

**MINUTES OF THE DECEMBER 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, December 13, 2005, in Room 22, 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 Danny Carroll, Marcella Frevert, David Heaton and Geri Huser.
- Also present: Joseph A. Royce and Emily Gardyas, Legal Counsel; Kathleen K. West, Administrative Code Editor; Sonya Streit, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened Chair Eichhorn convened the meeting at 9:05 a.m.
- Fiscal report** Jess Benson presented the LSA fiscal report.
- ADMINISTRATIVE SERVICES DEPARTMENT** Marianne Mickelson and John Gillispie represented the department.
- ARC 4691B No action on proposed amendments related to information technology governance. Sen. McKinley suggested that notice of the changes be sent to vendors and other affected parties. Rep. Huser was advised that these rules apply only to the executive branch and that agencies exempt from the rules are listed in Item 6. Mr. Gillispie told Rep. Huser that he was unaware of any sale of software to another state.
- ARC 4690B Amendments to ch 101 pertain to parking on the Capitol complex. Rep. Frevert expressed the view that visitor parking is too limited and may result in too long a walk for many citizens.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Vern Armstrong and Jennifer Vermeer represented the department.
- ARC 4623B No action on amendments relating to termination of social services.
- ARC 4624B No action on amendments regarding intergovernmental transfers in Medicaid.
- ARC 4621B No questions on amendments affecting SSA eligibility; the minimum income limit is lowered to allow coverage to an additional 3300 people.
- ARC 4658B No questions on amendments to ch 75 to allow for self declaration of pregnancy. Ms. Freudenberg noted that the policy of requiring written verification of pregnancy by a health care professional was a barrier to prenatal care, and that early access to health care should result in reduced public expenditures associated with poor birth outcomes.
- ARC 4625B No questions on the increase in the Medicaid premium for employed persons with disabilities. Ms. Freudenberg stated that notice of the increase was sent out in November.
- ARC 4628B No action on amendments to exclude covered Part D drugs from Medicaid coverage for dual eligibles. Ms. Vermeer directed Sen. Kibbie to information in the LSA fiscal report regarding "clawback" projections.
- ARC 4629B No action on Medicaid drug reimbursement amendments from three Notices of Intended Action. Ms. Freudenberg reported on discussions with the Iowa Psychiatric Society.
- ARC 4626B Amendments to temporarily increase Medicaid reimbursement for mileage for nonemergency medical care and participation in PROMISE JOBS will sunset June 30, 2006.
- ARC 4630B No action on the 3 percent increase in rates for medical and remedial care providers. Ms. Vermeer advised Rep. Heaton that the department does not anticipate that the federal government will oppose the retroactive application of the increase.
- ARC 4620B Ch 91 pertains to the Medicare drug subsidy. Ms. Freudenberg agreed to respond to Rep. Heaton regarding the number of additional staff funded by the \$2.7 million and projections for the 2007 budget.
- ARC 4618B No action on amendments to increase foster care payments and purchase of service. Ms. Freudenberg reported that these amendments implement legislative intent regarding payment for shelter care beds.
- ARC 4631B Family-centered services amendments combine three Notices of Intended Action. Rep. Heaton expressed concern about the lack of legislative input in these rules. Freudenberg advised Sen. McKinley that goals are established for each family at family team meetings. Sen. McKinley asked that the department expedite an investigation of a reported case of suspected abuse of a child who has been reunited with a parent. Mr. Armstrong agreed and confirmed that the department does monitor live-in boyfriends and would not place a child in a home where a sexual predator is living.
- ARC 4632B No questions on amendments to ch 151 regarding juvenile court services.
- ARC 4622B No questions on amendments to ch 170 regarding child care services.

Human Services Department (continued)

- ARC 4619B Amendments to ch 175 pertain to child protective services. There was discussion about the role of school personnel in decisions affecting a child. Mr. Armstrong stated that family team meetings should involve classroom teachers or coaches or other school employees that know the child, but they are not required to be involved. Sen. McKinley requested information about the standardized assessment tools used by the department in determining risk. Rep. Huser voiced concern about additional nonteaching burdens that may be imposed on teachers.
- Special review No questions on emergency amendments to chs 51 and 52.
- Special review No action on emergency amendments to ch 75. Sen. Lundby asked Ms. Freudenberg to clarify amounts allowed for the needs of the community spouse.

**ARTS DIVISION** Mary Jones and Gordon Hendrickson represented the division.

- ARC 4696B Ms. Jones indicated that the reorganized chapters are intended to make programs easier to access. In response to members' concern that some programs may have been eliminated, Ms. Jones stated that rules for all grant programs are consolidated into a single grant process. Ms. Jones assured Rep. Frevert that information about all arts programs is posted on the Iowa Arts Council's Web site and that the communications office ensures that school districts are aware of opportunities for grants. Sen. McKinley requested a list of the 44 operational support partnerships. Rep. Huser expressed concern for the safety of public art placed in buildings that do not comply with the state building code.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Sam Knowles, Jerry Brown, Michael Peterson, Steven Conlon, and Sean McCullough represented the department.

- ARC 4678B No questions on ch 121 concerning bail enforcement, private investigation, and private security businesses.
- ARC 4676B No action on amendments to ch 83 regarding the Iowa sex offender registry. Mr. Coveyou noted that all information, including an explanation of low-risk, medium-risk, and high-risk, will be included on the Web site. Discussion related to the three assessment tools established by the department of corrections.
- ARC 4675B Ch 156 pertains to the DNA database. In response to Sen. Connolly's inquiry about collection of DNA, Mr. Coveyou stated that the statute specifies collection from all felons and certain other offenders.
- ARC 4677B No action on ch 174 regarding sales of pseudoephedrine. Mr. Coveyou reported that from June to November 2005, 78 percent fewer meth labs were found; however, meth use has not decreased. Mr. Coveyou reported that because pharmacies keep track of only their own pseudoephedrine sales, a person who purchases products from different pharmacies potentially could exceed the legal limit.

**ECONOMIC DEVELOPMENT DEPARTMENT** Mary Lawyer, Melanie Johnson, Mike Miller and Amy Johnson represented the department. The following eleven adopted and filed documents pertain to the Iowa Values Fund.

- ARC 4633B No questions on ch 1, organization.
- ARC 4634B In regard to ch 2, Sen. McKinley requested information about any waiver of wage requirements that may have been requested or granted under Iowa Values or CEBA.
- ARC 4635B No questions on amendments to the Iowa jobs training program, workforce training and economic development funds, and the accelerated career education program.
- ARC 4636B Ms. Lawyer reported that there is much interest in ch 31, regarding economic development region initiatives.
- ARC 4637B No action on ch 32, tax credits for economic development region revolving loan fund.
- ARC 4638B No questions on endow Iowa grants program.
- ARC 4639B No action on endow Iowa tax credits, 47.2 to 47.4.
- ARC 4640B No questions on amendments to ch 53 involving wage calculations for the CEBA program.
- ARC 4642B No action on merging of the new jobs and income program and the new capital investment program into the high quality job creation program.
- ARC 4641B No action on amendments to enterprise zones.
- ARC 4643B No questions on the loan and credit guarantee program, ch 69.
- ARC 4644B No questions on amendments to ch 168 regarding program wage threshold calculations.

**Committee business** The minutes of the November 2005 meeting were approved.  
 The January meeting will take place Friday, January 6, 2006.  
 Mr. Royce advised the committee that there is a great deal of interest in a Department of Education Notice of Intended Action regarding athletic eligibility which will be reviewed at the January meeting. Rep. Frevert asked that ARC 4607B of the Board of Educational Examiners be reviewed in January.

## Committee business (continued)

Rep. Huser asked Mr. Royce about the issue raised in November concerning confidential information that appeared on a state agency Web site. Mr. Royce responded that he has not discovered other instances and went on to explain that while Iowa Code section 22.11 requires each agency to adopt rules describing public and confidential records retained by the agency and procedures by which a person may access public records, the statute does not specify how to protect confidential information. Discussion related to how long records should be retained and how confidential information stored in a data base should be protected. Rep. Huser voiced concern that the problem exists at both state and county levels. Rep. Eichhorn stated that oversight committee is also interested in this issue and may make a recommendation.

Ms. Streit announced that the governor's office is instituting an electronic filing system for rule making documents and noted that Iowa Code chapter 17A would need to be amended to accommodate the change. Mr. Royce agreed to draft proposed language.

**ELDER AFFAIRS DEPARTMENT** Mary Ann Young, Joel Wulf, Carlene Russell and Linda Hildreth represented the department.

ARC 4659B No questions on proposed revisions to ch 1, which includes abbreviations and definitions.

ARC 4660B Proposed ch 2 pertains to organization of the department. Sen. McKinley inquired about the administrative division's responsibility for monitoring, assessing, evaluating and auditing the 13 area agencies on aging. Ms. Young explained that the frequency and scope of audits vary with each program and that the state auditor conducts financial audits. Rep. Heaton requested additional information about the role of the department in oversight of federal funds passed on to AAAs.

ARC 4661B No action on department planning responsibilities, ch 4.

ARC 4662B No questions on proposed ch 5 regarding department fiscal policy.

ARC 4663B No questions on proposed ch 6 concerning AAA planning and administration.

ARC 4664B No action on proposed ch 7, AAA service delivery.

ARC 4665B No questions on amendments to move definitions for the senior internship program from ch 1 to ch 10.

ARC 4666B Proposed new ch 12 pertains to elder abuse, neglect or exploitation prevention and awareness. In response to Rep. Huser's inquiry about financial exploitation of seniors, Ms. Hildreth reported that the department of elder affairs has a role in raising awareness and promoting education, and the department of human services has enforcement responsibility. In regard to Rep. Frevert's interest in dental care for seniors, Ms. Russell reported that the department of elder affairs is working with the department of public health to address dental care needs of the elderly.

ARC 4667B Proposed new ch 15 outlines the application process for emergency shelter and support services projects.

ARC 4668B No questions on proposed ch 16 concerning the senior living coordinating unit.

ARC 4669B Proposed ch 28 pertains to home- and community-based services for seniors. Rep. Carroll suggested that the department include in 28.4(2) a requirement to coordinate with the Medicaid enterprise of the department of human services. Mr. Wulf responded that Iowa Code section 231.58 has charged the senior living coordinating unit, which includes the directors of the departments of elder affairs and human services, with coordination of all services to seniors.

**ENVIRONMENTAL PROTECTION COMMISSION** Jim McGraw, Tom Atkisson, Courtney Cswercko, Gene Tinker, Mark Warren, Theresa Stiner, Dave Wornson, Paul Nelson, and Fred Hutson represented the commission. Other interested parties included Doug Beach of Casey's General Stores and Jeff Hove of Petroleum Marketers and Convenience Stores of Iowa.

ARC 4651B No questions on proposed amendments to ch 22 to exempt certain equipment and processes from permitting requirements.

ARC 4647B No questions on amendments to ch 23 to adopt federal emission standards.

ARC 4645B No action on amendments to implement the commission's annual update of references to federal effluent and pretreatment standards. Mr. Atkisson noted that the standards affect meat and poultry processing facilities and fish hatcheries. Rep. Huser asked for additional information about any waivers of standards that may have been granted in any other states. Rep. Heaton requested verification that standards and measurement techniques are uniform in all states.

ARC 4652B Proposed 64.16 includes a fee structure for wastewater permits. Ms. Cswercko stated that there will be a large number of permits expiring in 2006, and the fee increase is intended to fund the processing of applications and reduce the backlog. Rep. Eichhorn voiced concern that the commission has opted to meet funding needs for increased staff through rules rather than through legislation. Rep. Carroll inquired about fees for major and minor municipal facilities.

Environmental Protection Commission (continued)

- Motion Rep. Carroll made a motion that the committee request a regulatory analysis.
- Motion carried The motion carried.
- ARC 4649B Rep. Eichhorn asked Mr. Royce to draft letters to notify committee chairs of the bureau's staffing needs and the proposed permit fees.
- ARC 4650B Proposed amendments to ch 65, animal feeding operations, provide technical corrections to the list of major water sources and add several 4th order streams to the list. Mr. Tinker distributed a map to show the streams that were included and stated that these stream segments have not been "ground proofed" with a canoe over a period of years, but were included in the list based upon the expertise of DNR staff. In response to Rep. Carroll's inquiry about the impact on livestock producers, Mr. Tinker indicated that new or expanded livestock facilities would need to maintain a separation distance of 1000 feet from a major water source, as opposed to 500 feet from a water source.
- ARC 4648B No questions on proposed ch 101 pertaining to solid waste comprehensive planning.
- ARC 4653B No action on chs 123 and 211 regarding regional collection centers and mobile unit collection and consolidation centers and financial assistance for collection of household hazardous and waste from small quantity generators.
- ARC 4653B Proposed amendments to chs 134 and 135 pertain to certification of underground storage tank compliance inspectors. Mr. Wornson stated that a group of stakeholders met over the past year to develop a proposal that would require owners and operators of underground storage tanks to contract with compliance inspectors certified by the department for annual compliance inspections under department oversight. EPA was involved and approved of the proposal put forth by the work group. When the proposed amendments were presented to the commission, the commission added provisions to prevent a certified inspector from inspecting an underground storage tank the inspector had installed or an underground storage tank owned by the inspector's employer.
- Mr. Beach commended EPC for involving stakeholders in the process and requested that inspections be required every two years, rather than annually. In addition, Casey's General Stores, which is self-insured, would prefer to be able to employ their own inspectors for their 792 underground storage tanks so that any needed remediation could be addressed immediately. Finally, in regard to the qualification requirements, Mr. Beach pointed out that the requirement for 40 hours of OSHA training is more appropriate for installers than for inspectors.
- It was noted that approximately 70 percent of the underground storage tanks in the state are insured by Petroleum Marketers Mutual Insurance Company (PMMIC), which requires annual inspections. Rep. Heaton noted a similarity between PMMIC inspectors inspecting PMMIC-insured tanks and inspectors employed by a self-insured entity inspecting tanks owned by the self-insured entity. Discussion related to the changes imposed by the the commission.
- Rep. Carroll asked that EPC reconsider the restrictions imposed by the commission to require third-party inspectors and to consider whether all tanks, for example those less than ten years old, need to be inspected every year. Rep. Carroll commented that conflict of interest concerns might better be addressed through auditing of inspections, rather than requiring third-party inspectors.
- Mr. Hove indicated that Petroleum Marketers and Convenience Stores of Iowa, supports the annual inspections and has taken no official stand of the conflict of interest provisions for third-party inspectors.
- Rep. Huser commented on the creativity of this approach to help target problem sites and suggested that the rules also require certification of DNR inspectors. Rep. Huser commented that it might be possible to exempt certified inspectors from the OSHA requirements for installers; wondered if professional liability insurance should be required; and suggested that the coverage level be increased to \$1 million and that the requirement for environmental liability insurance provided by a private insurer specify a minimum rating. Rep. Huser commented that DNR oversight and liability concerns of the certified inspectors should provide adequate protection against perceptions of conflict of interest; therefore, it should not be necessary to require third-party inspectors. Finally, Rep. Huser noted that requiring inspections every two years might be more feasible.
- Rep. Eichhorn concurred with Rep. Carroll's comments and cautioned that there may be a potential for confusion between these inspections and the Phase I analysis inspections for due diligence.
- ARC 4646B No questions on amendment to ch 136 pertaining to financial responsibility for underground storage tanks.

**NATURAL RESOURCE COMMISSION** Kevin Szcodronski and Sherry Arntzen represented the commission.

ARC 4654B No questions on chs 61 and 62 concerning state parks and recreation areas and state forest camping. Mr. Szcodronski reported that 50 percent of the camping sites in state parks will be reservable and 50 percent will be available on a first-come, first-served basis.

**REVENUE DEPARTMENT** David Casey, Jim McNulty and Ed Henderson represented the department. Gordon Hendrickson of the department of cultural affairs was also present.

ARC 4680B No questions on the interest rate for 2006.

ARC 4614B Amendments to chs 39, 42, 52, and 58 pertain to tax credits for historic preservation and cultural and entertainment businesses. Rep. Heaton requested clarification of the \$4 million from the values fund; Mr. Hendrickson responded that the funds are to be applied to renovation and restoration of historic structures in cultural and entertainment districts. Mr. Hendrickson explained that tax credits are not issued until a project is completed and developers may sell the tax credits; although the date of issue of the credits cannot be changed, the date the tax credits are reserved can be changed to allow developers to renegotiate on the potential of the tax credit and secure additional funding. Rep. Heaton expressed concern that the amendments give an additional benefit to certain developers that are in phase 2 of the process. At the request of Sen. McKinley, Mr. Hendrickson agreed to provide the committee a list of the 19 cultural and entertainment districts and a list of developers in phase 1 or 2 of the process and the date their tax credits were reserved. Sen. Connolly expressed support for this attempt to assist developers in efforts to preserve historic buildings in communities.

ARC 4682B No questions on proposed rules for the wage-benefit tax credit.

ARC 4681B No action on proposed amendments related to wind energy production tax credit and renewable energy tax credit.

ARC 4613B Mr. Henderson responded to Rep. Huser's questions about the property tax assessment appeal board. Sen. Connolly asked the department about a matter regarding low-rent elderly housing developments which was brought to his attention by Senator Warnstadt. Mr. Henderson reported that the department has met with the parties and intends to initiate a rule making after further study.

Adjourn The meeting was adjourned at 4:15 p.m.

Respectfully submitted,

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Kathleen K. West

APPROVED:

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Chair George Eichhorn

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Vice Chair John P. Kibbie