

**MINUTES OF THE JANUARY 2008 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, January 7, 2008, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Jeff Angelo, Thomas Courtney, John P. Kibbie and James Seymour; and Representatives Marcella Frevert, David Heaton, David Jacoby and Linda Upmeyer.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; fiscal staff, caucus staff and other interested parties.
- Convened Sen. Connolly convened the meeting at 9 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- TREASURER OF STATE** Karen Austin and Stephanie Strauss represented the Treasurer of State.
- ARC 6506B No questions on proposed ch 16, Iowa educational savings plan trust.
- CREDIT UNION DIVISION** James Forney represented the division. Justin Hupfer of the Iowa Credit Union League was also present.
- ARC 6486B No questions on the termination of ARC 5930B.
- ARC 6430B No action on proposed ch 5 regarding debt cancellation products. Discussion related to fee structures, disclosures, payment of fees, and profitability. Mr. Hupfer indicated that the league is generally supportive of the rules. Sen. Kibbie asked that the committee be provided a clearer picture of the fees when the rules are adopted.
- IOWA FINANCE AUTHORITY** Mark Thompson represented the authority.
- ARC 6507B No questions on amendments to ch 18 regarding waiver and variance procedures.
- ARC 6508B No action on 26.5(7), which allows communities to prepay loans for water pollution control works and drinking water facilities. Rep. Frevert requested information about community interest in this option.
- ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Mary Klemesrud represented the department.
- ARC 6478B No action on amendments to change the name of the targeted industries division to innovation and commercialization division.
- ARC 6479B No questions on adoption of chs 106 to 109.
- ARC 6477B Proposed ch 165 pertains to allocation of grow Iowa values funds to commercialization activities and reporting requirements for the state board of regents. Discussion related to legislative intent and the roles of the DED board and the board of regents regarding utilization of grow Iowa values funds. Rep. Jacoby asked about reporting by community colleges.
- REVENUE DEPARTMENT** David Casey represented the department.
- ARC 6525B No action on the interest rate for 2008.
- ARC 6455B No questions on 15.3(1)“a” to “c” regarding relaxed good faith provisions for exemption certificates in the determination of sale and sale price.
- ARC 6522B No action on proposed 68.8(9), which adjusts the rate for refund of motor fuel and special undyed fuel tax. Mr. Casey noted that idle time may also be tracked by on-board computers.
- ARC 6524B No questions on proposed 122.2 regarding term limits for the assessor continuing education committee.
- ARC 6527B No action on proposed 230.10, which implements HF 912 by establishing exemptions for a Web search portal business.
- EDUCATIONAL EXAMINERS BOARD** George Maurer represented the board.
- ARC 6449B No questions on 11.4(1) regarding who may initiate complaints.
- ARC 6457B No action on proposed 14.104, which would eliminate the requirement for applicants from foreign institutions to pass the TOEFL test.
- ARC 6446B No action on proposed 14.106(1) and 14.106(2) regarding board authority to add endorsements to licenses.
- ARC 6447B No questions on 14.114 concerning the administrator license.
- ARC 6445B No questions on proposed 14.121(2) concerning the fee for adding endorsements to licenses.
- ARC 6450B No action on proposed 14.142(1)“c,” which removes the requirement for a PK-12 license for administrators from out of state. Discussion related to fairness, since in-state administrators are required to have a PK-12 license. Dr. Maurer noted that, although an in-state administrator must have a PK-12 license, an in-state administrator also has more options.
- ARC 6448B No questions on 17.7(3) concerning renewal of administrator license.

EDUCATION DEPARTMENT Carol Greta and Jeff Berger represented the department.

- ARC 6472B No action on amendments to ch 12 pertaining to prohibition of discrimination based on sexual orientation and gender identity; the definition of “prekindergarten program”; and the antibullying and antiharassment policy. Ms. Greta noted that the amendments accommodate a request by Rep. Upmeyer to specify that the policy include but not be limited to the 17 specified characteristics.
- ARC 6469B No action on amendments to ch 12 pertaining to school nurses, guidance counselors, and school counseling program. Ms. Greta advised Rep. Frevert that a school nurse must have an SPR in order to be eligible for teacher quality funding; but a local board may decide to encourage a nurse who is working on a four-year degree. Mr. Berger explained to Rep. Frevert that local agreements will determine whether teacher quality disbursements are made in a lump sum or in monthly checks.
- ARC 6473B No action on amendments to ch 12 concerning core content standards.
- ARC 6475B No questions on proposed amendments to ch 83 concerning the student achievement and teacher quality program and the beginning administrator mentoring and induction program.
- ARC 6480B Proposed amendments to ch 17, open enrollment, are in response to a supreme court decision that race cannot be the sole or determining factor in decisions regarding attendance center assignments. Ms. Greta stated that districts that have a voluntary desegregation plan may define “minority student” to include socioeconomic status and English language learner status. Members commented that they support open enrollment, expressed concern that a district could define “minority student” in a way that would allow the district to deny requests for open enrollment, and asked that the department not include districts that do not currently have voluntary desegregation plans.
- ARC 6471B No questions on 21.3(7), salary allocation plan for community college faculty.
- ARC 6470B No questions on 21.75, which sets the maximum fee a community college can charge for the used motor vehicle dealer education program.
- ARC 6474B No action on amendments to ch 97, supplementary weighting. Rep. Frevert asked for additional information regarding seasonal sharing of operational functions, such as snow removal; Mr. Berger commented that the length of the contract would be less significant than the cost factor.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson and Chuck Corell represented the commission. Nicole Molt represented the Association of Business and Industry.

- ARC 6517B No action on proposed amendments to update the air quality rules. Ms. Paulson advised Rep. Upmeyer that it is unlikely that any entities in Iowa will be affected by the standard in Item 17 regarding carbon black.
- ARC 6441B No action on update of references to federal effluent and pretreatment standards. Mr. Corell noted that these amendments update federally approved methods for analysis of wastewater samples in certified laboratories.
- ARC 6521B No action on proposed increase in fees for authorizations issued under the general permits for storm water discharges. Mr. Corell commented that the increase is necessary to cover the cost of additional inspectors. Ms. Molt expressed concern about the proposed increase in fees and suggested implementation of a more efficient on-line permitting system. Rep. Jacoby expressed frustration with FEMA’s outdated floodplain maps.

NATURAL RESOURCE COMMISSION Kelley Myers, Steve Dermand, Nathan Hauptert, and Willie Suchy represented the commission.

- ARC 6440B No questions on ch 7, rules of practice in contested cases.
- ARC 6443B No questions on amendments to ch 15 to include criminal trespass while hunting deer in the rule pertaining to revocation of license.
- ARC 6444B No action on proposed amendments to ch 30 to provide grants to communities for the water trails development program and low-head dam safety program. Rep. Frevert took this opportunity to commend the department’s efforts to clean up Iowa’s rivers.
- ARC 6442B No action on proposed amendments to ch 94, nonresident deer hunting.

INSPECTIONS AND APPEALS DEPARTMENT Steve Mandernach, Beverly Zylstra, and David Werning represented the department. Scott Sundstrom was present on behalf of the Iowa Grocery Industry Association, and May Schaben was present on behalf of the Iowa Restaurant Association.

ARC 6454B Mr. Mandernach distributed the department's response to comments received from the Iowa Grocery Industry Association on proposed amendments concerning food and consumer safety. Mr. Sundstrom and Ms. Schaben expressed disappointment that the department did not consult with industry before publication of these amendments as required by Iowa Code section 137F.2. Discussion related to the change regarding the fine for a critical violation. Mr. Mandernach stated that the \$100-per-day fine is current department policy, but acknowledged that the department has not assessed a daily fine. Committee members expressed concern about the manner in which the department has exercised its authority and urged the department to work with concerned parties to resolve the issues.

ARC 6476B No action on 57.22 to add a violation annotation to the rule addressing service plans. Sen. Seymour asked if fines are imposed before a facility is formally notified of a violation. Mr. Werning responded that federally certified facilities are fined from the day of the inspection and noted that an exit conference at the time of inspection summarizes the findings and that the formal report is received within ten days. Ms. Zylstra noted that the department is working with CMS in this regard. Mr. Werning agreed to respond to Rep. Heaton's inquiry regarding the requirement for separate hospital and care facility administrators. Rep. Jacoby commented that inspectors can provide technical assistance rather than simply impose a fine.

PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE Scott Scheidel represented the board by telephone. Patrick Rounds represented Petroleum Marketers Management Insurance Corporation (PMMIC).

ARC 6423B At the December 2007 meeting, the committee delayed subrule 11.3(11) until January 11, 2008. Mr. Scheidel reported that he has drafted an amendment to address the concerns of the DNR and PMMIC and indicated that the board is likely to approve the amendment. Mr. Rounds expressed appreciation to the committee and the board for addressing the concerns and commented that this program is successful because of the board's responsiveness.

INSURANCE DIVISION Rosanne Mead, Craig Goettsch, William Cook, and Angela Burke Boston represented the division. Other interested parties included Sen. Rielly, Sandy Smitherman on behalf of Delta Dental, and Scott Sundstrom on behalf of the Federation of Iowa Insurers,

ARC 6516B No questions on 39.15(4), long-term care producer training requirements.

ARC 6495B No questions on amendments to ch 50 to update and clarify rules governing securities.

ARC 6511B Proposed ch 59 pertains to pharmacy benefits managers (PBMs). Discussion related to the differing views of PBMs and pharmacies as to timely payment of claims. PBMs want 30 days; pharmacies favor 15 days. Rep. Jacoby asked that a summary of the comments received be sent to the committee. Sen. Connolly directed the division to work out a solution.

ARC 6543B No action on proposed 71.26, uniform health insurance application form. Ms. Burke Boston acknowledged the role of Sen. Rielly and summarized the comments received. Ms. Smitherman commented that inclusion of vision and dental coverage on the form might give an advantage to multi-line carriers. Noting that the federation, which includes both single- and multi-line carriers, has not taken an official position on the concern raised by Ms. Smitherman, Mr. Sundstrom expressed appreciation for the work of the division in the development of an application form that is understandable and usable.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Vermeer represented the department. Marty Ryan was present on behalf of the American Civil Liberties Union (ACLU).

ARC 6481B No questions on amendments to ch 25, disability services management.

ARC 6520B No questions on annual adjustments to eligibility and payment levels for the state supplementary assistance program.

ARC 6431B No questions on proposed amendments to ch 75 regarding Medicaid eligibility for newborns and verification of identity and citizenship.

ARC 6494B No questions on proposed amendments to ch 75 concerning forms and procedures used to determine Medicaid eligibility and benefits.

ARC 6526B No action on amendments concerning Medicaid eligibility and financial participation of a married person residing in a medical institution. Ms. Freudenberg agreed to report the amount for 2008 to Sen. Kibbie.

ARC 6528B No questions on the personal needs allowance for Medicaid members who reside in a medical institution.

Human Services Department (continued)

- ARC 6518B No questions on the personal needs allowance for Medicaid members who reside in a long-term care facility.
- ARC 6461B Amendments to ch 76 pertain to data-sharing agreements. Ms. Freudenberg reported that a change was made in response to a concern of the ACLU about the privacy of the data. Mr. Ryan commented that the ACLU does not believe that the department has the authority to share with a third party insurance information reported to the department. Ms. Vermeer responded that the department must comply with both HIPAA and the Social Security Administration, and contractors are bound by the same conditions as the department.
- Motion to refer Sen. Kibbie moved a referral to the general assembly.
- Motion carried The department’s sharing of insurance information is referred to the general assembly.
- ARC 6425B No questions on amendments to ch 81 concerning Medicaid reimbursement of nursing facilities.
- ARC 6456B No questions on amendments to ch 172 regarding purchase of legal services for permanency.
- ARC 6459B No action on amendments to ch 176 regarding treatment of “confirmed, not registered” reports of dependent adult abuse.
- ARC 6515B No questions on extension of transition period for family-centered services in the Council Bluffs service area.
- ARC 6434B No questions on proposed amendments to ch 201 concerning subsidized adoptions.
- ARC 6493B No questions on amendments to ch 202 regarding verification of citizenship for children in foster care.
- Committee business** The minutes of the December 2007 meeting were approved.
The next meeting will be held Friday, February 8, 2008, at 8 a.m.
The committee gave the Administrative Code Editor permission to publish in the January 30, 2008, Iowa Administrative Bulletin a notice regarding the opportunity to participate in the Model State Administrative Procedure Act Revision Process.
- Adjourned The meeting was adjourned at 2:05 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise