

**MINUTES OF THE OCTOBER 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, October 12, 2010, 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, John P. Kibbie, and James Seymour; Representatives David Heaton, Tyler Olson, Nathan Reichert, and Linda Upmeyer were present.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Stephanie A. Hoff, Acting Administrative Code Editor; James Larew, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Frevert convened the meeting at 9:30 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- PUBLIC HEALTH DEPARTMENT** Barb Nervig represented the department. Other interested parties included Linda Goeldner on behalf of the Iowa Nurses Association.
- ARC 9092B Proposed amendments to ch 9 pertain to outpatient diabetes education programs. Ms. Goeldner questioned the reason for the deletion of references to the respective licensing chapters of the Iowa Code from several definitions and encouraged the department to use ch 9 as the basis for coordination of education in schools and in the general public to prevent and manage diabetes.
- ARC 9057B No action on ch 33 pertaining to contested cases related to the plumbing and mechanical systems board.
- ARC 9096B No questions on proposed ch 111, Iowa needs nurses now infrastructure account. Ms. Goeldner expressed support for the rules.
- ARC 9093B No questions on proposed ch 186, governmental public health advisory bodies.
- REVENUE DEPARTMENT** Jim McNulty represented the department.
- ARC 9103B No action on amendments to chs 10, 38, 40, 43, 44, 53 and 59 pertaining to individual income, corporation and franchise tax.
- ARC 9104B No action on amendments to chs 38, 42, 51, 52, 57 and 58 regarding tax credits related to individual income, corporation and franchise tax.
- ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Kelley Myers, Leslie Leager and Diane Foss represented the department.
- ARC 9060B No questions on proposed amendments to chs 21 and 25 pertaining to deletion of HOME housing fund requirements. The HOME housing fund is now administered by the Iowa finance authority.
- ARC 9064B No action on amendments to ch 72 regarding the definition of “trade mission” and related changes.
- ARC 9067B No action on 78.11 to 78.18 pertaining to the 2010 Iowans helping Iowans business assistance program.
- ARC 9062B No action on ch 80, Iowa small business loan program, which establishes criteria by which a business may apply for, receive and manage loan funds for investment in machinery, supplies and new technologies. Ms. Myers noted that the adopted rules provide an alternative consideration for business owners who do not meet the minimal credit score requirement.
- ARC 9063B No action on amendments to ch 104, which allow Iowa high school graduates who attend college out of state to participate in the targeted industries internship program.
- ARC 9061B No action on ch 114, Iowa innovation council. Ms. Myers noted that the adopted rules clarify that the executive committee may make recommendations to the council but cannot make decisions on behalf of the council and that the economic development board approves members of the council.
- IOWA FINANCE AUTHORITY** Mark Thompson represented the authority.
- ARC 9077B No action on ch 40, Iowans helping Iowans housing assistance program, which provides housing assistance for persons affected by certain natural disasters that have occurred in 2010.

ENVIRONMENTAL PROTECTION COMMISSION Chuck Corell and Courtney Cswercko represented the commission.

ARC 9056B Proposed amendments to chs 60 and 64 allow for the use of a new General Permit (No. 7) to authorize discharge of biological pesticides and chemical pesticides which leave a residue to waters of the United States. Mr. Corell explained that the requirement for this permit has arisen because the U.S. Sixth Circuit Court of Appeals, in its January 7, 2009, decision, vacated the U.S. EPA's final rule that exempted pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the Clean Water Act (CWA) permitting requirements. As a result, a permit is required when a pesticide is applied in, on or near waters of the United States. To minimize discharges resulting from pesticide applications, the permit requires all applicators to implement Best Management Practices (BMPs) that include following label instructions, conducting regular equipment calibration and maintenance, and monitoring application sites and reporting any adverse impacts to DNR. Larger applicators (e.g., DOT, DNR, ISU extension, some private companies) will have additional requirements, including submittal of a Notice of Intent (NOI). Mr. Corell pointed out that having a permit is not an environmental issue; it is a legal issue. Even if the applicator is applying the pesticides properly, without a permit the applicator is in violation of the rule and is subject to a third-party lawsuit for violation of the CWA. Thus, the permit coverage provides the applicator protection from such lawsuits. Mr. Corell reported that, as a result of department outreach, stakeholders have been actively involved in the development of the permit. Ms. Cswercko noted that terrestrial application is not covered under this permit.

Discussion focused on the volume and content of public comment, applicator liability, the fiscal impact of the permit on applicators, the possibility of appeal of the court ruling or of congressional action to cover applicators under CWA, the response to the ruling by other states, and clarification of "waters of the United States." Rep. Frevert requested that the department inform the committee of any changes and that the committee voice its concerns to the department.

NATURAL RESOURCE COMMISSION Paul Tauke, Martin Konrad and Willie Suchy represented the commission. Other interested parties included David Bartemes of Dave's Hardwood Trees LLC and Maggie Fitzgerald of the Iowa Nursery and Landscape Association.

ARC 9051B The rescission of 71.2(2)"c" allows for the sale of state forest nursery (SFN) stock outside the state of Iowa as authorized by 2010 legislation. Mr. Tauke provided a written record of public comment that included 13 of 16 comments supporting the change and three private sector nurseries, two in Iowa and one in Minnesota, opposing it. He also reported that the USDA Natural Resources Conservation Service and the Iowa Tree Farm Committee, which represents 1100 Iowa tree farmers, support the change. Mr. Tauke explained that since SFN is funded by its sales, cost-saving measures that include the closing of one state nursery and reductions in and reorganization of staff have been instituted and noted that out-of-state sales will aid in funding SFN, which must cover its costs from sales of seedlings.

Discussion pertained to the basis for the calculation of projected income for SFN; the conditions for sales by SFN, including the restriction that seedlings be barerooted; the perspective of private nurseries and whether the nurseries were consulted regarding the legislation; the prospect of the state's contracting sales of seedlings by private nurseries; the department's role in the development of the legislation; the impact on private nurseries; SFN's development of pest-resistant species; and whether sales to Iowa landowners should have priority over sales to out-of-state landowners. Rep. Upmeyer requested that Mr. Tauke provide information about the persons who provided comments for perspective on the persons' support for or opposition to the change.

Mr. Bartemes expressed support for the change. Ms. Fitzgerald expressed concern in regard to private/public competition in sales of nursery stock and questioned the restrictions on the types of plant materials sold by SFN.

Natural Resource Commission (cont'd)

The committee discussed the grounds for and the length of a delay in the interest of further discussion and review. As part of the scheduled review at the November meeting, Rep. Reichert, referring to Iowa Forests Today, an assessment document required in the 2008 federal farm bill, requested that the department address SFN's role in preserving native forests of Iowa and how SFN capacity is managed as demand rises and falls.

- Motion to delay Sen. Bartz moved a 30-day delay of ARC 9051B.
- Motion carried On a unanimous voice vote, the motion carried.
- ARC 9052B No action on amendments to 81.2, fishing regulations.
- ARC 9053B No action on the amendment to 88.1 that clarifies the definition of "fishing tournament."
- ARC 9055B No action on amendments to ch 91, waterfowl and coot hunting seasons.
- ARC 9054B No action on amendments to ch 113, which define "priority watershed" and direct compensation for natural resource damages from the vicinity of the loss to priority watersheds.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Deb Johnson and Jeff Anderson represented the department.

- ARC 9043B No action on amendments to 41.27 and 75.57 regarding return of documents submitted during eligibility determination.
- ARC 9044B No action on amendments to 75.20 pertaining to reviews of disability and to disability redeterminations for members attaining age 18.
- ARC 9045B Amendments to ch 78 pertain to the consumer choice option for Medicaid HCBS waiver services. Ms. Johnson clarified that a case manager, an independent support broker, or a representative is available to aid the consumer in hiring providers.
- ARC 9046B No action on amendments to chs 79 and 81 regarding final settlement for state-owned teaching hospital.
- ARC 9083B No action on amendments to ch 86 that provide HAWK-I enrollees a one-month grace period for each monthly premium owed.
- ARC 9084B No action on amendments to 86.6 that extend the period within which a new enrollee may request to switch from one HAWK-I health plan or dental plan to another. Rep. Upmeyer requested that the department provide information to her in regard to the HAWK-I program, specifically crowd-out.
- ARC 9086B No questions on proposed chs 101 and 103, which update the rules pertaining to the Iowa juvenile home and the state training school.
- ARC 9047B No action on the rescission of ch 165, family development and self-sufficiency program.

Special Review At the September meeting, Rep. Upmeyer requested that a special review of criminal and child abuse record checks for volunteers at child care facilities be placed on the agenda for the October meeting. Mr. Anderson stated that the department has the responsibility for and parents desire the establishment of health and safety standards for child care facilities, including measures to protect children from neglect and abuse. Not all volunteers are subject to record checks. However, Mr. Anderson stated that, pursuant to Iowa Code section 237A.5, a volunteer is subject to a criminal and child abuse record check if the volunteer is included in the determination of the staff-to-child ratio; if the volunteer has direct responsibility for a child or children without the direct supervision or intervention by paid staff (i.e., the volunteer is functioning as a substitute for paid staff); or if the volunteer has direct access to a child when no other staff are present. In addition, pursuant to 2009 Iowa Acts, Senate File 478, all new employees and volunteers subject to a record check must also, for the reasons cited above, provide fingerprints that are submitted to the FBI as part of a national criminal history check.

Rep. Upmeyer questioned whether subrule 109.6(6) is consistent with statute. She cited Iowa Code section 237A.5(2)"a"(1)"b," noting that it requires a check for a person "being considered by a child care facility for employment involving direct responsibility for a child," and that the term "employment" implies service for compensation, but that there is no grounding in statute for a record check for a volunteer who is not being considered for employment. Rep. Upmeyer moved an objection to 109.6(6) and requested that Mr. Royce explain the effect of an objection.

Human Services Department (cont'd)

He stated that the rule remains in effect, but the objection shifts the burden of proof to the department in defense of the rule.

Ms. Freudenberg asserted in response that, when volunteers at child care facilities are included in the staff-to-child ratio, have direct responsibility for a child or children without supervision or intervention by paid staff or have direct access to a child when no other staff are present, the volunteers are considered in the category of employment and are subject to record checks. She stated that the cost of the record checks, formerly absorbed by the department, is the issue because child care facilities must now pay for the record checks.

Discussion focused on the suggestion that the department state in rule the criteria for record checks for volunteers; the need for the rule to be grounded in statute; the need for further information and discussion about the issue and consideration of a general referral; whether a mandatory drug test should be required; and whether the rule governs a parent who volunteers and receives reimbursement in the form of lower tuition or fees. Following discussion, Rep. Upmeyer withdrew the objection.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Ross Loder, and Brian Young represented the department. Rep. Clel Baudler was also in attendance. Other interested parties included Christopher Rager of the National Rifle Association (NRA), John Reed of the Iowa Firearms Coalition, Susan Cameron of the Iowa State Sheriffs & Deputies Association, and Brad Epperly of the Iowa Propane Gas Association (IPGA).

ARC 9085B Proposed ch 91 pertains to weapons and Iowa professional permits to carry weapons. Mr. Coveyou explained that the rules are narrowly crafted to reflect the specific statutory authority of the department in Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2379. Mr. Loder provided a summary of the scope of the rules, which relate to issuance of permits by the department and have broader applicability to the designation of certain firearms as collector's items. He reported that there has been ongoing dialogue with stakeholders, including sheriffs, the NRA and citizens, and added that the NRA has provided a detailed analysis of five major issues. Resolution has been reached on three of the issues, and progress is being made toward resolution of the other two issues: the definition of "addicted to the use of alcohol" and the definition of "state of residence" as the term applies to active duty members of the armed forces and as the term relates to state and federal law. Rep. Reichert commended the department and other interested parties for their cooperation in the rule-making process and encouraged continued effort to resolve the issues. Rep. Frevert recognized Rep. Baudler, who was the House floor manager of Senate File 2379.

Mr. Rager suggested clarifying changes to the definitions of "addicted to alcohol" and "state of residence" in written statements to the committee and reported that the process of working with the department on resolving these issues is ongoing. Mr. Reed expressed support for the NRA's position and suggested that four additional questions from the Coalition's written statement be addressed. Ms. Cameron expressed agreement with the department that the rules largely apply to professional permits, not to nonprofessional permits, and voiced support for the rules as drafted. She also noted unintended consequences of the legislation, which the association will bring to the legislature for consideration.

ARC 9098B Proposed amendments to ch 226 pertaining to liquefied petroleum gas update national standards adopted by reference. Mr. Coveyou reported that the department has worked with IPGA, whose suggestions have been incorporated in many of the amendments. He stated that the national standard contemplated in regard to the use of railroad tank cars in stationary service has not yet been adopted; thus, the rule regarding this standard may not be adopted. Mr. Epperly expressed general agreement with the rules and stated that IPGA is continuing to work with the department on some issues.

ARC 9099B Proposed amendments to chs 500 and 502 pertain to electrician and electrical contractor licensing. Mr. Coveyou stated that the amendments establish a system of residential electrician licensing and clarify continuing education issues.

Public Safety Department (cont'd)

Sen. Kibbie encouraged the department to hold public hearings throughout the state via the Iowa Communications Network (ICN) and inquired about offering continuing education and training at community colleges. Mr. Young noted that the department offers continuing education courses online and is notifying licensees of the availability of these courses. He stated that community colleges are welcome to host continuing education courses and may contact him to initiate that process.

Committee business The minutes of the September 14, 2010, meeting were approved. The next meeting was scheduled for Tuesday, November 9, 2010, at 9 a.m. Mr. Royce explained that, at the next meeting, the computer services division of LSA will demonstrate the process for electronic acquisition of rule makings by chairpersons and ranking members of the appropriate standing committees pursuant to 2010 Iowa Acts, Senate File 2088, section 52.

Adjourned The meeting was adjourned at 1:05 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn