

**MINUTES OF THE OCTOBER 2004 MEETING
OF THE**

ADMINISTRATIVE RULES REVIEW COMMITTEE

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, October 12, 2004, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators Michael Connolly, John P. Kibbie, Mary Lundby and Donald Redfern; Representatives Marcella Frevert, David Heaton and Geri Huser. Representative Danny Carroll was excused.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Kristen Hardt representing the office of Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened Chair Eichhorn convened the meeting at 9 a.m.
- ELDER AFFAIRS DEPARTMENT** Mary Ann Young and Joel Wulf represented the department. Susan Cameron represented Iowa Health Care Association.
- ARC 3705B No action on proposed amendments to ch 25 concerning assisted living programs. Discussion related to occupancy agreements and to protection of consumer choice regarding service provider.
- ARC 3704B No action on amendments to ch 25 regarding alarm systems in assisted living facilities.
- ARC 3703B Proposed amendments to ch 25 would rescind a definition, amend program certification language, include in occupancy agreements information about alarm systems, and not require medications to be kept in a locked storage area within residential dwelling units when nurse-delegated assistance is used. Discussion related to state access to medical records of private pay residents. Wulf indicated that the department of inspections and appeals would have access to such records in complaint investigations or facility monitoring.
- ARC 3702B Young reported that amendments to ch 26 inadvertently changed language in subrules 26.3(2) and 26.4(1) from that which appears in the Iowa Code and indicated that the department will adopt emergency amendments to restore statutory language in those subrules, effective November 3, 2004. Cameron expressed appreciation for the department's willingness to restore statutory language.
- ARC 3701B No questions on elder group homes, ch 29.
- IOWA FINANCE AUTHORITY** Mike Tramontina, Dennis Dietz, Donna Davis, Tim Waddell, Roger Caudron, Carla Pope, and James Smith represented the authority. James Conlin and Kris Saddoris represented Conlin Properties. Robert Burns of Burns & Burns, L.C.; Bill Reinke of Houses, Inc. and Iowa Association of Community Providers; Rollic Lobsinger of MidAmerica Housing Partnership; and Jim Cain of Iowa Coalition for Housing and the Homeless were also present.
- ARC 3681B Dietz outlined changes in the 2004 QAP for low-income housing tax credits: the cost of the market study, return of residual market study fees to applicants, provisions for tax-exempt bond projects, increase in per-unit cost cap, delinquent parties' ineligibility for tax credits, change in MSA cap, reestablishment of points for brownfield sites, inclusion of tax-exempt bond financing by IFA as acceptable local contributing effort, and a recommendation for advisory group study of consultant cap provisions.
- Conlin and Saddoris distributed written comments and raised concerns relating to IFA's use of the ICN for public hearings, IFA's underwriting practices, provisions allowing IFA to award credits to a project based on considerations other than highest score, opposition to caps, and a desire for more input from the developer community.
- Burns commented that the single cap on a developer and consultant limits the consulting services successful developers can provide to nonprofit entities and recommended that two caps be established. Burns indicated that both developers and nonprofit groups oppose the single cap.
- Reinke expressed support for the QAP, including the caps, as encouraging smaller projects that serve persons with disabilities. Tramontina added that the cap allows for the participation of more developers. Lobsinger and Cain voiced support for the cap and expressed the opinion that the 2004 QAP allows for diverse projects in response to needs across the state.
- Davis clarified the difference between the "watch list" and the "troubled property list." McKinley requested a copy of the watch list and the reason for each project's listing. In response to questions relating to project completion timetables, Tramontina explained that IRS requires that 10 percent of funds be spent within six months and that the project be completed by December 30 of the following year. Eichhorn suggested that the advisory group expedite its review of the consultant cap provisions and that language allowing IFA flexibility in awarding credits should include some guidelines regarding situations in which the applicant's score may not be the sole criterion.
- ARC 3682B No action on ch 20 concerning the senior living revolving loan program.

Iowa Finance Authority (continued)

ARC 3683B No action on ch 21, the HCBS revolving loan program. Discussion related to the coordination of efforts and communications with the departments of elder affairs and human services. Pope confirmed that IFA funding is available for development and expansion of congregate meal programs. In response to Kibbie's concerns about the state of housing in small towns in rural Iowa, Tramontina indicated that councils of government should access the local housing trust funds and CDBG funding for rehabilitation of owner-occupied housing.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Excused from review.

ARC 3677B Not reviewed.

ARC 3676B Not reviewed.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Gregg Schochenmaier and Donna Mueller represented IPERS.

ARC 3670B ARC 3670B was not reviewed; instead discussion centered on concerns resulting from a change in calculation of the cost of service buy-backs. Mueller stated that effective January 14, 2004, IPERS changed the way of calculating the cost of service buy-backs to comply with 1998 Iowa Acts, HF 2496, which required employees buying back prior service credit to pay the actuarial cost of the years of service restored. In response to committee members' concerns that the 1998 statute had not been implemented until 2004, Schochenmaier explained that prior to HF 2496, employees wishing to buy back service repaid the amount of the refund plus interest. In 1999, IPERS calculated the actuarial cost and assessed the employee 40 percent of that amount, a significant increase over the previous cost of a buy-back. In 2003, IPERS determined that the 1998 statute intended buy-backs to be treated as buy-ins, with the full actuarial cost assessed to the employee. Mueller explained that no fiscal impact was reported to the committee at the time of the rule making initiated in October 2003 because the amendments in that rule making did not have a fiscal impact. The change in calculations implemented on the January 14, 2004, effective date of the amendments resulted from a new interpretation of a rule making that IPERS had adopted in 1999. Lundby expressed concern about the lack of recourse for employees who opted not to buy back service credit due to the 1998 statute but who may have made a buy-back had they known that IPERS was charging only 40 percent of the cost rather than the full actuarial cost.

Connolly expressed the opinion that the current policy creates an inequity between buy-ins, which are cost-neutral, and buy-backs, which cost 100 percent even though the employer contributions remain in the system.

In response to questions regarding parties responsible for implementing the law, Schochenmaier stated that at the time of the statutory change IPERS was part of the department of personnel. McKinley requested copies of IPERS annual reports to the governor and the legislature as well as a list of individuals who bought back at 40 percent and the amount of money involved.

CORRECTIONS DEPARTMENT Michael Savala represented the department.

ARC 3651B No questions on proposed amendments to 38.2 and 38.3, which remove references to risk assessment for sex offenders.

ARC 3652B No questions on proposed case auditing system for ch 42, probation services.

ARC 3653B No questions on proposed case auditing system for ch 43, residential facilities.

ARC 3654B No questions on proposed case auditing system for ch 44, work release.

ARC 3655B No questions on proposed case auditing system for ch 45, parole.

ARC 3656B No questions on proposed amendments to ch 47 concerning OWI programs.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Randy Novak, and Jeffrey Quigle represented the department. Marty Ryan represented Iowa Civil Liberties Union.

ARC 3684B No questions on proposed amendments pertaining to fire safety in foster care facilities.

ARC 3686B No action on proposed ch 83 concerning the Iowa sex offender registry. Ryan indicated that the Iowa Civil Liberties Union questions the July emergency rule making and objects to inclusion of "locations frequented by the offender" in the definition of "relevant information." Coveyou responded that the attorney general's office advised the emergency rule making and that "locations frequented by the offender" is statutory language.

ARC 3685B No action on ch 251 regarding voluntary fire fighter training and certification.

ENVIRONMENTAL PROTECTION COMMISSION Anne Preziosi, Jeff Myrom, and Randy Clark represented EPC. Chris Gruenhagen represented Iowa Farm Bureau.

ARC 3669B No questions on termination of the notice to amend definitions in chs 20 and 22.

ARC 3668B No questions on amendments to ch 105 concerning composting of organic materials.

ARC 3661B No questions on chs 120 and 121 pertaining to landfarming of petroleum contaminated soil and land application of wastes.

Environmental Protection Commission (continued)

ARC 3517B Paragraph "e" of 65.17(13) is under a 70-day delay. Clark reported that compromise language concerning application of commercial fertilizer on land used for application of manure has been worked out with Iowa Farm Bureau and will be presented to the EPC for approval. Gruenhagen thanked the committee for the 70-day delay which allowed for continued work and confirmed that Farm Bureau has agreed to the language that will be presented to the commission.

NATURAL RESOURCE COMMISSION Sherry Arntzen and Mike Mason represented the commission.

ARC 3706B No action on proposed amendments to ch 27, lands and waters conservation fund program. McKinley questioned the authority for inclusion of bonus points in the rules and asked that the department define "minority population."

ARC 3708B No questions on amendments to ch 61, state parks and recreation areas.

ARC 3707B Proposed amendments to ch 64 pertaining to use of metal detectors in state areas are the result of two petitions for rule making.

ARC 3709B No action on proposed ch 79 concerning fish stocking procedures and fees.

DENTAL EXAMINERS BOARD Jennifer Hart represented the board.

ARC 3675B No questions on amendments to require applicants to submit fingerprint packets and fees for criminal history background checks.

ARC 3674B No questions on amendments to provide for a fee for monitoring a practitioner's contract compliance.

ARC 3520B Hart reported on provisions under a 70-day delay. The board has agreed to work with the Iowa Dental Association and the University of Iowa in educational efforts to advise licensees of the CDC recommendations for preventing disease. No resolution was reached on mandatory reporting provisions; therefore, the board has agreed to reinstate former language by emergency rule making and to continue working with the association to reach consensus.

Committee business The minutes of the September meeting were approved.

The next meeting will be held November 9, 2004.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Rose Wazny represented the department.

ARC 3631B No questions on proposed amendments to ch 24 to bring the emergency shelter grants program into compliance with federal requirements.

ARC 3632B No questions on proposed amendments to ch 29, homeless shelter operation grants program.

MEDICAL EXAMINERS BOARD Kent Nebel represented the board.

ARC 3689B No action on proposed amendments to ch 1.

ARC 3693B No questions on amendments relating to renewal and reinstatement fees.

ARC 3688B No questions on amendments to ch 9 concerning permanent physician licensure.

ARC 3690B No questions on proposed amendments to ch 14, Iowa physician health program.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION David Miller and Barbara Vos represented the division.

ARC 3698B Miller outlined the four parts of the Iowa comprehensive plan, which correspond to federal requirements. Discussion related to state and local roles in emergency areas, school security, and fire fighter training.

ARC 3660B No action on amendments to ch 10 relating to enhanced 911 telephone systems.

PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE Scott Scheidel represented the board.

ARC 3649B No action on amendments to ch 11 concerning claims for permanent closure of UST systems.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Tom Newton represented the department.

ARC 3696B No questions on AIDS drug assistance program, 11.84 to 11.91.

ARC 3695B No questions on increase in fee for vital records.

SECRETARY OF STATE Sandy Steinbach and Steven Mandernach represented the secretary of state.

ARC 3662B Steinbach reported on rules relating to absentee ballot couriers. Discussion related to concerns that home voting situations do not provide the same safeguards for the integrity of the system as are provided in hospitals and nursing homes. While some members expressed confidence in the integrity of the system, Redfern disapproved of the change from the Notice which allows for the acceptance of ballots returned by unauthorized persons. McKinley questioned the lack of a requirement for the courier to have a photo ID and asked for a written response from the secretary of state regarding that decision. Steinbach advised Eichhorn that county auditors have reported some problems with ballot couriers, but there has been no formal tracking of complaints.

ARC 3665B No questions on ch 26 which establishes the standards for counting votes.

ARC 3636B No action on ch 27, Help America Vote Act grants. Mandernach advised McKinley that while voting equipment must meet HAVA standards, the secretary of state's office has not specified equipment to be purchased.

Secretary of State (continued)

- ARC 3664B No questions on ch 31, registration of postsecondary schools.
- ARC 3663B No questions on 40.7, the fee schedule for the revised nonprofit corporation Act.
- RACING AND GAMING COMMISSION** Jack Ketterer represented the commission.
- ARC 3679B No action on amendments which implement HF 2302. McKinley requested that the report required in 5.2(1) include information about use of Iowa vendors.
- ARC 3680B No questions on the rescission of the limitation on the location and number of racetracks and excursion gambling boats.
- REVENUE DEPARTMENT** David Casey represented the department. CPA Joe Kristan was also present.
- ARC 3673B No questions on proposed amendments to chs 10, 68, 81 and 82 related to cigarettes and motor fuel refunds.
- ARC 3700B No action on proposed amendments involving individual income tax, corporation tax, fiduciary income tax, penalty and interest. Casey elaborated on items 6, 26, 33, 36, 37 and 50.
- ARC 3671B No questions on proposed amendments to chs 40, 42, 52, 53, 58 and 59.
- ARC 3672B No action on amendments relating to income tax checkoffs.
- ARC 3699B No questions regarding property tax amendments.
- Special review Representative Carroll sent a letter regarding his request for a special review of the retroactive application of the bonus depreciation. The department requires the filing of an amended return for taxpayers who want to claim the deduction. Carroll asserted that it was not the intent of the legislature to require the filing of an amended return and suggested that an adjustment be made with the filing of the 2004 return. Casey indicated that the department does not believe it has the authority to allow the adjustment to be made on the 2004 return, but noted that the taxpayer has three years in which to amend the 2003 return. Kristan expressed the opinion that compliance with the department's requirement for amended returns would be unnecessarily costly to taxpayers.
- Adjourn The meeting was adjourned at 3:40 p.m.

Kathleen K. West

APPROVED:

Chair George Eichhorn

Vice Chair Paul McKinley