

**MINUTES OF THE JANUARY 2011 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, January 4, 2011, 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 and Nathan Reichert were present. Representatives Tyler Olson and Linda Upmeyer were not present.
- Also present: Joseph A. Royce and Jack Ewing, 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.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Thom Guzman and Diane Foss represented the department.

- ARC 9291B Ch 40 pertains to the Iowa jobs main street program. Mr. Guzman reported that 24 projects have been awarded funding of \$13.05 million. Discussion pertained to the number of applications and awards, protection of restored buildings from fire, and the feasibility of regulatory analyses of rule makings.

EDUCATIONAL EXAMINERS BOARD George Mauer represented the board.

- ARC 9305B No questions on proposed amendment to 13.7 related to the addition of a licensure and ethics orientation to the requirements for a standard license.
- ARC 9302B No questions on proposed amendment to 13.18(4) pertaining to the addition of a licensure and ethics orientation to the requirements for the professional core.
- ARC 9303B The proposed amendment to 18.5 relates to the addition of a licensure and ethics orientation to the requirements for a professional administrator license. Discussion pertained to licensure issues.
- ARC 9306B Proposed 18.7(7) relates to notification of an employer that an applicant for a Class A license holds an expired administrator license. Discussion pertained to the consequences for nonrenewal of licenses.
- ARC 9300B No questions on proposed 20.3(6) concerning timely renewal of a license.
- ARC 9304B No questions on proposed 20.9(4) relating to the addition of a licensure and ethics orientation to the requirements for the renewal of a professional administrator license.
- ARC 9301B No questions on proposed 27.7 pertaining to timely renewal of a professional service license.

EDUCATION DEPARTMENT Carol Greta represented the department.

- ARC 9261B Subrule 17.10(8) pertains to supplementary weighting for concurrent enrollment in a community college course by a high school student who open enrolls from the student's resident district into a receiving district. Discussion focused on issues related to open enrollment and school reorganization. In response to a question by Sen. Bartz, Ms. Greta noted that a general study of open enrollment by the legislature might be in order and that the department would serve as a resource for that study. Ms. Greta will provide to the committee the current number of open enrolled students.
- ARC 9270B The rescission of 36.15(6)"c" is proposed to eliminate confusion regarding "open gyms" so that school districts may, at their discretion, manage their own athletic facilities. Discussion focused on the process by which the rule making was developed, on the governance of both the Iowa High School Athletic Association (IHSA) and the Iowa Girls High School Athletic Union (IGHSAU), and on equalization of school funding statewide.
- ARC 9269B No questions on proposed amendments to ch 41 pertaining to special education.
- ARC 9262B No action on amendments to ch 43 relating to pupil transportation.
- ARC 9263B No action on the amendment to 44.3(7)"f" concerning Type A-2 bus tow hooks.

Education Department (cont'd)

- ARC 9264B No action on amendments to ch 68 regarding public charter and innovation zone schools. Ms. Greta reported that no applications for innovation zone schools have been received.
- ARC 9265B No action on 83.2, teacher and administrator quality programs related to beginning administrators.
- ARC 9266B No action on amendments to 97.2 pertaining to supplementary weighting.
- ARC 9267B No action on amendments to ch 98 relating to financial management of categorical funding.
- ARC 9268B Proposed amendments to ch 102 pertain to procedures for charging and investigating incidents of abuse by school employees. In response to Sen. Bartz's inquiry regarding the effect of the addition of "objectively" to the definition of "sexual harassment," Ms. Greta stated that the change conforms the rule to the Iowa Code and added that no liability is established unless the environment created is objectively hostile.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Jeff Farrell represented the department. Other interested parties included Joe Kelly on behalf of the Iowa Sheriffs and Deputies Association.

- ARC 9299B Ch 11 pertains to the procedure for contested cases involving permits to carry weapons and acquire firearms. Discussion pertained to the appeals process, the costs of appeals and who pays the costs, and the effect of denials on the number and costs of appeals. Sen. Bartz questioned the use of "clearly" in 11.2(1) and suggested alternative wording, which Mr. Farrell agreed to consider.
- Mr. Kelly expressed concern about the cost of appeals reverting to agencies and stated that the cost of appeals is a policy decision that should be made by the legislature.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Donna Mueller represented IPERS.

- ARC 9310B Proposed amendments to chs 4, 6, 16 and 21 relate to contribution rates, administration of marital property orders, and covered wage limits.

PHARMACY BOARD Terry Witkowski represented the board.

- ARC 9296B No questions on the termination of the notice to amend chs 3 and 5 pertaining to pharmacy technicians.
- ARC 9297B No questions on proposed amendments to 3.22 relating to the technical functions of pharmacy technician trainees and uncertified pharmacy technicians.
- ARC 9295B Proposed amendments to ch 8 pertain to unethical conduct or practice, confidential information, and requirements for a pharmacy that is closing or is transferring its business.

PUBLIC SAFETY DEPARTMENT Mike Coveyou represented the department.

- ARC 9283B Amendments to 221.4(2) pertain to E-85 fuel dispensers. Discussion pertained to blender pumps, the compatibility of pumps with E-85 dispensers and the effect on the use of renewable fuel, and categories of renewable fuels for purposes of regulation.

STATE PUBLIC DEFENDER Mark Smith represented the state public defender.

- ARC 9293B Amendments to chs 7, 11 and 12 pertain to attorney fee contracts in appellate cases and fee limitations. Discussion focused on eligibility for public defender services, the indigent defense fund, and the effect of *Simmons v. State Public Defender* on fixed fee contracts. Mr. Smith will make available to the committee a copy of the application and order form for court-appointed counsel in criminal cases.

ENVIRONMENTAL PROTECTION COMMISSION Randy Clark represented the commission.

- ARC 9274B No questions on proposed amendments to chs 60 and 63 to 65 pertaining to open feedlots and confinement feeding operations.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Ann Wiebers, Jennifer Vermeer and Deb Hanus represented the department.

Human Services Department (cont'd)

- ARC 9309B Proposed amendments to chs 41 and 75 are related to family investment program (FIP) and Medicaid for noncitizens. Ms. Wiebers clarified for Sen. Bartz the exceptions to the five-year prohibition from FIP assistance.
- ARC 9312B No action on amendments to ch 58 pertaining to issuance of vouchers under the Iowa disaster aid and individual assistance grant program.
- ARC 9313B Rules 58.51 to 58.58 set forth the Iowans helping Iowans unmet needs disaster assistance program. Sen. Bartz noted that the rules exclude a homeowner's insurance deductible as a covered expense under the program. Ms. Freudenberg stated that legislation would be needed to remove the exclusion.
- ARC 9277B Proposed amendments to 75.23(9) pertain to purchase of annuities related to Medicaid eligibility. Sen. Bartz inquired about the exemption of a Roth IRA from treatment as an asset transferred at less than fair market value.
- ARC 9314B No action on amendments to ch 77 regarding the update of provider qualifications for Medicaid HCBS programs.
- ARC 9276B No questions on proposed amendments to chs 77 and 79 pertaining to assertive community treatment.
- ARC 9315B No action on the amendment to 78.9(1)“1” that extends the time in which a physician may sign a home health agency plan of care to conform to Medicare policy.
- ARC 9311B No action on amendments to 78.27 pertaining to removal of the enrollment limit and a waiting list for HCBS habilitation services.
- ARC 9316B Amendments to chs 78 and 79 pertain to pharmacies administering influenza vaccines to children through the vaccines for children (VFC) program. In response to an inquiry by Sen. Bartz, Ms. Vermeer clarified the reimbursement process for administering vaccines.
- ARC 9318B Chs 101 and 103 update the rules pertaining to the Iowa juvenile home and the state training school. In response to an inquiry by Rep. Heaton, Ms. Hanus clarified the criteria and process for acceptance of individuals at the Iowa juvenile home and the state training school.

Committee business The minutes of the December 14, 2010, meeting were approved.
 The next meeting was scheduled for Friday, February 11, 2011, at 8 a.m.
 Sen. Kibbie expressed appreciation to Rep. Frevert, to departing members of the committee, and to Mr. Larew for their contributions to the progress of the committee. Sen. Kibbie also welcomed new committee members.
 Rep. Frevert affirmed that serving on the committee has been the most rewarding experience of her years of service. Sen. Horn presented a gift to Rep. Frevert on behalf of the committee with “a million thanks” for her service and with best wishes to her and to her family.
 Rep. Reichert expressed appreciation to committee members for their counsel and advice and for the opportunity to serve with them.
 Mr. Larew noted four processes that Iowa does best and that other states might emulate: the caucus system, the method of apportionment, the judicial selection process, and the review of administrative rules by the committee. He expressed appreciation for friendships, for the chair's and the committee's hard work, and for the opportunity to serve.
 Rep. Frevert introduced Rep. Pettengill, the incoming chair of the committee.

Adjourned The meeting was adjourned at 12:45 p.m.

Respectfully submitted,

 Stephanie A. Hoff

APPROVED:

 Chair Dawn Pettengill

 Vice Chair Wally Horn