be delayed for further consideration of the matter by the General Assembly. A special review of these rules was scheduled for the June 2017 ARRC meeting. At the June meeting, committee members expressed concern regarding the department's decision to implement HF 2392, division II, through guidance prior to the expiration of the session delay on ARC 2947C. An additional special review of these rules was scheduled for the July 2017 ARRC meeting.

**Commentary.** Department representative Mr. Phil Wise began by discussing several issues raised during the special review of ARC 2947C at the June 2017 ARRC meeting. He described the department's view of the relationship between ARC 2947C and HF 2392, division II. He asserted that division II is largely self executing and that the department has the legal authority to implement the division through guidance prior to the expiration of the session delay. He described the department's methodology for allocating certain funds pursuant to division II, and described the effect of various bills filed or enacted during the 2017 Legislative Session on the department's efforts to implement it. Some committee members disagreed with the department's conclusion that division II is largely self executing.

Committee Counsel Mr. Jack Ewing summarized a memorandum that committee counsel were asked by Chairperson Pettengill to prepare on the question of implementation of division II by guidance. He stated that the department arguably has the legal authority to implement division II by guidance prior to the expiration of the session delay on ARC 2947C based on the text of division II, particularly a June 30, 2017, deadline for implementation of certain provisions of the division, as well as the department director's authority to "interpret" school laws and rules. He noted that the department is still required to fulfill the rulemaking requirements provided in division II. Chairperson Pettengill asked that committee counsel prepare a memorandum for the August ARRC meeting describing considerations that can affect

a department's legal authority to implement legislation by guidance.

Additional discussion occurred regarding the department's allocation of funds pursuant to division II, during which Mr. Wise asserted that the department needed to distribute certain funds allocated in the division by a June 30, 2017, implementation deadline provided in the division in order to comply with the division and suggested that failure to distribute such funds might be contrary to federal law.

Public comment was heard from Ms. Sandra Mueller, Executive Director of the Iowa Association for Career and Technical Education, who spoke about her recent experiences in career and technical education in Iowa.

**Action.** A motion to lift the session delay on ARC 2947C failed on a 3-6 vote (seven votes required to pass).

### **PUBLIC HEALTH DEPARTMENT, *Trauma Registry*, 6/7/17 IAB, ARC 3106C, FILED.**

**Background.** The Department of Public Health (DPH) adopted this rulemaking on May 10, 2017, which became effective on July 12. The rules amend DPH's rules governing its trauma registry.

DPH made several changes to the noticed version of this rulemaking in response to committee concerns expressed during the February 10, 2017, meeting, including removal of social security numbers from the registry.

**Commentary.** A committee member thanked DPH for working with various legislators to address concerns but described these rule amendments as "a work in progress." The committee member cited what she saw as several errors and inconsistencies between DPH's stated goals for amending these rules and the resulting amendments. The committee member expressed interest in possible action on a bill still pending in the Senate that would prohibit DPH from collecting names in relation to health data. She noted that the state should look to use a patient identification numbering system rather than rely on patient names. The committee member moved for a session delay of the rulemaking.

Mr. Ken Sharp, the Division Director for DPH's Division of Acute Disease Prevention, Emergency Response, and Environmental Health, stated that concerns about incorrect references in the revised rule were mistaken. Mr. Sharp expressed concern regarding a session delay because DPH has been working on these rule changes for over two years and has received positive feedback from various interested groups. He indicated DPH would be willing to make changes to these rules as needed but would be concerned about not implementing this rulemaking.

Mr. Sharp noted that he understood concerns about privacy and security regarding patient data collection, but also noted that using a different identification system would come at a cost that would be tough to estimate. He indicated that patient information would need to be uniform across states and even countries so that a patient's information is not counted more than once.

One committee member expressed concern about delaying a rulemaking for pending legislation that may or may not progress during the 2018 Legislative Session.

**Action.** The motion for a session delay failed by a vote of 5 to 4 (would need seven to pass).

**Next meeting.** The next committee meeting will be held in Room 116, Statehouse, on Friday, August 4, 2017, 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?ga=87&groupID=705>

### **ADMINISTRATIVE RULES REVIEW COMMITTEE**

June 13, 2017

**Chairperson: Representative Dawn Pettengill**

**Vice Chairperson: Senator Mark Chelgren**

**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—Medical Cannabidiol Patient and Primary Caregiver Registration Card Applications and Renewals. EMERGENCY FILING APPROVED BY COMMITTEE.
- Department of Administrative Services—Capitol Complex Operations. EMERGENCY FILING APPROVED BY

## COMMITTEE.

### **HUMAN SERVICES DEPARTMENT, *Courtesy Review: Family Planning Program.***

**Background.** This Department of Human Services (DHS) rulemaking amends a current chapter of rules to implement a new state Family Planning Program (FPP) in accordance with section 90 of HF 653, as signed by the Governor on May 12, 2017. In general, providers of family planning services will change as entities that provide abortions can no longer participate as an FPP provider. Providers unable to participate as an FPP provider will also be unable to participate as a point-of-service agency for eligibility determinations for FPP.

While DHS is authorized to use the “emergency” rulemaking process for this rulemaking by HF 653, the agency brought these rules before the committee as a courtesy.

**Commentary.** Ms. Wendy Rickman, the Division Administrator of Adult Children and Family Services for DHS, spoke on behalf of the agency. One committee member asked what happens if the \$3 million allocated to this program runs out. Ms. Rickman indicated services would most likely cease. She added that in considering past usage of such programs, DHS is funded appropriately to operate the FPP. The committee member asked whether all clinics in Iowa that perform abortions are disqualified from the FPP, since about 60 percent of abortions occur at facilities other than Planned Parenthood. Ms. Rickman answered affirmatively.

A committee member asked why much of the framework for the old program is being used to create this new program. Ms. Rickman stated that HF 653 requires DHS to replicate much of the old family planning program to create the new FPP. Another member asked how far along DHS is in terms of being able to provide the services provided by the prior program. Ms. Rickman replied, “We believe this is going to be very seamless for providers and recipients.”

Another committee member asked how many providers there were under the old program. Ms. Rickman stated there were about 800 total providers. She stated that UnityPoint, University of Iowa Hospitals and Clinics, and Planned Parenthood were all point-of-service providers under the old plan but will not be participating in the new FPP. She added that DHS is working with the Department of Public Health and advocacy groups from both sides of this issue to address concerns.

**Action.** No action taken.

### **EDUCATION DEPARTMENT, *Career and Technical Education, 2/15/17 IAB, ARC 2947C, ADOPTED, SPECIAL REVIEW.***

**Background.** This rulemaking implements 2016 Iowa Acts, House File 2392, division II, by establishing new standards relating to career and technical education, including standards for career and technical education service areas, regional secondary career and technical education planning partnerships, career academies, and regional centers.

The committee placed a session delay on these rules at its March 2017 meeting. The rules will become effective at the end of the 2018 Legislative Session. Committee members stated at the March meeting that the language of HF 2392 had unintended consequences relating to agricultural education and that this rulemaking should be delayed for further consideration of the matter by the General Assembly. A special review of these rules was scheduled for the June 2017, Administrative Rules Review Committee meeting.

**Commentary.** Department representatives Mr. Jeremy Varner and Mr. Thomas Mayes explained that the issue is how HF 2392 can be implemented when the related rules have been subject to a session delay. They stated that the department is implementing the bill through guidance, but that implementing it by rule would be a better approach, as rules provide greater clarity and are less subject to change. They stated that the session delay no longer serves a useful purpose now that the bill is being implemented.

Committee members questioned the department’s authority to implement HF 2392 through guidance despite the committee’s session delay. Members noted that legislation on this subject proposed but not enacted during the 2017 Legislative Session could still be enacted during the 2018 Legislative Session. Mr. Varner and Mr. Mayes acknowledged the limitations of departmental guidance and stated that the guidance is intended to implement HF 2392, which they stated is self-executing and can still be implemented without rules. They stated that the guidance is not implementing the session-delayed rules. Some committee members expressed disappointment with the department’s decision to move forward with guidance despite the session delay while other members supported lifting the session delay. Members asked the department to provide the committee with guidance regarding how the funding at issue in HF 2392 could be used. Members also asked about the fiscal impact of moving forward with guidance, but an answer could not be determined.

Committee members asked Mr. Steve Ovel, who represents the Iowa Association of Community College Trustees, to comment on the situation. He stated the community colleges have a strong interest in seeing HF 2392 implemented and urged that the session delay be lifted. He stated that he did not see a negative impact from the department moving forward with guidance.

**Action.** No action taken. Additional review scheduled for the July 6 meeting.

**MEDICINE BOARD, *Physician Supervision of a Physician Assistant*, 5/24/17 IAB, ARC 3069C, NOTICE.**

**Background.** This notice of intended action seeks to amend the Board of Medicine's (BM) chapter of rules dealing with a physician's supervision of a physician assistant. BM approved the rules on April 28, 2017. The proposed rulemaking requires a physician to have a written supervisory agreement in place with each physician assistant supervised by the physician and sets forth several required provisions for those agreements.

**Commentary.** House File 591, passed by both chambers and signed into law by Governor Branstad on April 12, 2017, effectively terminated a 2015 joint-rulemaking directive from the Legislature to BM and the Board of Physician Assistants (BPA) regarding physician supervision of a physician assistant. Speaking on behalf of BM in support of ARC 3069C were Mr. Mark Bowden, Executive Director, and Mr. Kent Nebel, the Director of Legal Affairs. Mr. Nebel stated that while House File 591 ended an unsuccessful cooperative effort with BPA, it did not solve the problem BM identifies as a lack of clarity for its licensees in how to provide appropriate supervision to physician assistants. Mr. Bowden stated that the supervisory agreements required by this proposed rulemaking allow for flexibility in the relationships between supervising physicians and physician assistants.

The Iowa Physician Assistant Society, represented by Mr. Tom Cope, expressed strong disapproval of the proposed rulemaking. In Mr. Cope's view, House File 591 was an attempt to avoid disagreements between physicians and physician assistants. He believes this rulemaking "completely gets us back on a confrontational approach" and asked BM to withdraw the proposed rulemaking and restart its process. Mr. Cope pointed out that much of the language used in this rulemaking is taken verbatim from the proposed rule terminated by House File 591, which he argued ignores the legislative intent of House File 591.

While one committee member expressed concern that the rules appear to be "heavy-handed" on the side of physicians, two members spoke at length in support of BM. One member pointed out that the purpose of House File 591 was not to encourage cooperation between the two groups but rather to provide certainty to the public that physicians are in fact supervising physician assistants. The member also stated that while some of the language may be repurposed, the intent of this rulemaking is to require an agreement between a physician assistant and supervising physician. The member noted that the joint rulemaking process demonstrated that a "you're-not-the-boss-of-me mindset" was "running rampant" among physician assistants and House File 591 was the result of good work to ensure physicians are in charge of rules regarding supervision of physician assistants.

Mr. Cope challenged BM's authority to adopt rules relating to this subject due to provisions in Iowa Code chapter 148C, regulating physician assistants. The Iowa Physician Assistant Society, according to Mr. Cope, disagrees that a problem exists under current supervision rules and argues that there is no evidence supporting BM's position that a problem exists.

A committee member asked Mr. Bowden whether he thinks this rulemaking will improve patient care and increase patient access to care. Mr. Bowden stated that it will because it will bring clarity to the expectations to physicians and physician assistants. He noted that the American Academy of Family Physicians and the American Academy of Physician Assistants support supervisory agreements between supervising physicians and physician assistants. Mr. Nebel pointed out that over 40 states require such agreements.

Ms. Sandie Conlin spoke on behalf of the Iowa Medical Society in favor of this rulemaking, stating that its members desire greater clarity in the rules. Mr. David Adelman, representing UnityPoint Clinics, which employs about 90 physician assistants, expressed support for the rulemaking, but added he will look to work with Mr. Bowden on a few points.

**Action.** No action taken.

**INSPECTIONS AND APPEALS DEPARTMENT, *Award of Attorney Fees and Court Costs*, 5/24/17 IAB, ARC 3073C, NOTICE.**

**Background.** This notice of intended action seeks to amend Department of Inspections and Appeals (DIA) rules relating to procedures for contested cases involving permits to carry weapons and acquire firearms. DIA seeks to implement changes made to Iowa Code section 724.21A as amended by House File 517, signed by the Governor on April 13, 2017.

**Commentary.** Mr. Sam Langholz, Chief Administrative Law Judge and Administrator for DIA, spoke on behalf of the agency. He explained that this rulemaking allows for recovery of attorney fees but not "court costs" in contested case proceedings, since contested cases are administrative proceedings and do not occur in court.

Ms. Susan Cameron, on behalf of the Iowa State Sheriffs' and Deputies' Association, expressed concern that DIA is not

following the spirit of House File 517, which was to require the costs of all appeals to be paid by the loser of the appeal. Ms. Cameron did not think the phrase “contested case” needed to be included in the bill to include them in the change to the law. She acknowledged that if DIA does not alter its proposed rulemaking, further legislative action will be necessary next session to address the association’s concern.

A committee member asked how much money is at issue. Mr. Langholz indicated that DIA billed just over \$2,000 last year for costs of administrative hearings.

Mr. Richard Rodgers of the Iowa Firearms Coalition seconded the concern of Ms. Cameron that the loser of an appeal of this nature at the contested case stage should have to pay just like the loser of an appeal to a court.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Room 116, Statehouse, on Thursday, July 6, 2017, beginning at 9:00 a.m.

**BOARD OF REGENTS, *Promotional and Lead Worker Pay; Grievance Procedure, 5/24/17 IAB, ARC 3071C, NOTICE.***

**Background.** This rulemaking makes changes to the board’s rules relating to human resources. The rulemaking modifies certain procedures relating to pay increases for employees who are promoted or designated as lead workers. The rulemaking also modifies certain procedures relating to the grievance process, including striking step 2 of the grievance process, which provides for an appeal to an employee’s department head, and limiting the persons permitted to represent an employee in a grievance to the employee’s coworkers.

**Commentary.** Committee members asked why the board is limiting the persons who can represent an employee in a grievance to coworkers. Board representatives Mr. Tim Cook and Ms. Aimee Claeys explained that the board wanted to ensure that a representative would be someone from within the institution who would understand the institution’s policies. Members questioned whether an employee could choose an attorney as a representative, and Mr. Cook and Ms. Claeys explained that an employee is eventually allowed to be represented by an attorney if the grievance goes to arbitration. Members questioned whether this change complies with relevant court rulings, and Mr. Cook and Ms. Claeys stated that it did. Members asked the board to provide the committee with information regarding persons who have served as representatives in the past.

Members questioned why the initial appeal to an employee’s department head is being eliminated, and Mr. Cook and Ms. Claeys explained that the elimination would promote efficiency because an employee already begins a grievance with an informal meeting with the department head, therefore requiring the employee to then make formal complaint to the same person would be redundant.

Public comment was heard from Ms. Morgan Miller representing American Federation of State, County and Municipal Employees Council 61 (AFSCME). She expressed concern regarding the limitation of representatives to coworkers, stating that AFSCME has provided representatives in the past. She asserted that this change would violate a provision of Iowa Code chapter 20 and relevant court rulings. She also expressed concern regarding the elimination of the appeal to a department head, which she asserted would reduce participation in the grievance process by unions.

**Action.** No action taken.

**ADMINISTRATIVE SERVICES DEPARTMENT, *Human Resources Procedures, 5/24/17 IAB, ARC 3072C, NOTICE.***

**Background.** This rulemaking makes numerous changes to the department’s rules relating to human resources. Some changes pertain to 2017 Iowa Acts, House File 291. Changes include modifying overtime rates for eligible employees to conform with the federal Fair Labor Standards Act rather than paying for each hour worked over 40; eliminating various distinctions between contract and noncontract employees; striking rules relating to dues deductions for employee organizations; making various changes relating to calculation of pay; eliminating requirements that certain matters be negotiated through collective bargaining; making procedural changes relating to transfers, discipline, and grievances; and other matters.

**Commentary.** Committee members asked why the department had changed language on job performance as it relates to pay increases to reference “overall” job performance. Department Director Janet Phipps explained that the new language would not penalize an employee who has a poor job performance in a single category. Members asked why the department increased the amount of time for a supervisor to respond to a grievance complaint. The director explained that the department wanted to allow sufficient time for a meeting to occur. Members asked why language relating to negotiation of pay grade changes in collective bargaining had been changed from “shall” to “may.” The director stated that the law in this area may be changed in the future. Members had several questions regarding the

changes to overtime. The director explained that over 600 employees would be affected and would lose eligibility for overtime, although they may be able to use flex time instead. She explained that this change reflects the fact that overtime is no longer a mandatory subject for collective bargaining. Members questioned whether changes relating to persons permitted to represent an employee in a grievance proceeding comply with relevant court rulings, and the director stated that they do. Additional discussion was had regarding criteria for pay increases for certified teachers and eligibility of community-based corrections employees for promotional lists.

Public comment was heard from Ms. Morgan Miller representing AFSCME. She expressed concern about various provisions of the rulemaking, including some issues raised by committee members such as the changes relating to job performance, the time for a supervisor to respond to a grievance complaint, criteria for pay increases for certified teachers, and eligibility of community-based corrections employees for promotional lists. She questioned the legality of the changes relating to persons permitted to represent an employee in a grievance proceeding. Additionally, she asked how the department defines “base pay” and “certified teacher” and which employees would be affected by the overtime changes and how much overtime would be lost. She stated that AFSCME is still reviewing the rulemaking and may have additional concerns in the future.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Room 116, Statehouse, on Thursday, July 6, 2017, beginning at 9:00 a.m.

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