

MINUTES OF THE JANUARY 2005 MEETING OF THE

ADMINISTRATIVE RULES REVIEW COMMITTEE

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, January 4, 2005, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators Michael Connolly and John P. Kibbie; Representatives Danny Carroll, Marcella Frevert, and Geri Huser. Senators Mary Lundby and Donald Redfern and Representative David Heaton were not present.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Gary Dickey Jr., Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.

Convened Vice Chair McKinley convened the meeting at 9:10 a.m.

FISCAL IMPACT STATEMENTS Jennifer Vermeer presented an overview of the four rule makings that have a fiscal impact over \$100,000.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Mary Nelson represented the department.

ARC 3893B In proposed ch 186 the department implements part of the redesign of the Iowa child welfare system by providing community care through a single statewide performance-based contract. The purpose of the program is to keep children safe from abuse and neglect and to keep families intact. In response to McKinley's inquiry, Nelson reported that she was advised not to release information about proposals, but noted that the department received 17 letters of intent. McKinley asked that Nelson confer with the director and provide a response to Royce about the number of proposals received.

Kibbie commented on the distance between public hearing sites in some parts of the state.

ARC 3879B No questions on amendments to allow for Medicaid applications sent by fax.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Terry Vestal represented the department.

ARC 3884B The American dream downpayment initiative provides federal funds to assist first-time homebuyers. McKinley asked the department to provide geographical data on distributions made through this program in the past two or three years.

REVENUE DEPARTMENT David Casey represented the department.

ARC 3895B No action on proposed chs 1 and 2 regarding the state board of tax review.

ARC 3882B No action on amendments to implement SF 2290, the economic development program for investment tax credits and corporate tax credits. Casey highlighted the fiscal impact to the state.

ARC 3894B No action on amendments to eliminate individual and corporate tax credits for property rehabilitation and the university-based research utilization program in accordance with the supreme court decision in Rants v. Vilsack.

ELDER AFFAIRS DEPARTMENT Joel Wulf and Mary Ann Young represented the department. Other interested parties included Kristie Oliver of the Iowa Association of Homes and Services for the Aging.

ARC 3892B The rescission of ch 20 eliminates the department's program for the Older Iowans Legislature, which is organizing as an autonomous entity. Frevert expressed a desire that older Iowans retain the ability to use the Capitol when this program ceases to be under the department. Wulf agreed to work with the chief clerk of the house in making arrangements, and Frevert asked that the minutes reflect the department's intent to assist the organization in securing space in the Capitol for the Older Iowans Legislature.

At the request of Carroll, the next four rule makings were reviewed as a group.

ARC 3876B No action on termination of ARC 3703B, proposed amendments to ch 25, in response to numerous comments received.

ARC 3878B Three of the proposed amendments are the same as those proposed in the terminated notice, ARC 3703B. Proposed rule 25.29 regarding medications has been revised in response to comments from the industry.

Oliver commented that the association supports the rule, which allows programs to have flexibility and tailor service plans to address the needs of individuals. The association expressed reservations about how the department of inspections and appeals interprets rules of the department of elder affairs.

Carroll indicated concerns about the trend toward increased regulation of assisted living and about separate departments having responsibility for adoption and enforcement of rules. Huser requested that the department of inspections and appeals be represented when DEA's assisted living rules are under review. McKinley requested a written statement of the department's intent regarding final arbitration of medication decisions. Members suggested that hearings be held in all areas of the state and expressed an interest in use of the ICN and the Internet.

Elder Affairs Department (continued)

ARC 3875B No action on amendments to ch 24, adult day services programs.

ARC 3874B No action on amendments to ch 29, elder group homes.

CORRECTIONS DEPARTMENT Michael Savala represented the department.

ARC 3860B No questions on amendments to ch 38 regarding sex offender risk assessment.

ARC 3859B No questions on amendments to ch 42, probation services.

ARC 3858B No questions on amendments to ch 43, residential facilities.

ARC 3857B No questions on amendments to ch 44, work release.

ARC 3856B No questions on amendments to ch 45, parole.

ARC 3855B No questions on amendments to ch 47, OWI programs.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Charlie Smithson represented the board.

ARC 3896B No questions on the proposed amendment to 1.2(1) concerning advisory opinions.

ARC 3897B No questions on proposed 1.7(7) concerning employee sales of goods and services.

ARC 3898B Proposed 4.24 requires reporting of state party building fund contributors. Smithson reported that federal law supports requiring disclosure of contributors. Connolly asked that the minutes reflect his opinion that the rule should require disclosure of not only the names of contributors, but also how the money is spent.

ARC 3899B No questions on proposed 6.8 concerning misuse of public property.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department. John Tapscott appeared as an advocate for elders.

ARC 3847B No action on proposed amendments to ch 51 relating to critical access hospitals.

ARC 3848B Proposed ch 54 pertains to the governor's award for quality care. Werning advised McKinley that there are over 400 nursing facilities in the state and the department received 16 applications for the award.

Tapscott voiced strong opposition to the program. If an award must be made, Tapscott urged the department to require that only facilities with no deficiencies for a year be eligible for the award.

Motion to refer Huser moved a general referral of the award for quality care program.

Motion carried The motion carried; the governor's award for quality care program was referred to the general assembly.

IOWA FINANCE AUTHORITY Carla Pope and Dennis Dietz represented the authority.

ARC 3890B No action on proposed ch 22, Iowa aftercare services rent subsidy program. The program is intended to help provide safe and affordable housing for youth between the ages of 18 and 21 who have aged-out of the foster care program and to help these young adults achieve self-sufficiency. In response to Frevert, Pope indicated that receipt of this assistance should not disqualify a participant from college student aid commission assistance and added that DHS has funded the program through a federal grant from the Chafee Foster Care Independence Program. Huser expressed concern that the program may not be available in all areas of the state. Members suggested that eligibility factors and criteria for measuring self-sufficiency be specified in the rules.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Ray Jones represented the department.

ARC 3849B No action on ch 143, the automated external defibrillator grant program.

ARC 3841B No action on amendments to ch 202, certificate of need program.

ARC 3842B No action on proposed amendments to ch 202 resulting from a petition for rule making regarding specialty hospitals.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Stuart Crine represented the department.

ARC 3885B No action on 16.702(2) relating to elevators in apartment buildings. Coveyou reported that the provision was inadvertently omitted when rules were previously adopted. Apartment buildings of 4 or more stories are required to have accessible elevators. This subrule provides that elevators not required by accessibility codes are not required to meet accessibility requirements. Discussion pertained to the responsibilities of the the department for enforcing the building code and the division of labor services for inspection and safety of elevators.

Committee business Minutes of the December 2004 meeting were approved.

The date of the next meeting will be Friday, February 4, 2005.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION Ron Koontz represented the commission.

ARC 3887B No questions on amendments relating to organization, contracts and purchasing.

UTILITIES DIVISION Mary Whitman represented the division.

ARC 3900B No action on proposed amendments to ch 22 regarding procedures to prevent unauthorized changes in telecommunications service by providing an alternative to the waiver process in situations involving carrier-to-carrier sale or transfer of customer bases. In addition, the amendments delete "social security number" from the examples of appropriate verification data. Connolly expressed the view that the rules should prohibit carriers from requesting social security numbers.

NATURAL RESOURCE COMMISSION Sherry Arntzen, Terry Little, Mike Mason, and Marion Conover represented the commission.

ARC 3867B No questions on amendments to ch 27, lands and waters conservation fund program.

ARC 3866B No questions on 51.11, camping restrictions at game management areas.

ARC 3862B No action on proposed addition of Gladys Black Eagle Refuge in Marion County to the list of wildlife refuges.

ARC 3868B No questions on amendments to ch 61, state parks and recreation areas.

ARC 3869B No action on amendments to ch 64 concerning metal detector use in state areas.

ARC 3865B No questions on ch 79, fish stocking procedures and fees for private waters.

ARC 3864B No questions on ch 90, aquatic invasive species.

ARC 3861B No action on proposed amendments to ch 94.

ARC 3863B No questions on amendments to ch 98 regarding wild turkey spring hunting.

NATURAL RESOURCES DEPARTMENT Jon Tack represented the department.

ARC 3844B No action on proposed amendments to ch 9 concerning groundwater hazard statements.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Chuck Corell, and Wayne Gieselman represented the commission. Other interested parties included Chris Gruenhagen on behalf of Iowa Farm Bureau and Eldon McAfee on behalf of the Iowa Cattlemen's Association, and Emily Eide on behalf of the Iowa Rural Water Association.

ARC 3871B No action on proposed 22.9 regarding special requirements for visibility protection.

ARC 3872B Proposed amendments to ch 23 pertain to training fires and controlled burning of a demolished building. Huser asked that the fire marshal be provided a copy of these proposed amendments and stated that the intent of the legislation was to allow training fires and controlled burning of demolished buildings, whether by townships or city fire departments. Kibbie indicated that procedures should be as efficient as possible in the event of natural disasters. McKinley asked that information regarding procedures to be followed after natural disasters be provided to the committee.

ARC 3870B No questions on amendments to update references to federal effluent and pretreatment standards.

ARC 3873B Proposed amendments to ch 65, intended to protect the groundwaters of the state, separate open feedlot standards from confinement facility standards. Discussion related to costs of compliance, federal cost-share funds, alternative technologies, and resources of the department.

Informal request Kibbie asked the department to provide additional regulatory information. Members concurred with Kibbie's request for an informal regulatory analysis, which will not delay the process but will provide information related to costs and benefits.

Gruenhagen contended that only construction costs were included in the fiscal analysis for these rules, and pointed out that there are federal cost-share limitations, such as for prior engineering fees. Gruenhagen also maintained that the preamble to the rule making does not identify the provisions which are more stringent than federal requirements as required by Iowa Code chapter 17A.

McAfee stated that the Iowa Cattlemen's Association will present concerns during the public comment period. McAfee said that although Gieselman indicated that some mistakes appeared in the Notice, the association does not know what is correct and what is a mistake.

McKinley asked that EPC identify any errors in the Notice of Intended Action. Members expressed concern about stakeholders not working with the department.

Special review Construction permit fees adopted in 43.3(3) have been in effect since April. Concerned parties asked for a reevaluation of the impact of the rule. Corell reported that between April and December 495 permits have been issued for a total of approximately \$192,000. The average permit cost \$384; 36 percent paid the minimum fee of \$100 and 7 percent paid \$1000 or more; and 23 permits were issued to rural water systems. Eide noted that the fee has generated more revenue than was originally estimated. The association would like the legislature to repeal the department's authority to collect the fee and suggested instead that a portion of the sales tax collected on drinking water be dedicated to funding the department's implementation of the Clean Water Act. Frevert voiced a concern that rural water lines are not sufficient for fire protection.

Members wanted to ensure that fees not generate more revenue than needed to fund the cost of operating the program.

JANUARY 4, 2005

Adjourn

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

Kathleen K. West
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APPROVED:

George S. Eichhorn
Chair George Eichhorn

Paul McKinley
Vice Chair Paul McKinley