

**MINUTES OF THE SEPTEMBER 2005 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting:** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 13, 2005, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Representative George Eichhorn, Chair, and Senator John P. Kibbie, Vice Chair; Senators Jeff Angelo, Michael Connolly, Mary Lundby, and Paul McKinley and Representatives Marcella Frevert, David Heaton and Geri Huser. Representative Danny Carroll was excused.
- Also present:** Joseph A. Royce and Emily Gardyas, Legal Counsel; Kathleen K. West, Administrative Code Editor; Gary Dickey Jr., Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened** Chair Eichhorn convened the meeting at 9:05 a.m.
- Fiscal report** Mary Beth Mellick presented the LSA fiscal analysis of ten rule makings.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Mary Nelson and Gary Lippe represented the department. Other interested parties included Kim Schmett of the Coalition for Family and Child Services and Senator Jack Hatch.
- ARC 4479B** No questions on amendments to the FIP and PROMISE JOBS programs.
- ARC 4478B** No questions on proposed Medicaid premiums for employed persons with disabilities.
- ARC 4477B** No questions on proposed exclusion of Medicare-covered Part D drugs from Medicaid coverage for persons who are eligible for both Medicare and Medicaid.
- ARC 4439B** No action on proposed amendments to ch 151 regarding juvenile court services-directed programs.
- ARC 4438B** No action on proposed amendments to ch 176 which pertain to access to dependent adult abuse information and include parties identified in HF 825.
- ARC 4313B** Review of amendments to chs 150 and 156 was carried over from the August ARRC meeting. Freudenberg stated that the department has revised the rules to incorporate language from HF 825, which required the department to provide for 288 shelter care beds, and indicated that the department has contracted for 345 beds, with payment guaranteed for 246 beds. Freudenberg indicated that contracting for nonguaranteed beds allows the department to place children as needed in shelters close to home rather than transport them to paid beds in other parts of the state. Shelter care providers contended that the legislature intended that 15 of the 288 beds be undesignated and that payment be guaranteed for the remaining 273 beds. Heaton related the goals of the child welfare redesign and expressed the belief that both the demand for shelter care beds and the needs of providers can be met. Lippe commented on the difficulty of trying to meet fluctuating needs within a service area with fixed numbers of beds. Members discussed the intent of the legislation; Senator Hatch offered his perspective of the intent of the Senate to preserve the safety net for children by ensuring that providers' needs are met. Schmett stressed that payment for 273 beds must be guaranteed in order for shelters to remain viable. Heaton noted that child welfare redesign initiatives may result in alternatives to placement or shortened stays in shelters and asked that the department also provide information about the month-by-month population of detention centers. Freudenberg agreed to convey to the department the committee's belief that the legislature's intent was to guarantee payment for 273 beds.
- Huser expressed a concern about the adoption subsidy rate being tied to the rate for foster family care.
- PUBLIC SAFETY DEPARTMENT** Mike Coveyou and Jim Kenkel represented the department. Keith Luchtel appeared on behalf of the Iowa Propane Gas Association. Lucy Norton represented the Iowa Renewable Fuels Association.
- ARC 4444B** Proposed amendments to ch 5 establish fire safety standards for assembly occupancies and provide that occupancies in jurisdictions that have adopted and enforce the International Fire Code are deemed to be compliance with rules of the fire marshal. Luchtel commented that the association is working with the department to resolve an apparent conflict regarding propane gas; Coveyou responded that the department concurs with the association and will clarify that the rules for flammable and combustible materials apply even where the IFC is used.
- ARC 4445B** Proposed amendments to ch 51 pertaining to dispensing of motor vehicle fuel are intended to facilitate retail sales of ethanol blends. Coveyou indicated that the department plans to revise the adopted amendments in response to public comments received and would like to implement the adopted amendments on an emergency basis. Kibbie asked that the revisions be provided to the committee through Royce. Norton expressed the support of the association.

IOWA FINANCE AUTHORITY Dennis Dietz, Tim Waddell and Carla Pope represented the authority. David Mitchell of Iowa vocational rehabilitation services was also present.

- ARC 4474B No action on amendments to ch 3 concerning multifamily housing.
- ARC 4475B No action on 12.1 and 12.2. Waddell highlighted changes in the 2006 QAP for the low-income housing tax credits.
- ARC 4473B Proposed ch 25 implements the entrepreneurs with disabilities program, which is administered by IFA in collaboration with vocational rehabilitation services and the department for the blind. Mitchell provided a brief description of the program and indicated that efforts are being made to improve data collection and utilization.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 4443B No action on 200.4 concerning fees for boilers and pressure vessels. Uehling noted that a fee that was inadvertently eliminated is being reinstated in an emergency rule making.

EDUCATIONAL EXAMINERS BOARD George Maurer represented the board. Carol Greta of the department of education was also present.

- ARC 4442B No action on fee increases needed to fund staff and update computers. Eichhorn expressed concern about the emergency filing.
- ARC 4441B No action on 14.121(7) which imposes a penalty for a teacher's failure to have appropriate licensure. In response to questions about the fairness of penalizing the teacher but not the district, Maurer stated that the board has authority over licensees, not districts. Greta commented that although it is illegal for a district to employ a teacher without proper licensure, there is no statutory provision for a penalty.

EDUCATION DEPARTMENT Carol Greta and Arlie Willems represented the department.

- ARC 4469B No action on an amendment to 11.3(1) concerning unsafe school choice option.
- ARC 4470B No questions on proposed amendments relating to open enrollment.
- ARC 4471B Proposed amendments to ch 77 pertain to standards for teacher intern preparation programs. Greta noted that there is only one such program in Iowa, and it will probably be closed due to a lack of participation. Willems indicated that although the current program is being phased out, a regents program will be forthcoming.

CAPITAL INVESTMENT BOARD David Casey represented the board.

- ARC 4476B No action on proposed amendments concerning tax credits for investments.

PHARMACY EXAMINERS BOARD Terry Witkowski represented the board.

- ARC 4446B No action on amendments to ch 10 pertaining to the dispensing of pseudoephedrine-containing drug products.

Committee business The minutes of the August 2005 meeting were approved.

The next meeting will be held Tuesday, October 11, 2005.

Kibbie moved, and the committee concurred, that the committee sponsor legislation to change the period for requesting a regulatory analysis from 32 days to 70 days.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland represented the department.

- ARC 4436B No questions on proposed 62.6 which sets fees for registration of Iowa-foaled horses and Iowa-whelped dogs. Rowland advised the committee that the department would like to proceed with an emergency after notice filing.

ENVIRONMENTAL PROTECTION COMMISSION Wendy Rains represented the commission. Erin Peiffer of the Iowa Association of Municipal Utilities was also present.

- ARC 4433B No action on definitions of "biodiesel fuel," "diesel fuel," "number 1 fuel oil," and "number 2 fuel oil" in ch 20.

- ARC 4434B No questions on adoption of federal emission standards.

NATURAL RESOURCE COMMISSION Lowell Joslin, Sherry Arntzen, Jeff Joens, and Martin Konrad represented the commission.

- ARC 4472B No questions on termination of the notice to amend ch 16.
- ARC 4461B No questions on termination of the notice to amend ch 18.
- ARC 4463B No questions on amendments to ch 40 concerning boating speed and distance zoning.
- ARC 4462B Proposed amendments to chs 61 and 62 to establish a centralized reservation system for state parks and recreation areas generated many comments. Angelo questioned the commission's authority to make this change. Discussion related to costs of implementation, reservation fees, and availability of campsites. McKinley requested a copy of the contract.
- ARC 4464B No questions on the proposed locations where snagging of fish is prohibited.
- ARC 4465B No questions on proposed amendments to ch 86, turtles.
- ARC 4466B No action on proposed amendment to ch 87 concerning mussels.
- ARC 4467B No questions on amendments to waterfowl hunting rules.
- ARC 4468B No questions on falconry seasons for geese.

PROFESSIONAL LICENSURE DIVISION Pierce Wilson and Lois Churchill represented the division. Cosmetologist Dena Wise was also present.

There was no committee action on the 18 rule makings scheduled for review. Churchill reported on the fee increases and indicated that the increased revenue will be used for board members' travel expenses, database development, and the hiring of an additional investigator. Wilson summarized the other rule makings. Churchill advised cosmetologist Dena Wise that the fee increase will benefit licensees by providing for on-line renewals and agreed to convey to the board Wise's concern about availability of continuing education courses.

UTILITIES DIVISION David Lynch and Joan Conrad represented the division. Other interested parties included Stephen Dryden of Midwest Renewable Energy and Rich Leopold of the Iowa Environmental Council.

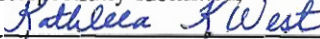
ARC 4342B Eichhorn summarized the concerns expressed at the August ARRC meeting and reported that, due to the likelihood of litigation, the attorney general chose not to issue an opinion as requested by the committee. Committee concerns related only to HF 882 projects and specifically pertained to provisions for documentation other than an executed purchase of power agreement (PPA), the emergency adoption of the rules, and whether the limitation of two projects per owner was intended to apply to different limited liability companies indirectly owned by the same person. Lynch reported that the board had intended application procedures for wind energy tax credits to be the same for both small wind projects under SF 390 and large wind projects under HF 882 and that the emergency adoption allowed potential applicants to prepare for application. Lynch further noted that the regular rule-making process is still in process and that the adopted rules may address some of the concerns raised by the committee. Leopold asked that any action that the committee may take would not affect SF 390 projects. Dryden related information about the LLCs with which he has been involved and asked that the committee not take action until the final rules are adopted.

Motion to object Angelo made a motion that the committee object to rule 15.18 on the grounds that the provision that allows for documentation other than a PPA is unreasonable. Following discussion, the motion was amended to also object to indirect ownership by the same individuals through multiple LLCs and to object to the emergency filing.


Motion carried The motion carried. Lundby suggested that a subcommittee be formed to make recommendations to the legislature regarding the filing of emergency rules. Members agreed that emergency rules upset the balance of power among the branches.

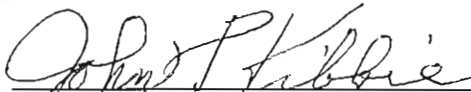
Adjourn The meeting was adjourned at 3:50 p.m.

Respectfully submitted,


Kathleen K. West

APPROVED:


Chair George Eichhorn


Vice Chair John P. Kibbie