

**MINUTES OF THE JANUARY 2006 MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Friday, January 6, 2006, in Room 24, State Capitol, Des Moines, Iowa.
- Members present: Representative George Eichhorn, Chair, and Senator John P. Kibbie, Vice Chair; Senators Michael Connolly, Thomas Courtney, and Paul McKinley and Representatives Danny Carroll, Marcella Frevert, and David Heaton. Senator Mary Lundby and Representative Geri Huser were excused.
- 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. and welcomed Sen. Courtney.
- Fiscal report** Mary Beth Mellick presented the LSA report on four rule makings that have a significant fiscal impact: ARC 4711B, ARC 4715B, ARC 4713B, ARC 4769B. Rep. Carroll requested that the fiscal report be distributed with the Agenda and Digest; Rep. Heaton asked that the report be sent in Word rather than PDF.
- HUMAN SERVICES DEPARTMENT** Mary Ellen Imlau, Jody Casewell, Carol Eaton, and Mary Nelson represented the department. Other interested parties included Marvin Tooman of the Iowa Association of Community Providers and Lloyd Vander Kwaak of ChildServ.
- ARC 4711B Ch 118 implements the voluntary child care quality rating system. Ms. Imlau outlined changes made in response to comments received. Discussion related to the point categories both for child care centers and for child development homes, options for acquisition of professional development points, quantifiable criteria for evaluating the effects of the program, and budgetary considerations if the program were to become mandatory.
- ARC 4712B No action on emergency amendments to revise forms for better useability and greater efficiencies in applications for income maintenance programs.
- ARC 4741B No questions on amendments to ch 24 to implement case management for the children's mental health waiver.
- ARC 4751B Proposed amendments to ch 24 pertain to accreditation of providers of services to persons with mental illness, mental retardation, and developmental disabilities. Mr. Tooman expressed concern about a proposed amendment that would prevent staff of an organization from serving on the board of directors of the organization and noted that there have been no reported instances involving conflict of interest. Mr. Vander Kwaak concurred with Mr. Tooman's comments and stated that the rule is not necessary since Iowa law already provides adequate protections. Mr. Vander Kwaak stated that the amendment would have an adverse impact on organizations currently accredited under this law and noted that the CEO of ChildServ serves as a voting member on the board of directors and on all board committees and task forces. Rep. Eichhorn asked the department to take these comments into consideration; Rep. Carroll indicated that there may be other ways the department can address its conflict of interest concerns.
- ARC 4710B No questions on ch 66 regarding the emergency food assistance program.
- ARC 4709B No action on amendments to ch 99 pertaining to child support obligations.
- ARC 4708B No action on amendments to chs 108, 130, and 202 concerning foster care. Ms. Nelson assured Rep. Heaton that the case worker's assessment of the safety and best interests of the child will determine whether a mother may continue to breast-feed her child who has been placed in foster care.
- ARC 4707B No action on amendments to ch 109 affecting child care center owners, employees and volunteers and vehicles used to transport children.
- ARC 4706B No questions on amendments to ch 176 pertaining to increased access to dependent adult abuse information.
- LOTTERY AUTHORITY** Ed Stanek and Marci Tooman represented the lottery. Lisa Pierce represented the Central Iowa Gambling Treatment Program.
- ARC 4732B Ms. Tooman outlined the amendments. Sen. Kibbie distributed copies of a previous referral made by the committee to the general assembly regarding the proliferation of MVM lottery machines. Sen. Kibbie related his experience of playing a TouchPlay machine and commented that players cannot tell the difference between slot machines and lottery machines. Dr. Stanek explained that TouchPlay machines allow a player to select from various game options and that the ticket is printed at the time of selection according to a predetermined sequence. Dr. Stanek reviewed the history of the legislature's direction to the lottery to generate additional funds through new games and reported that last year the lottery generated \$55 million for the state; Dr. Stanek projected an additional \$30 million in 2006 and an additional \$45 million in 2007.

Lottery Authority (continued)

Dr. Stanek clarified that the state's percentage of the profit from lottery machines will increase from 24 percent in 2006 to 27 percent in 2007, 30 percent in 2008, and 34 percent in 2009, with the remainder divided among the manufacturer of the machine, the owner of the machine, and the owner of the premises.

Dr. Stanek reported that in 2003, there were 30 machines; today there are 4,600 and more are on order. Sen. Connolly complimented Dr. Stanek on the success of the lottery, but commented that the proliferation of machines has exceeded the legislature's intent. Sen. Connolly contended that the legislature never intended for gambling to become so pervasive. Rep. Carroll noted that, in spite of the limitations imposed by this amendment, the number of gambling machines in the state could more than double under this rule. Sen. McKinley expressed concern about the state's dependence on this source of revenue to fund government operations. Sen. Kibbie requested additional information about the number of licensees for scratch tickets, lotto, pull-tabs, and TouchPlay machines. It was the consensus of the committee that the legislature should review legislative intent regarding the lottery.

Dr. Stanek maintained that the lottery has received no complaints from the public and identified penalties that would be imposed for violations of age restrictions.

Ms. Pierce commented that last month 20 percent of the crisis line calls were related to the lottery's TouchPlay machines. Ms. Pierce expressed the opinion that the self-ban is ineffective and unenforceable, that age-restricted areas are not well monitored, and that attendants pay winners without requiring identification to prove they are of age. Rep. Eichhorn suggested that Ms. Pierce provide the lottery information about complaints received.

**Agenda change**

Rep. Eichhorn removed from the agenda three agencies scheduled for review and asked members to notify Mr. Royce if they want any of the following rules placed on the February agenda:

**ADMINISTRATIVE SERVICES DEPARTMENT** ARC 4748B, ARC 4749B, and ARC 4747B.

**PHARMACY EXAMINERS BOARD** ARC 4759B, ARC 4758B, ARC 4760B, and ARC 4757B.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD** ARC 4765B, ARC 4762B, ARC 4766B, ARC 4768B, ARC 4763B, ARC 4767B, and ARC 4764B.

**REVENUE DEPARTMENT** David Casey and Jim McNulty represented the department.

ARC 4713B No questions on amendments to chs 37, 67 to 69, and 83.

ARC 4769B In regard to proposed amendments relating to investment tax credits, Mr. McNulty agreed to provide Sen. McKinley additional information about applications that have been approved by the department of economic development.

ARC 4714B No questions on amendments pertaining to implementation of the streamlined sales and use tax.

**SECRETARY OF STATE** Sandy Steinbach and Charlie Krogmeier represented the secretary of state.

ARC 4743B No action on proposed 21.50(7), which revises the form for requesting a temporary waiver of accessibility requirements.

ARC 4742B No action on amendments to ch 22.

**Committee business** The minutes of the December 2005 meeting were approved.

The next meeting was scheduled for Friday, February 10, 2006.

Drafts of proposed amendments to the Iowa Code concerning regulatory analysis, emergency rule making, and electronic filing of rule-making documents were distributed and discussed.

Rep. Eichhorn reported that the attorney general responded to the committee inquiry regarding the dental examiners board rule that requires reporting of acts or omissions by licensees.

Motion to refer Sen. Eichhorn moved a referral to the general assembly.

Motion carried The motion carried.

The committee approved publication of the public safety department's list of approved ignition interlock devices.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Mark Adams, and Stuart Crine represented the department. Other interested parties included Bill Dikis of the Iowa chapter of the American Institute of Architects.

ARC 4772B No action on chs 300 to 303 concerning the state building code. Mr. Coveyou distributed the notification list and a summary of the state building code's applicability and stated that Iowa's building code is consistent with that of 40 other states. Sen. McKinley suggested that the National Federation of Independent Businesses also be notified of this adoption. Mr. Dikis expressed the opinion that this building code should result in cost savings and improved safety.

## Public Safety Department (continued)

ARC 4753B Proposed ch 275 pertains to certification of automatic fire extinguishing system contractors. In response to a letter read by Rep. Heaton, Mr. Coveyou indicated that the department is seeking comments regarding appropriate standards for contractors who install only pre-engineered systems.

ARC 4773B No questions on ch 350, the state historic building code.

**ENVIRONMENTAL PROTECTION COMMISSION** Patti Cale-Finnegan, Gene Tinker, and Ken Herring represented the commission.

ARC 4770B These proposed rules include the drinking water state revolving fund, the clean water state revolving fund, and nonpoint source pollution control set-aside programs. Responsibility for financial analysis and loan processing is transferred to the Iowa finance authority. Ms. Cale-Finnegan agreed to respond to Rep. Heaton's observation that a reference to lead pipes was removed from the point table on p. 978 of the 12/21/05 IAB. Sen. Connolly emphasized the importance of addressing pollution from nonpoint sources and cleaning up the watersheds.

ARC 4771B The proposed amendment to ch 65 adds a definition of designated wetland. Mr. Tinker stated that the list of designated wetlands will be adopted by reference, and any changes to the list will be made through the rule-making process. The proposed list, which is posted on the department's Web site, includes 140 wetlands owned or managed by the Department of the Interior or the department of natural resources. A separation distance of 2500 feet from a designated wetland or secondary containment is required for new or expanded confined animal feeding operations. Mr. Herring noted that lands within a drainage area are not eligible to be designated wetlands.

**NATURAL RESOURCE COMMISSION** Marion Conover and Terry Little represented the commission.

ARC 4719B No questions on the amendment to ch 81, fishing regulations.

ARC 4718B No action on amendments to ch 86 regarding turtles. Mr. Conover stated that there are 127 licensed turtle harvesters in the state.

ARC 4717B No action on 87.1(4), which closes commercial harvest of mussels in waters of the Mississippi River common with the state of Wisconsin.

ARC 4715B Proposed amendments to ch 94 would require nonresidents who purchase an any-deer license to also purchase an antlerless-only deer license.

ARC 4716B No action on proposed ch 114, nuisance wildlife control. Rep. Eichhorn suggested that language be included to specify that the rules are applicable to species under the authority of the department. Sen. McKinley requested copies of a lawsuit filed to require the department to place mountain lions on the endangered species list.

**EDUCATIONAL EXAMINERS BOARD** George Maurer represented the board.

ARC 4721B No questions on the proposed media specialist endorsement.

ARC 4607B No action on amendments to require testing of applicants from recognized non-Iowa institutions, which were made to comply with the No Child Left Behind requirements.

**EDUCATION DEPARTMENT** Carol Greta, Arlie Willems, and Susan Fischer represented the department. Other interested parties included athletic director Steve Shanks and President Jerry Deegan of Dowling Catholic High School. Margaret Buckton represented the Iowa Association of School Boards.

ARC 4724B No questions on amendments to ch 12, general accreditation standards.

ARC 4727B No action on amendments to ch 17 pertaining to open enrollment.

ARC 4726B No action on standards for teacher intern preparation programs. Sen. McKinley suggested that in 77.8(3), membership of the teacher intern committee, the words "district personnel" should be more specific.

ARC 4725B No action on requirements for smaller districts regarding the local option sales and services tax for school infrastructure.

ARC 4731B Proposed amendments to ch 36 pertain to extracurricular interscholastic competition. Ms. Greta reported that many comments have already been received. A comparison of the current athletic eligibility standards and the proposed standards was distributed. The proposed standards require that a student pass all classes, as opposed to four classes, and establish the period of ineligibility as 20 school days. Rep. Carroll suggested clarification of the timing of evaluations and subsequent periods of eligibility. Discussion related to applicability of the standards to other extracurricular activities, the change of the provision that allowed for remediation of ineligibility during summer school, the effect the pass-all standard may have on students' willingness to enroll in more challenging courses, and spectator sportsmanship. Sen. Courtney and Sen. Connolly applauded the state board for the proposed standards.

Education Department (continued)

Mr. Shanks expressed the view that the current requirement that a student pass four classes is too low, but the proposed requirement goes too far in the other direction. This fall 5 of the 273 student athletes at Dowling were ineligible; had these rules been in effect, an additional 36 students would have been ineligible. Mr. Deegan commented that although Dowling supports rigorous standards, he believes the proposed rules will have an adverse effect on students.

Ms. Buckton distributed written comments from school board members and a superintendent and stated that the association believes local control should prevail unless there is proof that students will have better outcomes under state standards. Ms. Buckton commented that there is no data to show that students will be better off under the proposed standards.

Adjourned

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