

**MINUTES OF THE APRIL 2010 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, April 13, 2010, at 10 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, and John P. Kibbie; Representatives David Heaton, Tyler Olson, and Linda Upmeyer were present. Senator James Seymour and Representative Nathan Reichert were not present.

Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Frevert convened the meeting at 9:58 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Donna Mueller and Kelly Lovell represented IPERS. Other interested parties included Tom Jochum of One Iowa.

ARC 8601B Amendments to chs 4, 7, 11, 12, 14, and 16 pertain to contribution rates for special service groups and tax treatment of distributions. Ms. Mueller explained that members of IPERS may designate anyone as beneficiary, and these amendments do not affect the designation of beneficiary. The IRS requested that the plan document, which includes the rules, specify compliance with the Defense of Marriage Act, which does not recognize same gender marriages for federal tax purposes. Sen. Bartz voiced concern about the amendments that implement the *Varnum v. Brien* decision. Mr. Jochum commented that a statute declared unconstitutional by the supreme court cannot be enforced.

Motion to delay Sen. Bartz moved a Session Delay on Items 5, 7, 8, 10, 12, 13, 14, and 15.
Motion failed On a vote of 3 to 5, the motion failed.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 8591B Ms. Uehling distributed brochures about the division's consultative services bureau, which assists employers with compliance with OSHA requirements. Discussion pertained to how the bureau would handle hazards reported or observed during a consultation visit. Ms. Uehling emphasized that the consultative services bureau is not an enforcement agency. Sen. Courtney requested a response from the division in regard to how it would respond to reported hazards that present imminent danger. Rep. Frevert asked that the response be provided to Mr. Royce for distribution to the entire committee.

ARC 8621B No action on amendments to chs 65 to 70 regarding the elevator safety board.
ARC 8622B No questions on proposed 72.1(3)"a" concerning installation of hoistway door safety retainers.
ARC 8623B Proposed 73.14(9) pertains to access to elevator speed governors. Members requested information regarding the number of elevators affected.
ARC 8590B No questions on amendments to ch 91 to update ASME codes.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid, Joe Walsh, LeLoie Dutemple and Shannon Archer represented the department.

ARC 8583B Sen. Kibbie pointed out a sentence in Item 33 that needs to be removed in compliance with current legislation. Sen. Courtney commented that the voluntary shared work program benefits many people.

REVENUE DEPARTMENT Jim McNulty, Victoria Daniels, Dale Hyman, and Donald Stanley represented the department. Other interested persons included Muscatine County auditor Dale McCrea and Chris Gruenhagen on behalf of Farm Bureau.

ARC 8603B No questions on 8.5 and 39.13 regarding electronic filing of Iowa income tax returns.
ARC 8605B No action on amendments to chs 38, 40, 43, 46, 50 and 52. Discussion related to reporting of dependents' health care coverage.
ARC 8589B No questions on amendments to chs 39 to 41, 46, 48, 52, 53, 58, and 59.

Revenue Department (continued)

ARC 8559B The amendment to 71.1(1) pertains to responsibilities of assessors. Mr. Hyman indicated that the controversial provision was not adopted. Ms. Gruenhagen expressed concern about the lack of direction to assessors regarding mixed-use and transitional neighborhoods. Discussion related to assessors' determination of market value, uniformity of practices, and outcomes of appeals. Mr. McCrea commented on how assessors determine the market value. Rep. Upmeyer voiced concern about highest and best use valuation when the homeowner does not wish to sell the property.

Motion to refer Sen. Bartz moved a general referral of valuation of property in mixed-use and transitional neighborhoods.

Motion carried On a unanimous vote, the motion to refer passed.

ARC 8602B No action on 230.12 and 230.13 concerning data centers.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Becki Brommel represented the Iowa Dental Association.

ARC 8627B, ARC 8628B, ARC 8629B, ARC 8630B, ARC 8631B, ARC 8634B, and ARC 8632B, all Notices of Intended Action, were reviewed as a group. Ms. Nervig reported that two proposed definitions in ch 88 regarding dental services will not be adopted. Ms. Brommel expressed appreciation to the department for withdrawing the definitions and commented that the association is interested in working with the department. Sen. Bartz would like to discuss proposed ch 155 with the appropriate agency contact person.

MEDICINE BOARD Kent Nebel and Mark Bowden represented the board. Other interested parties included Laura Malone on behalf of the Iowa Hospital Association, Ginny Wangerin and Mary O'Brien on behalf of the Iowa Nurses Association, Tom Cope on behalf of the Iowa Physician Assistant Society, Becki Brommel on behalf of the Iowa Dental Association, Jim Carney on behalf of the Iowa Association of Nurse Anesthetists, Lorinda Inman on behalf of the board of nursing, Kevin Kruse on behalf of the Iowa Society of Anesthesiologists, and Heidi Goodman on behalf of the Iowa Medical Society.

ARC 8554B No questions on amendments to ch 9 concerning permanent physician licensure.

ARC 8579B Proposed 13.9 pertains to interventional chronic pain management. The proposed rule defines interventional chronic pain management, lists procedures, establishes standards, and identifies interventional chronic pain management as the practice of medicine. Ms. Malone expressed concern that the rule would restrict Iowans' access to care. Ms. Wangerin expressed concern about the board's limiting the practice to physicians. Mr. Cope commented that the detailed language is cumbersome and asked that "practice of medicine" be clarified so that physician assistants are not excluded. Ms. Brommel expressed concern that "practice of medicine" excludes dentists. Mr. Carney expressed concern about the "practice of medicine" provision and stated that the association has filed a petition for a declaratory order. Ms. Inman and Ms. O'Brien added their concerns in regard to the "practice of medicine" language. Mr. Kruse and Ms. Goodman expressed support for the rule. Discussion focused on the language of the rule in light of the board's stated position that the board does not intend to limit the practice of interventional chronic pain management solely to MDs and DOs. Sen. Kibbie and Rep. Frevert urged the board to work with concerned parties and resolve the issue.

ENVIRONMENTAL PROTECTION COMMISSION Steve Dermand, Lori McDaniel, Patti Cale-Finnegan, and Wayne Gieselman represented the commission.

ARC 8597B No questions on proposed ch 16 regarding revocation, suspension, and nonrenewal of licenses for failure to pay state liabilities.

ARC 8599B Proposed 61.3(5) incorporates a third group of stream assessments. Ms. McDaniel reported on the process followed in making the use designations. In response to a question from Sen. Bartz regarding drainage ditches, Ms. McDaniel explained that EPC regulates only point-source discharges. Sen. Bartz requested information about any NPDES-permitted facilities that might discharge into private drainage districts.

ARC 8596B No questions on amendments to chs 90 to 93 pertaining to the clean water state revolving fund.

Environmental Protection Commission (continued)

- Special review Mr. Gieselman reported that concerned parties were unable to complete discussions during the period allowed by the 70-day delay on 135.5(1)"e" and requested additional time to resolve differences regarding leak detection at unstaffed facilities.
- Motion Sen. Kibbie moved a session delay.
- Motion carried The motion carried; 135.5(1)"e" was delayed until adjournment of the next session of the legislature.

EDUCATION DEPARTMENT Carol Greta represented the department. Other interested parties included Susan Roberts, Ruth Litchfield and Lois Stillman of the Iowa Dietetic Association and Craig Schoenfeld on behalf of the Iowa Beverage Association.

ARC 7782B A special review of the nutritional content standards for beverages sold in schools was requested. Dietitians expressed concern that the advisory panel's recommendations were not adopted. Ms. Greta commented that the board considered the recommendations of the advisory panel, but also approved flavored waters and sport drinks. Dr. Litchfield asserted that beverages such as sport drinks, caffeinated beverages and flavored waters contain stimulants and add no nutritional value. The committee was advised that products bearing a supplement facts label, as opposed to a nutritional facts label, are not regulated by the FDA. Mr. Schoenfeld distributed copies of the Alliance for a Healthier Generation School Beverage Guidelines Final Progress Report and commented on voluntary steps taken to reduce calories from beverages in the schools.

- Motion to refer Rep. Upmeyer moved a general referral to the legislature.
- Motion carried The motion carried on a vote of 6 to 2.

PROFESSIONAL LICENSURE DIVISION Roxanne Sparks represented the division.

ARC 8586B No action on 280.6(1)"e" and "f" regarding supervised professional practice for licensed independent social workers. Discussion related to differences between assessment and diagnosis. Rep. Frevert expressed appreciation to the board for working with concerned parties to resolve issues.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jeff Anderson represented the department. Child care center operator Jay Mattson was also present.

ARC 8619B, ARC 8581B, ARC 8582B, ARC 8613B, ARC 8556B, ARC 8580B, ARC 8557B, ARC 8611B, and ARC 8612B were reviewed as a group, and there were no questions.

ARC 8650B The department requested a special review of ch 109 regarding record checks and regulatory fees for licensed child care centers. Ms. Freudenberg reported that child care centers have expressed concerns about the costs of fingerprint and criminal history record checks. Ms. Freudenberg outlined changes made in response to comments and distributed a letter from the council on human services regarding their fiscal concerns. Mr. Mattson commented on the cost of conducting record checks every two years.

Committee business The minutes of the March 2010 meeting were approved. The next meeting was scheduled for Monday, May 10, 2010, at 9:30 a.m. Sen. Bartz asked that a review of ARC 8593B be scheduled for the May ARRC meeting.

Adjourned The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Kathleen K. West

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APPROVED:

Marcella R. Frevert

Chair Marcella Frevert

Wally E. Horn

Vice Chair Wally Horn