

**MINUTES OF THE NOVEMBER 2009 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, November 10, 2009, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa.

Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, John P. Kibbie, and James Seymour; Representatives David Heaton, Nathan Reichert, and Linda Upmeyer were present. Representative Tyler Olson was present via telephone; Senator Thomas Courtney was excused.

Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; James Larew, Administrative Rules Coordinator; Senators David Johnson and Paul McKinley; Representative Peter Cownie; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Frevert convened the meeting at 9 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Christine Paulson, Chuck Corell, and Adam Schmieders represented the commission. Other interested parties included John Kaller of Mid-American Energy; Marybeth Gardam; Mike Delaney of the Raccoon River Water Association; Mel Berryhill of Milford, Iowa; Brad Klein of the Environmental Law and Policy Center; Marian Gelb of the Iowa Environmental Council; Wally Taylor of the Sierra Club; Brett Lorenzen of Trout Unlimited; and Steve Vasey of the Hawkeye Fly Fishing Association.

ARC 8215B No action on amendments to chs 20, 22, 23, 25, 28, and 33 regarding air quality.

ARC 8216B Amendments to chs 23, 25, and 34 remove CAMR provisions but require continued mercury monitoring until new EPA standards for mercury emissions are adopted. Ms. Paulson explained that EPA is required by court order to propose standards for hazardous air pollutants for power plants in March 2011, and final rules are to be adopted by November 2011. Mr. Kaller commented that MidAmerican Energy supports the removal of CAMR provisions, but does not support mercury monitoring while awaiting adoption of new federal standards. Discussion related to costs of quarterly stack tests used to certify continuous monitoring data. Ms. Gardam expressed concern about the dangers of mercury emissions and support for the required monitoring.

ARC 8214B Amendments to chs 61 and 62 pertaining to water quality and effluent pretreatment standards are identical to the Notice. Rep. Heaton expressed concern about the hardness of the water in many communities and its effect on attainability of the new chloride standard. Mr. Corell explained that as hardness increases, the toxicity of chloride decreases and suggested that, in determining how to meet the chloride standard, facilities might consider adjusting their centralized softening system and identifying industrial dischargers in the area. Mr. Corell advised communities to report the hardness of the source water and the discharge water in order to adjust the chloride standard. Rep. Heaton asked for the list of communities of concern.

ARC 8226B No action on amendments to 61.3(5), surface water classifications of 32 stream segments.

Special review The Regulatory Analysis regarding the classification of outstanding Iowa waters was published in the October 21, 2009, Iowa Administrative Bulletin. Mr. Corell explained that antidegradation procedures are required by the Clean Water Act and EPA regulations, and that the purpose is to keep clean waters clean, not to clean up polluted waters. Sen. Bartz asserted that the regulatory analysis is flawed in that it underestimates potential costs. Discussion related to leach fields, drainage tiling, general permit fees, and on-site treatment systems. Mr. Corell agreed to provide the committee a summary of comments from the public hearing. Rep. Reichert suggested that the commission consider allowing opportunities for additional public comment before adopting the rules and explored the possibility of allowing for a trading system.

Environmental Protection Commission (continued)

Several parties expressed support for the Tier 2½ classification. Mr. Delaney commented on the importance of protecting Iowa's outstanding waters, especially the trout streams. Mr. Berryhill stressed the need to protect West Lake Okoboji, one of three bluewater inland lakes in the world. Mr. Klein contrasted the minimal costs with the great cultural, economic, and ecological benefits of protecting Iowa's outstanding waters. Ms. Gelb, Mr. Taylor, Mr. Lorenzen and Mr. Vasey expressed support for the Tier 2½ classification.

EDUCATION DEPARTMENT Carol Greta and Su McCurdy represented the department. Other interested parties included Robin Taylor of Eddyville-Blakesburg HSAP; Vicki Bono, parent of home-schooled students; Janelle Erwin of Marion Independent Schools HSAP; Jill Watson of Davis County Community Schools; and Marti Melton-Streeter of Boone Schools.

ARC 8054B At the September 8, 2009, ARRC meeting, the committee delayed the effective date of categorical funding rules 98.12 and 98.112 for 70 days. Since the delay expires December 9, 2009, the committee deferred action until the December 8, 2009, meeting. Interested parties unable to attend the December meeting were invited to address the committee.

Ms. Erwin, secretary for the Marion HSAP, indicated that under these rules she will lose her job because it is funded through the HSAP.

At the request of Rep. Upmeyer, Ms. McCurdy clarified allowed uses of HSAP funding. Ms. McCurdy maintained that while alternative schools and statewide voluntary preschool programs are public education programs, the HSAP is a private education program. Committee members discussed potential legislative solutions to address HSAP funding concerns.

Ms. Taylor identified many expenditures necessary for the program that will not be allowed under the rules. Such expenditures include: clerical support, equipment, rent for office space or activity space, and enrichment classes that are similar to those offered in the public school. Ms. Taylor stated that she has always considered the HSAP as part of the public school system, and that she believes these rules will bring about the end of home school assistance programs. Asserting that HSAPs serve a public purpose, Ms. Watson stated that the rules regarding use of HSAP funds are more restrictive than the statute and do not allow expenditures for necessary space, furniture, and equipment. Ms. Bono expressed concern about the effect the rules will have on her children's HSAP and commented on the importance of having a place for resources and meetings with the supervising teacher. Ms. Melton-Streeter pointed out similarities between alternative schools and HSAPs and commented that funding for these programs should also be similar.

EDUCATIONAL EXAMINERS BOARD Review of ARC 8143B was deferred until the December 2009 ARRC meeting.

VETERINARY MEDICINE BOARD David Schmitt represented the board.

ARC 8168B Dr. Schmitt reported that the board has decided not to adopt these proposed rules.

INSPECTIONS AND APPEALS DEPARTMENT Deborah Svec-Carstens represented the department.

ARC 8190B No action on proposed amendments to chs 50, 56, and 58 affecting health care facilities. Rep. Upmeyer advised the department that a commenter reported feeling intimidated by a department representative at a public hearing. Ms. Svec-Carstens agreed to follow up.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Mike Miller and Alaina Santizo represented the department.

ARC 8228B No questions on proposed amendments to ch 47, endow Iowa tax credits.

ARC 8213B No questions on amendments to ch 211, community attraction and tourism development program.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 8204B No questions on 45.21, FIP assistance payments.

ARC 8220B No action on proposed 75.5 concerning the long-term care partnership program.

ARC 8221B No questions on proposed amendments to ch 75 regarding Medicaid eligibility.

Human Services Department (continued)

- ARC 8247B No questions on proposed 78.12 regarding formal assessment and authorization of continued remedial services.
- ARC 8205B No action on Medicaid coverage and fees for ambulatory surgical center services.
- ARC 8206B No questions on Medicaid reimbursement for translation and interpretation services.
- ARC 8246B No action on proposed amendments to ch 81 regarding pay for performance in nursing facilities. Sen. Kibbie commented that he hopes for a reduction in paperwork.
- ARC 8207B No questions on amendments to ch 82 pertaining to the 3 percent inflation factor for reimbursement of intermediate care facilities.
- ARC 8209B No questions on proposed amendments to ch 175 concerning the child abuse assessment intake process and records retention.
On another matter, Rep. Upmeyer expressed concern that in order to comply with the executive budget cuts, departments may cut rates that are set in statute.

Committee business The minutes of the October 2009 meeting were approved.
There was discussion in regard to emergency filings and rule makings in the “No Rep” category. Mr. Royce offered to notify committee members in advance as to why emergency filings might appear in the “No Rep” category.
The next meeting was scheduled for Tuesday, December 8, 2009.

Adjourned The meeting was adjourned at 12:46 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn