

**MINUTES OF THE JULY 2007 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, July 10, and Wednesday, July 11, 2007, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Philip Wise, Vice Chair; Senators Thomas Courtney and John P. Kibbie; Representatives Marcella Frevert, David Heaton, David Jacoby, and Linda Upmeyer. Senators Jeff Angelo, Michael Connolly, and James Seymour were not present.
- Also present: Joseph A. Royce, Legal Counsel; Stephanie A. Hoff, Administrative Code Deputy Editor; Deborah Svec-Carstens, associate counsel in the office of the Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened Rep. Wise convened the meeting at 10:09 a.m. Mr. Royce introduced LSA employee Michael Duster who will be working with Mr. Royce and the committee.
- Fiscal report** Ron Robinson presented the LSA fiscal report on rule makings that have a significant fiscal impact.
- CREDIT UNION DIVISION** Jim Forney represented the division.
- ARC 5930B Mr. Forney indicated that proposed ch 5 provides guidelines for debt cancellation products and disclosures to consumers regarding these products. The rules are based on a standard developed for national banks. Mr. Forney noted that changes suggested by commenters will be considered by the review board prior to the adoption of rules. Discussion related to the relationship between debt cancellation products and insurance products and how to ensure that the purchase is voluntary and that the consumer is not influenced to purchase the product.
- ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Melanie Johnson, Nichole Warren, Tom Wheeler, Dianne Foss, and Jeremy Babcock represented the department.
- ARC 6026B No questions on reorganization of the department's rules or about new ch 188, which establishes the method for counting new jobs.
- ARC 6032B Ms. Warren summarized proposed changes in ch 9 concerning workforce training and economic development funds.
- ARC 6029B No questions on proposed amendments to ch 25.
- ARC 6030B Mr. Wheeler commented that there has been much interest in the film, television and video project promotion project, ch 36. One project has begun in Davenport, and other projects will begin in August. Rep. Wise commented that this program will be a significant economic development tool for the state.
- ARC 6028B No action on proposed amendment to 44.6 to split one council of government (COG) into two COGs.
- ARC 6033B No action on proposed amendments to ch 59, enterprise zones. Following discussion regarding layoffs and the need to retrain workers, Rep. Frevert asked the department to prepare a summary to identify the various programs that communities and industries might access.
- ARC 5947B No questions on waiver criteria for the renewable fuel infrastructure program.
- PUBLIC HEALTH DEPARTMENT** Charlene Craig, Melanie Rasmusson, Ben Woodworth, Diana Nicholls Blomme, and Binnie LeHew represented the department.
- ARC 5912B No action on proposed amendments to chs 38, 39, 41, 42, 45, and 46 concerning radiation. Members were advised that although the amendments increase fees, there will be no significant fiscal impact.
- ARC 5914B Proposed ch 56, brain injury services program, provides guidance on how to apply for assistance and the financial eligibility requirements for the waiver-eligible and cost-share components of the program. The committee discussed the definition of brain injury and the waiting list for services.
- ARC 5913B No action on proposed amendments to ch 93 which affect the number of members and quorum requirements for the abuse education review panel.
- IOWA FINANCE AUTHORITY** Mark Thompson represented the authority.
- ARC 6014B No questions on the 2008 QAP for the low-income housing tax credit.
- Committee business** The minutes of the June 2007 meeting were approved (motion by Sen. Courtney). The next meeting will be August 14, 2007, and, if necessary, August 15, 2007. There was discussion about the number of emergency filings and who should review emergency rules before they are filed. Mr. Royce suggested that although most emergency filings are authorized by statute, the committee could ask that the Administrative Rules Coordinator review emergency rules before they are filed.

committee business (continued)

Mr. Royce commented that the racing and gaming commission took no action on the definition that Mr. Ketterer prepared regarding suspension of a license. Rep. Wise asked that this matter be scheduled for next month's meeting.

Mr. Royce rescheduled DHS review to 1 p.m. Wednesday, July 11, 2007.

Mr. Royce was authorized to schedule the committee Christmas party for Tuesday, December 11, 2007, at the Latin King. (motion by Sen. Kibbie)

EDUCATION DEPARTMENT Carol Greta, Thomas Mayes, Penny Milburn, and LauraBelle Sherman-Proehl represented the department.

ARC 5919B No questions on amendments to ch 12 concerning librarians and media programs.

ARC 5969B Ch 16 implements the statewide voluntary preschool program. Ms. Greta commented that the department has received over 140 applications. Discussion related to program requirements regarding licensed teachers, the department's priority for awarding grants, requirements for evidence-based standards, collaboration for transportation of children, and Head Start program requirements. The department agreed to advise the committee of the reason that one of Iowa's counties does not have a Head Start grantee.

ARC 5920B No action on the proposed revision of the special education rules, ch 41, to align the state rules with federal regulations. Mr. Mayes explained transition provisions which differ from federal requirements.

ARC 5921B Ms. Greta outlined proposed amendments to ch 79 concerning practitioner preparation programs. Public comment concerned the human relations component.

SF 61 implementation Rep. Wise requested a review of the department's implementation of the anti-bullying legislation. Ms. Greta distributed information to committee members prior to the meeting and commented on the training that is being provided to school districts regarding accreditation requirements, documentation of incidents, and record keeping. Ms. Greta noted that there has been some opposition from school boards. Rep. Wise commended the department on efforts taken to ensure the legislation's successful implementation by school districts.

ENVIRONMENTAL PROTECTION COMMISSION Joe Griffin, Jon Tack, Wayne Gieselman, and Alex Moon represented the commission. Other interested parties included Julie Ketchum and Terry Johnson of Waste Management, Sarah Bixby of SCISWA, Scott Smith of Boone County, Vickie Moorhead of South Dallas County Landfill, Mary Wittry of Carroll County Solid Waste, Nancy Boyd on behalf of Iowa Waste Systems, Tom Hadden of Metro Waste Authority (MWA), Karmin McShane of Cedar Rapids/Linn County Solid Waste Agency, Myron Magritz of Page County Landfill, Marian Riggs Gelb of Iowa Environmental Council, Gary Schmidt of NCIRSWA, Hal Morton of Des Moines County Regional Solid Waste Commission, Nela Seaman of Sierra Club, Roger Kaster of RASWC, Kathy Morris of Waste Commission of Scott County, and Jeff Dworek of MWA.

ARC 6000B No questions on amendments to ch 64 concerning wastewater construction and operation permits.

ARC 5999B Mr. Tack distributed the department's response to a letter from a law firm in Chicago. Mr. Moon referenced federal standards adopted in 1991 that the state was required to implement by 1994 and summarized the process the department has undertaken to implement those standards in order to be in compliance by the October 1, 2007, deadline established by the EPA. These rules incorporate criteria for location and siting of landfills, operation and design of landfills, the liner system, liquid collection system, covers, groundwater monitoring, closure and postclosure monitoring, and financial assurance requirements. During the rule-making process, the industry asked for an independent third-party review of the proposed rules, clarification of cost estimates, and more opportunities for public comment. In response, the department arranged for an independent review, which concluded that the proposed rules were consistent with surrounding states; and the department prepared a detailed fiscal impact statement and a draft regulatory analysis, extended the comment period, and held additional public hearings.

Mr. Gieselman distributed copies of a letter from EPA dated July 9, 2007. Rep. Wise asked that this rule making be included on the August 14, 2007, agenda and that a representative from EPA be present to answer questions. Members agreed to take no action until that time and encouraged parties to continue discussions in an attempt to resolve differences.

Ms. Ketchum of Waste Management distributed materials to document communications with EPA and EPC and requested a 70-day delay be imposed on 113.2(8) to 113.2(10) and 113.3, definition of "liner," and asked that the encirclement design not be required.

Environmental Protection Commission (continued)

In response to the committee's question about the scope of the impact, Mr. Moon identified 22 landfills that will be affected. Ms. Bixby, who represents SCISWA, one of the affected landfills, supported the rules and stated that Iowa landfills must become compliant with the encirclement design. Mr. Smith also expressed support for the rules and commented that Boone County has been working for the past ten years on implementing the liner requirements. Ms. Moorhead contended that EPC had assured operators that landfills that were compliant with the 1997 rules would be grandfathered under the new ch 113 and asked that such language be added to the rules. Ms. Moorhead indicated that new units will comply with ch 113 but because retrofitting existing ones would be cost-prohibitive, South Dallas County will be seeking a variance. As the president of ISOSWO, Ms. Wittry stated that the board voted 5 to 4 to support the rules and, as the representative for Carroll County Solid Waste Management Commission, Ms. Wittry voiced support for the rules and EPC's efforts in the process. Ms. Bixby stated that the three-year period for landfills to become compliant is adequate and commented that airspace won't be lost if the rules are allowed to go forward and the three-year window is used to make existing cells compliant or to construct compliant new cells. Ms. Boyd, who represents Iowa Waste Systems, one of the 22 affected facilities, expressed concern about the cost of installing side liners. Mr. Hadden and Ms. McShane both voiced support for the rules as necessary for the protection of Iowa's groundwater.

Rep. Wise asked Mr. Moon to provide the committee with some statistics regarding the rate structures and remaining capacity at the 22 affected facilities.

Mr. Johnson commented that the encirclement design will not only be costly and difficult to implement, it will be inefficient and less productive because of gas buildup that cannot be collected and will penalize facilities that installed liners before they were required. Mr. Magritz expressed concern that the encirclement design will increase costs and that the EPA may impose additional requirements. Mr. Gelb stated that the Iowa Environmental Council strongly supports these long overdue rules that implement minimum federal standards and that Iowa cannot permit landfills to operate in violation of federal law. Mr. Schmidt expressed concern about damage that may have been done by landfills that existed prior to regulation. Mr. Morton indicated that management of landfill gas may be addressed by alternative means rather than mandatory liner design requirements which in effect penalize landfills that installed approved liners prior to these rules. Mr. Morton noted that the federal requirements allow for some flexibility and that these rules change policy regarding existing approved facilities that are not causing pollution. Ms. Seaman stated that these rules are the minimum requirements needed to protect Iowa's groundwater and urged the committee to allow the rules to become effective.

Committee members noted that there should be a way to allow those landfills that have formerly approved liners and have not yet reached capacity to continue to operate unless there is evidence of pollution resulting from the landfill.

Mr. Kaster stated that RASWC supports the rules; the landfill will be closed and solid waste will be transported to SCISWA. Ms. Morris commented that cities in Scott County support the rules and insisted that any landfill in Scott County comply with federal requirements. Ms. Morris commended the work of DNR throughout the process, particularly in regard to the equivalency standard allowed by the rules. Mr. Dworek spoke in favor of the rules and stated that because airspace is constructed in phases, the design must allow for changes in requirements and the extraction of gas to maintain negative air pressure.

Mr. Tack confirmed that the point of contention is the abutment liner requirement. Rep. Wise concluded that it is essential that the committee understand exactly what EPA requires. Rep. Heaton emphasized the importance of having an EPA representative present at the August meeting of the committee. Rep. Wise advised the parties to continue communications and to reach a consensus.

WEDNESDAY, JULY 11, 2007

EDUCATIONAL EXAMINERS BOARD George Maurer represented the board.

- ARC 5945B No action on proposed amendments to the fee for extension of coaching authorization renewal.
- ARC 5916B No action on 14.140(11)“b” regarding SPR for school nurses. Rep. Upmeyer expressed a desire that RNs who do not have a four-year degree will have an opportunity to complete their degrees and benefit from the legislation.
- ARC 5942B No action on proposed amendment to the business teaching endorsement.
- ARC 5946B No action on proposed amendment to the mathematics teaching endorsement.
- ARC 5943B No action on proposed amendment to 20.58(1) regarding evaluator license renewal.

NATURAL RESOURCE COMMISSION Kelley Meyers, Willie Suchy, Marion Conover, and Dale Garner represented the commission. Other interested parties included Joe Galloway, Pam Mackey Taylor of Sierra Club, George Scalf of National Trappers Association, and Maryann Hynes.

- ARC 6004B No questions on proposed ch 7 regarding contested cases.
- ARC 5950B No action on 51.10 concerning game management areas.
- ARC 5952B No action on 52.1(2)“a” regarding wildlife refuges.
- ARC 5956B Mr. Conover reported receiving many comments on proposed amendments to ch 82 pertaining to commercial fishing on the Mississippi River. Commercial fishers have expressed concern that item 2 of the amendments will reduce their catch; few comments have been received from sport anglers. Mr. Conover commented that changes will likely be made before the final rules are presented to the commission. Rep. Wise and Sen. Courtney encouraged the commission to respond to the concerns of commercial fishers. Discussion related to instances in which Iowa’s rules are more stringent than those in Illinois.

- ARC 5951B No questions on amendments to ch 95, regarding game harvest reporting.
- ARC 5953B No action on amendments to ch 98, wild turkey spring hunting.
- ARC 5954B No action on amendments to ch 99, wild turkey fall hunting.
- ARC 6002B No action on amendments to ch 106 concerning deer hunting by residents. Discussion related to the desire to reduce the herd while protecting the interests of landowners and preventing illegal hunting.

- ARC 5955B No questions on amendments to ch 107, rabbit and squirrel hunting.
- ARC 6001B Amendments to ch 108 pertain to trapping seasons for bobcats, beavers and otters. These amendments open a limited bobcat season in the southern two tiers of counties where bobcat populations are increasing. Mr. Suchy noted that neighboring states have open seasons without quotas. Discussion related to the rationale for establishment of a trapping season for bobcats and for selection of the southern two tiers of counties.
Mr. Galloway disputed the DNR figures, asked the committee to delay the rule and pointed out that bobcats eat voles and other rodents that destroy crops. Rep. Heaton observed that landowners can refuse to allow trappers on their land. Ms. Taylor stated that DNR has no scientific data to determine the population of bobcats and that she opposes the bobcat trapping season. Mr. Scalf expressed support for the rules and offered assurance that bobcats would not be overharvested. Ms. Hynes questioned the validity of the surveys used to determine the population of bobcats in Iowa and indicated that since bobcats were listed as endangered only six years ago, she is opposed to the trapping season.
Mr. Garner indicated that this one-year season to allow the taking of 150 bobcats will be closely monitored by DNR, the public, and the U.S. Fish and Wildlife Service.

LAW ENFORCEMENT ACADEMY Penny Westfall represented the academy. Susan Cameron was present on behalf of the Iowa Sheriffs and Deputies Association.

- ARC 6025B Ms. Westfall outlined proposed amendments relative to training, certification, and revocation of certification of reserve peace officers. Ms. Cameron commended the academy for working with affected groups to find common ground regarding training and testing.

SECRETARY OF STATE Sandy Steinbach represented the secretary of state.

- ARC 5927B No questions on 21.800(3)“b”(2) concerning local sales and services tax reimposition elections.
- ARC 5979B No action on 22.32 which implements reimbursement for compliance with the paper record requirement for DRE voting machines.

LABOR SERVICES DIVISION Kathleen Uehling and David Neil represented the division. Jim Obradovich of Ultimate Fighting Championship (UFC) was also present.

- ARC 5936B No questions on amendments concerning employee discrimination complaints and adoption of OSHA standards.
- ARC 6034B No questions on rescission of ch 27, protective clothing and equipment standards for firefighters.
- ARC 5935B No questions on amendments regarding blood-borne disease testing for professional boxing and shoot fighting.
- ARC 5929B Proposed amendment to 177.2(2) would make promoters responsible for the conduct of all officials and participants in professional shoot-fighting events. Members wanted to ensure that the state is not liable for injuries and disabilities that may result from such events. Mr. Obradovich opposed making the promoter responsible for the conduct of officials.

Labor Services Division (continued)

ARC 5928B Proposed 177.9 would make the commissioner's attendance at professional shoot-fighting events discretionary. Discussion related to whether amateur events should be regulated or be eliminated, why the division issues licenses, and the liability that may result from state licensure. Mr. Obradovich commented that the commissioner or designee needs to be present to ensure that the sport is effectively regulated.

ARC 5934B Proposed 177.10 would require promoters to buy insurance to cover injuries that result from professional shoot-fighting events. Mr. Obradovich commented that he does not support this rule at this time.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 6006B Ms. Leeper stated that, based on comments from the governor's office, ch 8 will be further amended to direct assistance to the neediest students.

ARC 6007B No action on ch 9, which is intended to ensure that foster children have an opportunity for a college education.

ARC 6008B No action on ch 34, registered nurse and nurse educator loan forgiveness program. Rep. Frevert noted that many school nurses may want to complete their four-year degrees in order to be eligible for an SPR; Ms. Leeper agreed to look into whether school nurses might be eligible for this program, which is designed to encourage nurses to remain in Iowa by helping them pay back their student loans.

ARC 6011B No action on ch 35, Iowa teacher shortage loan forgiveness program.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 5983B No questions on 19.72, transition rules for preneed funeral contracts.

ARC 5974B Proposed 39.15(4) pertains to producer training requirements for long-term care insurance in accordance with NAIC continuing education requirements. Rep. Upmeyer commented that standardization of long-term care coverage would be beneficial to consumers. Ms. Mead responded that Commissioner Voss is reviewing long-term care insurance, the division is holding public hearings, and there have been many discussions about such standardization. Rep. Wise asked the division and the governor's office to keep the house and senate commerce committees informed.

ARC 5974B No action on ch 50 concerning regulation of securities offerings and those who engage in the securities business.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Mary Nelson represented the department. Shelley Chandler of the Association of Community Providers and Kim Schmett of the Coalition for Family and Children's Services in Iowa were also present.

ARC 5980B No questions on calculation of countable income for FIP, FMAP and CMAP eligibility.

ARC 5982B No action on emergency assistance program.

ARC 5918B No questions on 65.26 regarding student eligibility for food assistance.

ARC 5940B No action on amendments to implement annual medical assistance eligibility cards. Ms. Freudenberg noted that in addition to the computer verification option, there are 48 telephone lines. Provider concerns have been addressed and educational efforts have begun.

ARC 5986B No questions on amendments concerning Medicaid eligibility and spousal impoverishment thresholds.

ARC 5988B No action on exemptions to the federal requirement for verification of citizenship for receipt of Medicaid.

ARC 6019B Amendments to ch 75 increase to \$50 the personal needs allowance for Medicaid members who reside in nursing facilities, ICFMRs and PMICs and supplement the income of persons in nursing homes whose income is less than \$50. Ms. Chandler requested clarification regarding any supplemental appropriation for 2008 to supplement the income of persons in ICFMRs and PMICs. Ms. Freudenberg responded that there was no additional funding to supplement the income of persons in ICFMRs and PMICs. Discussion related to the intent of House File 909, the authority of the department, and cost and budgetary considerations, and whether the department can ask the fiscal committee or the governor to use Medicaid moneys to fund the supplementation for the ICFMRs and PMICs. Rep. Wise asked that the issue be placed on the agenda for the August meeting.

ARC 6023B No questions on personal needs allowance for veterans who reside in a long-term care facilities.

ARC 5990B No questions on annual update of statewide average cost of nursing facility services.

ARC 5971B No questions on proposed amendments to chs 77 to 79 and 81 concerning Medicaid coverage for durable medical equipment, prosthetic devices, and medical supplies.

ARC 5985B No questions on proposed Medicaid reimbursement methodology for community mental health centers.

ARC 6013B No questions on proposed amendments to ch 79 concerning Medicaid reimbursement methodology for hospital inpatient psychiatric services.

Human Services Department (continued)

- ARC 5978B No action on proposed 79.15, which provides for education about false claims recovery.
- ARC 6009B No action on amendments to implement fingerprint checks for foster and adoptive parents and adult members of their households.
- ARC 5992B No questions on the 3 percent rate increase for providers.
- ARC 5994B No questions on 170.2(2)“d,” which implements citizenship requirements for child care assistance.
- ARC 5996B No questions on use of alternative claim forms for child care assistance.
- ARC 5937B Ch 172, the new child welfare services program, replaces the family-centered services program, ch 182. Discussion related to the following concerns: criteria for provider contracts, the effect on smaller providers, provider rates, and the RFP process.
Mr. Schmett voiced concern that although 100 agencies are currently providing services, there were only 13 bids on the contract, including 3 agencies that are not current providers. Mr. Schmett suggested that the new child welfare advisory committee work with the department to create a better system and expressed concern about the lack of competitive bidding in several areas of the state. Rep. Upmeyer requested that the department send a copy of the RFP to Mr. Royce. Rep. Wise asked Ms. Nelson to send Mr. Royce a response to the concerns raised during this review. Ms. Nelson clarified that these rules do not impact group care services, foster families, adoption subsidy, juvenile justice or shelter care, but apply to services provided during a child abuse assessment, services to children adjudicated in need of assistance, and services provided to keep children at home. Ms. Nelson noted that providers that did not bid on the RFP can function as subcontractors and encouraged community involvement for the provision of services whenever possible. Rep. Wise asked that a review of the program be scheduled in December or January.
- ARC 6005B No questions on amendments to 175.26 to allow for a child abuse assessment summary addendum.
- Adjourned The meeting was adjourned at 3:05 p.m.

Respectfully submitted,

Kathleen K. West (notes provided by Stephanie Hoff)

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise