

**MINUTES OF THE NOVEMBER 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, November 9, 2010, at 9 a.m. 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; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Frevert convened the meeting at 9:05 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- NATURAL RESOURCE COMMISSION** Paul Tauke, Kevin Szcodronski, Tamara Mullen and Susan Stocker represented the commission. Other interested parties included David Bartemes of Dave’s Hardwood Trees LLC, Eric Nielsen of Resource Services, Al Wagner of the Iowa Woodland Owners Association, Larry Wiley of Wiley’s Tree Farm, Linda Grieve on behalf of the Iowa Nursery and Landscape Association, Tom Rosenberger, woodland owner, Bob Petrzelka of Geode Forestry, and Mike Brandrup on behalf of the Iowa Tree Farm System.
- Special Review At its October 12, 2010, meeting, the committee imposed a 30-day delay on ARC 9051B pertaining to the rescission of 71.2(2)“c,” which allows for the sale of state forest nursery (SFN) stock outside the state of Iowa as authorized by 2010 legislation.
- Mr. Tauke reiterated that the rule-making action aligns the rules with the authorizing legislation and that all other provisions of ch 71, including procedures, order limitations, customer obligations, and prices, remain unchanged. He explained that the sale of nursery stock by SFN out of state will enable SFN to cover expenses related to the growing of plants pursuant to Iowa Code section 455A.13, maintain affordable seedling prices for Iowans, and encourage landowners and farmers to engage in reforestation, erosion control, water quality, and wildlife habitat conservation projects. At the October meeting, it was suggested that that Iowans have the first opportunity to purchase seedlings. In response, Mr. Tauke proposed that the following statement be placed in the SFN catalog, on the order form and on the Web site: “The state forest nursery will sell no trees or shrubs for planting outside of the state of Iowa until after February 1 of the current sales year.”
- Mr. Bartemes affirmed the quality and affordability of SFN stock and expressed support for the change. Mr. Nielsen expressed support for the change and stated that competition is not an issue since both SFN and private nurseries provide choices in nursery stock and may use prison labor. Mr. Wagner stated that SFN and private nurseries complement, rather than compete with, each other. Mr. Wiley stated that the change will ensure the longevity of SFN. Mr. Rosenberger stated that he needs high quality, affordable trees from SFN stock and expressed support for the change. Mr. Petrzelka stated that he needs SFN stock to keep costs under the \$600 per acre cost-share rate for conservation reserve program (CRP) plantings and would need to go out of state to purchase stock for less without SFN. Mr. Brandrup stated that maintaining a viable SFN is essential for providing forest landowners with a source of high quality plant material that is readily available, affordable and healthy. Ms. Grieve expressed opposition to the change because it will create competition between private nurseries and SFN related to certain sizes of plants, and she suggested that sales to Iowans precede out-of-state sales and that SFN sell nursery stock to states without state nurseries.

Natural Resource Commission (cont'd)

Discussion pertained to the issue of SFN competition with private nurseries; the existence of an SFN agreement with private nurseries that SFN not sell out of state; the reasons for commenters' opposition to and support for the change; and the meaning of affordability. Sen. Bartz suggested that the commission promulgate in rule the statement that SFN will sell no trees or shrubs for planting outside of the with state of Iowa until after February 1 of the current sales year and that reciprocity out-of-state nurseries might be considered by the legislature. He indicated that he would move no further action on this rule making and noted that the 30-day delay will expire on November 10, 2010, causing the rescission to become effective on that date.

ARC 9114B No action on ch 44, boating, special events. This rule making rescinds the amendments to ch 44 as promulgated in ARC 8815B, IAB 6/2/10, and restores ch 44 as it appeared prior to that rule making. The commission will resubmit special event rules at a later date.

ARC 9117B Proposed amendments to ch 45 pertain to horsepower limitations for boat motors. Ms. Stocker reported that 33 public comments were received; 3 of the comments were specific to Lake McBride and requested that the ten horsepower limitation be removed, even though it is statutory. Ms. Stocker stated that the department would prefer that a request to change the statute be initiated by the public. Ms. Stocker explained that the purpose of no-wake speed is to prevent erosion and damage to the shoreline, to protect wildlife and to provide for the safety of other boaters in the area.

ARC 9118B Proposed amendments to chs 61 and 62 pertain to reservations at state parks and recreation areas and state forest camping areas. Mr. Szcodronski stated that the rule making is necessary because the commission is contracting with a different reservation system vendor. Currently, one-half of the campsites are in the reservation system and one-half are available first-come, first-served on a walk-in basis. The commission proposes to increase to 75 percent the number of campsites that must be reserved through the on-line reservation system statewide. Mr. Szcodronski stated that campers want to secure campsites in advance, but campers who travel a long distance to the campsite prefer to use the on-line reservation system, and local campers prefer to secure campsites in person at will. Mr. Szcodronski reported that of 74 public comments, those opposed to the increase to 75 percent outnumber those in favor of the increase by 2 to 1. Sen. Kibbie stated that the reservation system is a step in the right direction. Rep. Reichert asked that the commission consider granting a discount as an incentive to use the on-line system and that an average of 75 percent be used statewide.

ARC 9185B No questions on the termination of proposed amendments to ch 65, fireworks displays at state parks and recreation areas. Rules pertaining to fireworks will be included in the new chapter regarding special events, which will be resubmitted at a later date (see ARC 9114B).

ARC 9189B No action on amendments to ch 101 pertaining to falconry regulations.

ARC 9188B No action on amendments to ch 102, falconry regulations for hunting game.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Chuck Corell, Christine Schwake, and Elaine Douskey represented the commission.

ARC 9154B Amendments to chs 23, 24 and 28 update state air quality rules by adopting new or amended federal requirements and allow the option of submitting initial excess emission reports by E-mail. At the July meeting, the committee voted to request that an informal regulatory analysis be prepared. Ms. Paulson reported that the department held meetings with affected parties to clarify requirements and conveyed the parties' concerns to EPA. Ms. Paulson noted that the RICE internal combustion engine standard generated the greatest concern. She reported that a Region 7 representative sought answers to several questions, including those pertaining to the 15-hour demand response time, and that EPA granted a request for reconsideration for that portion of the standard, with a proposed decision expected by spring 2011. She noted that the compliance deadline is May 2013 and that the department continues to work with affected parties on compliance options.

Environmental Protection Commission (cont'd)

- Rep. Heaton expressed appreciation to the department for responding to the concerns of communities whose stationary engines are affected by the rules. Sen. Bartz asked that the committee be provided a list of the 314 municipalities whose engines will be subject to emission standards, monitoring and testing requirements. Sen. Bartz also expressed concern about the completeness of the data, the cost to consumers and the number of businesses affected and asked that the rule making be placed on the agenda of the December meeting. Sen. Kibbie inquired about whether the data were covered in the regulatory analysis. Ms. Paulson responded that all data except possible increases in energy rates, which were unavailable, were included.
- Motion to delay Sen. Bartz moved a 70-day delay on Items 4, 5, 6 and 7 of ARC 9154B.
- Motion carried On a voice vote of 9 to 1, the motion carried.
- ARC 9153B No questions on proposed amendments to 61.2(2)“g” concerning water quality certification.
- ARC 9152B No questions on proposed amendments to ch 135 promulgated pursuant to 2010 Iowa Acts, House File 2531, regarding site investigation, classification, and corrective action design reports from certified groundwater professionals. Sen. Kibbie asked that the public comments be made available to the committee.

EARLY CHILDHOOD IOWA STATE BOARD Shanell Wagler represented the board.

- ARC 9137B Proposed ch 1 pertains to the early childhood Iowa initiative. Ms. Wagler summarized the purpose of the initiative, reported that meetings with affected parties were held throughout the state prior to publication of this rule making, and noted the changes to ch 1 that resulted. Rep. Frevert requested that the prepublication comments be made available to the committee. Sen. Courtney questioned the criteria used by the state board for the granting of waivers, in particular, what constitutes an exceptional circumstance. He also noted that granting waivers has the potential to allow boards not to merge and may contradict the purpose of the legislation, which is to save money. Sen. Kibbie requested that public hearings be held throughout the state via the Iowa Communications Network (ICN) and added that what constitutes a hardship remains problematic. Ms. Wagler agreed to bring the committee’s concerns to the state board.

EDUCATION DEPARTMENT Carol Greta represented the department.

- ARC 9143B Proposed 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. Ms. Greta explained that the rule codifies the department’s guidance directing that the resident district send the supplementary weighting to the receiving district. Sen. Bartz noted that the statute addresses supplementary weighting in regard to resident students but not in regard to nonresident students and stated that review of the statute is perhaps warranted.
- Motion to refer Sen. Bartz moved a general referral on ARC 9143B.
- Motion carried On a unanimous voice vote, the motion carried.
- ARC 9144B Proposed amendments to ch 36 pertain to extracurricular athletic competition. Ms. Greta noted that the key changes include clarification of the prohibition against all-star players competing in all-star contests, the increase in the cost of all-star awards, the appeal of an F to the local school, and the use of schools’ names in cooperative shared programs. Ms. Greta reported that no public comments were received.
- Sen. Bartz inquired about the precedent in Item 4 for the religious exemption from a physical examination and the prohibition in Item 7 of a coach’s requiring students to participate in any activities outside the season of that coach’s sport. In reference to interscholastic athletic competition, Sen Bartz inquired about the meaning of substantial prejudice in Item 10. Ms. Greta welcomed suggestions regarding these issues and will supply additional information. Sen. Horn inquired about the initiation of due process for a student who receives an F. Ms. Greta stated that a parent must make the request.
- ARC 9147B No questions on proposed amendments to 41.604, which clarify that enforcement actions taken by the department are mandatory, not permissive.
- ARC 9145B No questions on the proposed amendment to 44.3(7)“f” pertaining to Type A-2 bus tow hooks.

Education Department (cont'd)

ARC 9146B Proposed amendments to ch 103 pertain to restraint, physical confinement and detention of students. Rep. Frevert asked that the public comments be provided to the committee. Sen. Bartz questioned Item 3, which appears to adopt standards by reference into the future, and asked that Item 3 be omitted. Mr. Royce concurred with Sen. Bartz and stated that every adoption by reference to standards of another jurisdiction must be adopted as the reference exists currently with date certain. Ms. Greta will provide the committee an update regarding Item 3.

SCHOOL BUDGET REVIEW COMMITTEE Carol Greta represented the committee.

ARC 9122B No questions on proposed amendments to ch 1 pertaining to the composition of the committee and hearings.

ARC 9124B No questions on the proposed rescission of 6.2 regarding hearings. This rule will now appear as rule 1.4.

ARC 9125B No questions on the proposed rescission of ch 7, on-time funding for increased enrollment. The statute implemented by ch 7 has been repealed.

ARC 9126B No questions on proposed amendments to ch 8, which clarify that a petition for waiver is handled by the committee, not by the department.

IOWA FINANCE AUTHORITY Mark Thompson and Carla Pope represented the authority. Other interested parties included Robert Burns of Burns Housing and Rob Smith on behalf of the Iowa chapter of the American Institute of Architects.

ARC 9160B Proposed amendments to ch 12 pertain to the 2011 qualified allocation plan for the low-income housing tax credit program. Ms. Pope explained that, for the first time, a limitation of 4 percent on architect fees has been proposed. Ms. Pope reported that the public comment period would close at the end of business on November 9 and that the authority would take under consideration several suggestions received from architects in regard to the fees. Discussion focused on what is a fair percentage.

Mr. Burns expressed opposition to the proposed fee limitation of 4 percent and asserted that this fee limitation is not commensurate with the risks and responsibility incurred by the architect. Mr. Smith expressed opposition to the proposed 4 percent fee limitation and asserted that the fees should be appropriate for the project at hand.

ARC 9159B No questions regarding proposed amendments to ch 39, HOME partnership program.

ARC 9162B No action on ch 41, shelter assistance fund.

ARC 9166B No action on ch 42, emergency shelter grants program.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 9120B Proposed amendments to ch 51 pertain to recognized hospital accreditation organizations. Mr. Werning stated that the accreditation organization to be added, Det Norske Veritas (DNV), is headquartered in Oslo, Norway.

ARC 9121B No questions on proposed 51.20, food and nutrition services.

ARC 9119B No questions on proposed 51.50 and rescission of 51.51 and 51.52 pertaining to minimum standards for construction.

REVENUE DEPARTMENT Jim McNulty and Dale Hyman represented the department. Other interested parties included Neil Morgan, Ringgold County assessor, and John Boedeker, Cerro Gordo County assessor and president of the Iowa State Association of Assessors.

ARC 9113B Proposed amendments to ch 71 pertain to valuation of agricultural real estate for property tax purposes. Mr. Hyman stated that the amendments update references and document current practices. He noted that interested parties suggested that a statewide hay price be used. Discussion focused on the process for valuation of each county's land, the taxation of conservation reserve program (CRP) land, the effect of CRP on the valuation of lower quality pasture property, the reflection of row crop acres in taxable value, and the involvement of land managers in the rule-making process.

Mr. Morgan expressed concern about changing the rule to conform to current practice and about the types of data used for hay pricing. Mr. Boedeker expressed concern about the accuracy and fairness of the agricultural real estate productivity formula.

Revenue Department (cont'd)

Rep. Frevert and Rep. Upmeyer asked that Mr. Boedeker's written comments be provided to the committee. Rep. Frevert encouraged the interested parties and the department to work toward a resolution.

ARC 9197B No questions regarding proposed 10.2(30), interest rate for calendar year 2011.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

ARC 9110B No action on amendments to ch 91, Iowa domestic abuse death review team.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Jennifer Vermeer, Jan Clausen, Wendy Rickman, and Joe Finnegan represented the department. Jess Benson represented the fiscal services division of LSA. Other interested parties included Bill Nutty on behalf of the Iowa Association of Homes and Services for the Aging (IAHSA), Kelly Meyers on behalf of the Iowa Center for Assisted Living and the Iowa Healthcare Association, Teresa Bomhoff of the Iowa Mental Health Planning Council, Linda Goeldner on behalf of the Iowa Nurses Association, and Bernie Nesbit, private citizen.

ARC 9127B No action on amendments to ch 36 pertaining to health care access assessment.

ARC 9128B No action on amendments to ch 58 relating to a voucher system for the Iowa disaster aid individual assistance grant program.

ARC 9130B No action on 58.51 to 58.58, Iowans helping Iowans unmet needs disaster assistance program.

ARC 9155B No questions on the termination of the proposed amendment to 65.4(2)"b" regarding replacement of EBT cards after three manually keyed transactions.

ARC 9112B No questions on proposed amendments to ch 77 pertaining to the update of provider qualifications for Medicaid HCBS programs.

ARC 9138B Proposed amendments to chs 77 to 79 and 83 pertain to assisted living services under the HCBS elderly waiver. Rep. Heaton asked whether the department's documentation requirements exceed the federal requirements, to which Ms. Vermeer responded that the documentation must verify the services provided. Ms. Vermeer also stated that, for people in assisted living programs, Medicaid is permitted to reimburse only for services provided, not for room and board.

Mr. Nutty expressed concern about the reduction in the reimbursement for providers of service for people without cognitive impairment and about the extensive service documentation requirements. Ms. Meyers expressed appreciation to the department for working with the center on the rules but expressed concern regarding the service documentation requirements and suggested that the assessment tool be used to document needs for Tier 1 and Tier 2.

ARC 9111B No questions on the proposed 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 9170B Proposed amendments to chs 78 to 80 update, streamline, and clarify Medicaid policy for HCBS waiver services.

ARC 9132B No questions regarding amendments to chs 78 and 79 pertaining to pharmacies administering influenza vaccine to children.

ARC 9134B The amendment to 79.1(2) restores a 2.5 percent rate reduction for state fiscal year 2011 for individuals providing consumer-directed attendant care (CDAC) services under a Medicaid HCBS waiver.

ARC 9157B Proposed amendments to ch 81 and proposed ch 166 pertain to quality improvement initiative grants. Ms. Meyers questioned the timing of this noticed rule making because the federal rules have been promulgated but not adopted and expressed concern about the scope of the definitions of eligible entity and nursing facility stakeholder groups.

ARC 9135B No action on amendments to ch 92, which revise IowaCare premium policies to satisfy federal requirements.

ARC 9172B No action on amendments to ch 47 pertaining to the promoting healthy marriage program.

ARC 9174B No action on ch 57, interim assistance reimbursement.

Human Services Department (cont'd)

- ARC 9173B Amendments to 65.39 pertain to categorical eligibility for the food assistance program. Rep. Heaton inquired about whether these are one-time funds since the November fiscal report notes the estimated cost for FY 2011 and FY 2012 and stated that the funds are part of the federal American Recovery and Reinvestment Act (ARRA) of 2009. Mr. Benson stated that the source of funds for FY 2011 is the federal Department of Defense; another source of funds will need to be found for FY 2012. Ms. Rickman will inform the committee about funding for 2013.
- ARC 9175B The amendment to 78.2(4)“a” pertains to Medicaid coverage of mental health prescription drugs that have a significant variation in therapeutic or side effect profile from other drugs in the same therapeutic class. Discussion centered on the number of persons who use the four drugs that have become PDL-preferred; the effect of the Patient Protection and Affordable Care Act (PPACA) on open access to psychotropic drugs; the extent of involvement in discussion by interested parties; whether a factor for noncompliance was included in the calculation of savings; the effect of rebates on provider participation in the program; and best practice. Ms. Bomhoff requested an indefinite delay in the implementation of Medicaid rules to establish a preferred drug list (PDL) for mental health medications and asked that open access to mental health medications be implemented instead. Ms. Goeldner expressed concern regarding drug interactions in children and adolescents.
- Motion to delay Rep. Upmeyer moved a session delay on 78.2(4)“a.”
- Motion failed On a roll call vote of 4 to 4, the motion failed.
- ARC 9176B No action on amendments to chs 79 and 85 regarding provider reimbursement rates.
- ARC 9177B Amendments to chs 95 and 98 pertain to the collection of court-ordered support. Mr. Finnegan confirmed for Sen. Bartz that the child support recovery program does match to the Great Iowa Treasure Hunt.
- ARC 9215B No questions on proposed amendments to ch 97, which are related to the electronic submission of child support payments to the collection services center.
- ARC 9195B Proposed amendments to ch 99 pertain to review, adjustment, and modification of court orders for child and medical support. Mr. Nesbit expressed opposition to the rule making and suggested changes in a written statement to the committee. Mr. Finnegan confirmed for Sen. Bartz that these amendments conform the rules to statutory changes that were made to comply with the federal Deficit Reduction Act of 2005, Public Law 109-71. Sen. Bartz asked that Mr. Nesbit provide his written statement to the department and that Mr. Finnegan provide the committee with details to show the correlation between the rules and the state and federal statutes.

Committee business

The minutes of the October 12, 2010, meeting were approved.

The next meeting was scheduled for Tuesday, December 14, 2010, at 9:30 a.m.

Glen Dickinson, director of the legislative services agency (LSA), explained the process for electronic acquisition of rule makings by chairpersons, ranking members of the appropriate standing committees, and other members pursuant to 2010 Iowa Acts, Senate File 2088, section 52.

Legislators may subscribe to receive rule makings of any agency. When the Iowa Administrative Bulletin is published on the Internet, legislators will receive an E-mail list of rule makings, categorized by agency, which will include a brief description of the subject matter of the rule making and a link to the rule making. Although the statute refers only to a Notice, this application will deliver Notices of Intended Action and Emergency and Filed rule makings. Mr. Dickinson also discussed an Internet application that will link rule makings to the committee minutes and any Digest entry or fiscal note related to a particular rule making.

Committee business (cont'd)

After discussion, the committee voiced support for delivering final, edited copies of rule makings and decided that the notice process will provide adequate time to review any issue related to a rule making. The committee also decided that the system of delivery will allow chairpersons, ranking members of the appropriate standing committees, and other members to subscribe to desired rule makings instead of having the rule makings delivered by each agency and noted that legislative leaders should be notified about this process. The committee also supported plans to make this system available to the public.

Adjourned

The meeting was adjourned at 3:05 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn