

**MINUTES OF THE MAY 2012 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, May 8, 2012, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Jo Oldson, Rick Olson, and Guy Vander Linden were present. Representative David Heaton was not present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:15 a.m.
- Fiscal overview** Aaron Todd presented the LSA fiscal report.
- CAPITAL INVESTMENT BOARD** Victoria Daniels; Richard Neumann, board chair; and Richard Malm of Dickinson Mackaman Tyler & Hagen, P.C., represented the board. Other interested parties included William C. Scales of Whitfield & Eddy on behalf of Regions Bank.
- ARC 0076C Amendments to 4.2 and 4.5 pertain to verification of tax credits for investment in a fund of funds. Ms. Daniels introduced the rule making by stating that the amendments clarify the verification process for the contingent tax credit related to the fund of funds and add transparency to and further explain the board's due diligence process.
- Mr. Neumann explained that one of the board's duties is to administer the contingent tax credit related to the fund of funds. He then related the history pertaining to a loan made by Regions Bank that was to come due in February 2012 and that was extended (the contingent tax credit was extended) until April 22, 2012. Mr. Neumann explained that it has been of great concern to the revenue department that the board have the necessary information to verify the tax credit when the loan became due and that the board was not getting that information. Mr. Neumann stated that the board consequently reviewed the rules and clarified in emergency amendments the information the board needed to verify the tax credit. He added that it was beneficial for all parties to know the position of the board whose duty is to enforce the law, to protect taxpayers in accordance with statute, and to insist on transparency regarding the information the board is required to verify. Mr. Neumann stated that the board clarified the rules but did not modify its contract with Regions Bank in any way.
- Mr. Scales stated that Regions Bank objects to the amendments to the rules. (He stated that two lawsuits are pending to protect Regions Bank with respect to the amendments and submitted copies of the objections and of the lawsuits for the record.) He asserted that the contingent tax credit certificates are a contract between the state of Iowa and Regions Bank, requiring that both parties agree in writing to any modifications to the contract. Mr. Scales expressed the opinion that the amendments, including but not limited to changes in definitions, the method of calculation, and timelines for submission of and requests for documents, were made unilaterally in contravention of the rules themselves. He asserted that Regions Bank has a contract and expects the contract to be honored and that the contract has been modified to the detriment of Regions Bank.
- Discussion pertained to the relationship of the contract to the administrative rules; the reason for an emergency rule making; the investments and the investors; the cost of administration of funds; the information needed for verification; and solutions.
- In regard to the contract (the tax credit certificate), Mr. Malm stated that the tax credit certificate refers to the administrative rules, which reference implies a right to modify the rules in accordance with the law; that the amendments adopted and filed emergency by the board are not considered to be an impairment of anyone's contract rights; and that, though there is no provision in the contract that explicitly states the rules may be changed, the certificate states that it is subject to the rules.

Capital Investment Board (continued)

Regarding the emergency rule making, Mr. Scales stated the view that the primary reason for the emergency amendments was knowledge by the board that Regions Bank might present tax credit certificates. Mr. Scales noted that Regions Bank had inquired about the process by which the bank could verify and redeem the tax credit because there was concern that the borrower would default on the loan. Mr. Neumann stated that the emergency amendments were promulgated in order for the board to clarify the information the board needed in order to verify the tax credit. Ms. Findley stated that the governor supports transparency and verification of a tax credit before the credit is granted in order to protect taxpayers and affirmed the board's emergency rule-making action, including concurrent publication of a Notice of Intended Action to allow public comment to be considered and warranted changes to be made to the emergency amendments before final adoption.

In regard to the investments and investors, Mr. Malm noted that in the lawsuit (a public record) the loans were stated to be \$33 million plus interest. Mr. Scales stated that the borrower from Regions Bank is the Iowa Designated Investor, Inc. (IDII) and that IDII is making investments; the state provides tax credit certificates for the value of the loan and backs the loan by Regions Bank. Mr. Neumann stated that money loaned by Regions Bank was taken ultimately by the fund of funds and invested in venture funds. Mr. Neumann added that the board does not have complete information about the investments made by the fund of funds and the funds in which the fund of funds invested.

Regarding the cost of administration of the funds, Mr. Neumann stated that the board needs more information to verify the amount of the administration costs and the expenses incurred by the fund of funds.

In regard to information needed for verification, Mr. Scales asserted that Regions Bank is providing information to the board and added that the information from the borrower may be the board's concern. Mr. Neumann stated that a certain amount of information needed to verify the tax credit is out of Regions Bank's control because the board is seeking information from IDII and the fund of funds. Mr. Malm stated that everyone involved is committed to the purpose for the amendments, which is to have complete information available publicly for full transparency to the extent appropriate before any taxpayer money is committed.

Regarding solutions, Mr. Neumann noted that the board and the department have tentatively scheduled a meeting on May 15, 2012, to hear Regions Bank's objections. Mr. Malm affirmed that the objections from Regions Bank and other objections to the amendments will be considered by the board before final adoption. Mr. Scales stated that Regions Bank would like to work toward a resolution, one that is in the interest of the state and that satisfies the bank. Mr. Neumann stated that the board is working on a restructuring and expressed the hope that a solution can be found that minimizes any cost to the state, to the point of no cost, and that makes the bank whole.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson and Jim McGraw represented the commission. Other interested parties included Kevin Condon on behalf of the Iowa Association of Business and Industry.

ARC 0087C No questions on proposed amendments to chs 20, 22 and 25 relating to air quality, specifically, air emissions testing. Ms. Paulson stated that two of the more significant proposed changes include (1) eliminating the state-only emissions testing procedures and adopting federal methods for emissions testing; and (2) reducing the notification time and allowing electronic submittals for regulated portable plants.

Mr. Condon expressed appreciation for the opportunity to work with the department on the rule making and stated that stakeholders intend to comment on testing procedures, specifically, the proposed equipment testing rate of 90 percent in Item 6.

ARC 0097C Proposed amendments to 33.3 pertain to air quality standards for fine particulate matter. Ms. Paulson stated that the amendments adopt a portion of the changes that EPA has mandated for PM_{2.5} implementation for the prevention of significant deterioration (PSD) program and that these amendments impact the largest sources of industrial emissions. This rule making will ensure that industry can continue to be issued PSD permits from the state rather than from EPA.

Environmental Protection Commission (continued)

In response to an inquiry from Rep. Pettengill during the fiscal overview, Ms. Paulson stated that the fiscal impact statement for this rule making will be updated to reflect no fiscal impact; the department does not intend to add 2.0 FTE positions beginning in FY 2013.

In response to inquiries from Sen. Bartz, Ms. Paulson addressed emissions by source category, the finding of failure to submit the state implementation plan (SIP) due to a delay by EPA to adopt rules, and the definition of “federally enforceable,” and Mr. McGraw explained the variation in precursors for PM_{2.5} among areas of the country in reference to the definition of “regulated NSR pollutant.”

In response to Rep. Vander Linden, Mr. McGraw explained that compliance with the PSD program allows the department to be the primary permitting authority for PSD permits and to expedite the requests for PSD permits from industry; that Iowa is considered to be in attainment for PM_{2.5}; and that agriculture sources, including fugitive dust, are exempt from PSD permitting requirements. Mr. McGraw, in response to Rep. Pettengill, stated that residential living units in Iowa are exempt from PSD permitting requirements. In response to an inquiry from Sen. Courtney, Mr. McGraw stated that the department is working with three companies in Muscatine whose facilities are oscillating in and out of attainment to develop control strategies to reach attainment for the PM_{2.5} standard by February 2013.

HISTORICAL DIVISION Mary Cownie represented the division. Other interested parties included Mark Landa of Sullivan & Ward on behalf of rural electric cooperatives.

ARC 0104C Proposed amendments to 35.2 concern historic preservation program administration.

ARC 0103C Proposed amendments to ch 42 relate to the review and compliance program.

Because ARCs 0104C and 0103C are directly related, Ms. Cownie addressed them concurrently. Ms. Cownie stated that the division has under its purview the state historic preservation office (SHPO), which receives an annual federal grant that requires compliance with federal law. She stated that the SHPO is responsible for administering the Iowa Cultural Resources Survey and Registration Program, which includes site surveys among other appropriate efforts to identify historic properties. She explained that 2011 Iowa Acts, House File 267, modified the effort required of rural electric cooperatives (RECs) in identifying historic properties. Specifically, the legislation states that the SHPO shall only recommend that an REC constructing electric distribution and transmission facilities for which the REC is receiving federal funding conduct an archeological site survey of its proposed route of construction when the SHPO has determined that a historic property is likely to exist within the proposed route. In addition, the legislation states that the SHPO cannot require a level of archeological identification effort greater than the reasonable and good-faith effort required by federal law. Ms. Cownie affirmed the goal, which is that the survey balance the impacts on the historic property and the project costs.

In response to an inquiry from Sen. Kibbie, Ms. Cownie stated that public comment has been mixed and noted that comments in support of the rules favored the legislation while comments in opposition to the rules took issue with the legislation. In response to an inquiry from Sen. Bartz, Ms. Cownie stated that the legislation will streamline the process of determining the eligibility of a historic property for inclusion in the National Register of Historic Places.

In expressing support for the rules, Mr. Landa acknowledged the intent of the legislature, which is that the director has the authority to review and approve the actions of the SHPO’s office. While noting that some modifications in the final rules will perhaps be needed, he expressed the opinion that the process is working well.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 0070C No questions on proposed amendments to ch 20 pertaining to certificates of insurance for commercial lending transactions. Ms. Mead noted that because the division intended that these amendments be Adopted and Filed Emergency After Notice and that they become effective before the May meeting, a special review of the proposed amendments was conducted at the April meeting. Ms. Mead stated that the division concluded after the public hearing that there will be no changes from the Notice.

Insurance Division (continued)

Rep. Pettengill thanked the division for its work on the rule making and for allowing the rule making to remain unchanged after a consensus of interested parties was reached. Ms. Mead expressed appreciation to Rep. Pettengill for her efforts to bring the rule-making process to a conclusion.

Committee business The minutes of the April 9, 2012, meeting were approved.

The next meeting was scheduled for Tuesday, June 12, 2012, and Wednesday, June 13, 2012, at 9 a.m.

Mr. Royce inquired about whether HJR 2001 regarding the ban on traditional shot will be brought forth in the Senate since the HJR may impact a pending lawsuit. Committee members stated that there was nothing to report.

Adjourned The meeting was adjourned at 10:31 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill