

**MINUTES OF THE AUGUST 2008 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, August 12, 2008, at 8:30 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators John P. Kibbie and James Seymour; Representatives Marcella Frevert, David Heaton, David Jacoby, and Linda Upmeyer were present. Senators Jeff Angelo and Thomas Courtney were not present.

Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; Deborah Svec-Carstens, Assistant Counsel to the Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Connolly convened the meeting at 8:30 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

ENVIRONMENTAL PROTECTION COMMISSION Chris Schwake, Brian Tormey, and Commissioners Charlotte Hubbell and Susan Heathcote represented the commission. David Sheridan represented the office of the attorney general.

ARC 7039B No questions on proposed reissuance of Regional Permit No. 7.

ARC 7038B No action on proposed 107.16, the independent redemption center grant program. Discussion related to the kinds of improvements, such as equipment and additional personnel, that will make redemption centers more sustainable, convenient and accessible.

ARC 6921B Commissioners Hubbell and Heathcote outlined the reasons the commission voted 6 to 1 in June to clarify the number of votes required when there are vacancies on the commission. While not disagreeing with the commission's authority to amend the voting requirement, Mr. Sheridan explained that he did not support the use of emergency procedures in this instance and, by way of illustration, distributed a summary of votes taken while there were vacancies on the commission. Discussion related to the importance of public input and also concerns about unfilled vacancies that may allow the minority to decide the outcome of votes.

Motion to object Rep. Frevert moved an objection to the emergency rule-making procedures.

Motion carried On a unanimous roll call vote, the motion carried.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Tim Waddell, Terry Vestal, Nancy Landess, Kim Bentley, Alaina Santizo and Mark Laurenzo represented the department.

ARC 6944B No action on proposed amendments to ch 23 concerning sustainable community projects and the downtown revitalization fund.

ARC 6943B No questions on proposed amendments to ch 25, housing fund.

ARC 6942B No action on proposed 38.1 to 38.8 concerning regional sports authority districts.

ARC 6941B No questions on proposed 107.1 to 107.8, targeted industries networking fund.

ARC 6940B No questions on chs 110 to 112, lean manufacturing institute, supplier capacity and product database, and management talent recruitment programs.

ARC 6939B No action on proposed chs 211 and 212 pertaining to the river enhancement community attraction and tourism fund. Ms. Santizo confirmed that there is much public interest in this program.

EDUCATIONAL EXAMINERS BOARD George Maurer represented the board.

ARC 6959B The amendment to 11.21 allows the board to hire in-house legal counsel to address the backlog of cases so that cases can be resolved or prosecuted within the statutory 180-day limit.

IOWA PUBLIC EMPLOYEES RETIREMENT SYSTEM Gregg Schochenmaier represented IPERS.

ARC 6976B No questions on amendments to implement Senate File 2424, update Iowa Code references, and eliminate rules no longer needed.

VETERANS AFFAIRS DEPARTMENT Patrick Palmersheim and Kent Hartwig represented the department.

ARC 7021B No questions on amendments to ch 14, veterans trust fund.

ARC 7022B No questions on proposed amendments to ch 15 concerning veterans commemorative property.

ARC 7018B No questions on ch 16, limited residency Vietnam Conflict veterans bonus.

LABOR SERVICES DIVISION Kathleen Uehling and Dave Neil represented the division. Harold Prior represented the Iowa Wind Energy Association.

- ARC 6948B No questions on 10.20, adoption by reference of OSHA regulations.
- ARC 6947B No action on amendments to chs 71, 75 and 76 concerning construction personnel hoists.
- ARC 6935B No questions on amendments to combustion air source requirements in ch 91.
- ARC 6979B No questions on amendments to chs 150 and 155 regarding asbestos abatement in areas affected by disaster proclamations.
- ARC 6852B Amendments to chs 71, 72, 75 and 76 apply to wind tower lifts. Ms. Uehling indicated that the board agreed to a request from industry regarding registered engineer approval of designs, but the board did not agree with industry that fees are too high. Mr. Prior noted that Iowa is a leader in wind energy production and that Iowa's programs and rules will serve as a model for other states.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

- ARC 7012B No action on 41.30 concerning FIP eligibility. Rep. Jacoby asked for information about the number of hardship exceptions the department approves each month.
- ARC 6994B No questions on amendments to ch 58 to implement temporary measures related to disasters.
- ARC 7011B No questions on amendments to chs 75 and 76 pertaining to Medicaid eligibility and benefits.
- ARC 6929B No action on proposed amendments to chs 77 to 79 regarding Medicaid coverage for behavioral health services.
- ARC 7016B Amendments to ch 81 implement performance-related Medicaid reimbursement for nursing facilities. Members expressed concern that DHS and the department of inspections and appeals may interpret a "G" deficiency differently.
- ARC 7015B No questions on proposed amendments to ch 86 regarding recovery of HAWK-I overpayments, enrollment periods, definitions, and electronic signatures.
- ARC 6926B No questions on amendments to ch 86 concerning eligibility for the HAWK-I program.
- ARC 7013B Amendments to ch 88 allow Medicaid coverage for all-inclusive care for the elderly (PACE) programs. Ms. Freudenberg advised the committee that although there have been inquiries, no organizations have applied.
- ARC 7014B No questions on amendments to allow IowaCare members to obtain smoking cessation drugs from community pharmacies.
- ARC 6928B No action on proposed amendments to chs 109 and 110 to clarify smoking prohibition provisions at child care centers and child development homes.
- ARC 6930B No questions on the proposed 2 percent increase for child care assistance providers.
- Special review No action on review of an emergency filing to implement the Food, Conservation and Energy Act of 2008.

SECRETARY OF STATE Michael Mauro and Sarah Reisetter represented the office of secretary of state. Also present were Emily Piper and Mary Ganon on behalf of the Iowa Association of School Boards.

- ARC 7047B No questions on 21.75 concerning voting centers.
- ARC 6992B Rule 21.803, revenue purpose ballot statements (RPS), generated many comments. On behalf of school districts, Ms. Ganon noted that RPSs, formerly county-based, are now district-based; and districts are concerned about how to publish multiple existing RPSs. Discussion related to the requirement to insert both the existing and the proposed RPS on the ballot for an amended RPS, the advice county auditors may be providing to school districts, the value of voter education, and how to determine whether an RPS is new or amended. Rep. Wise asked that this issue be placed on the September agenda, that the secretary of state and the school board association prepare legal arguments regarding the authority of the secretary of state to require both the existing and the amended RPS, and that the county auditor association be represented at the meeting.
- ARC 6945B No questions on amendments to ch 23 regarding voter registration in state agencies.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION John Benson and Steve Zimmerman represented the division.

- ARC 6972B No action on adoption of 9.4 concerning Part C of the Iowa disaster recovery plan. Rep. Frevert commended the agency for providing up-to-date information.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Bob Russell represented the department. Mike Heller and Paula Feltner represented the Iowa Dental Association.

ARC 7023B Ms. Nervig noted that ch 50, oral health, is intended for all Iowans, whether Medicaid eligible or not. Dr. Russell indicated that the rules set forth the mission of the department and do not affect the practice of dentistry. On behalf of the dental association, Mr. Heller requested clarification in the definition of “dental home” in regard to the roles of health care professionals in the provision of oral health education, dental screenings, preventive services, diagnostic services, treatment services, and emergency services. Discussion related to the shortage of pediatric dental providers and the shortage of dentists who take Medicaid patients.

Motion to delay Rep. Wise moved a 70-day delay on ch 50.

Motion carried On a roll call vote, the eight members present voted to delay ch 50 for 70 days.

ARC 7024B No questions on ch 51, dental screening.

NURSING BOARD Lorinda Inman represented the board. Laura Malone represented the Iowa Hospital Association. Gary Hemann and Jeri Babb of Mercy Medical Center were also present.

ARC 7009B Proposed amendments to ch 6 prohibit, with certain specific exceptions, RNs and ARNPs, except for CRNAs, from administering anesthetic agents. Ms. Malone noted that emergency room physicians are trained in airway management and sedation procedures and can supervise administration of these drugs in emergency rooms. In addition, Ms. Malone requested an exception for nurses to be able to administer Propofol and Ketamine in end-of-life care. Finally, Ms. Malone asked that emergency nurses pediatric course (ENPC) certification be included in 6.4(4)“a” and that the drugs be considered individually rather than together. Dr. Hemann and Ms. Babb opposed the limitations imposed by these proposed amendments.

HISTORICAL DIVISION Gordon Hendrickson and Kristen Vander Molen represented the division.

ARC 6925B No questions on amendments to ch 48, historic tax credits.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Jim Saunders, Sam Knowles, Jim Bleskacek, and Stuart Crine represented the department.

ARC 6986B An amendment to 6.4(2) pertains to the inventory of impounded vehicles under emergency conditions. Discussion related to the emergency adoption of this amendment as well as the other emergency filings scheduled for review.

ARC 6987B No questions on definition of “working day” in 11.2.

ARC 6985B No action on amendments to ch 12 to provide for free replacement of licenses lost in disaster areas.

ARC 7020B No questions on proposed 157.2 regarding approved evidentiary breath testing equipment.

ARC 6967B No questions on 221.4(4) to allow for up to 90 days of temporary storage of flammable liquids in disaster areas.

ARC 6984B No questions on 275.5(4) regarding issuance of an amended certification for automatic fire extinguishing system contractors who relocate as a result of a disaster emergency.

ARC 7007B No action on 322.11 and ch 323 regarding temporary emergency use of manufactured housing and temporary emergency commercial use of factory-built structures.

ARC 6970B No questions on 322.12, temporary suspension of installation requirements in proclaimed disaster emergencies.

ARC 6988B No questions on amendment to ch 372 to provide an amended license for manufactured home retailers, manufacturers or distributors that relocate as a result of a disaster emergency.

ARC 6966B No questions on 374.11, temporary certification of manufactured housing installers during proclaimed disaster emergencies.

ADMINISTRATIVE SERVICES DEPARTMENT Patricia Lantz and Debbie O’Leary represented the department. Other interested parties included Brice Oakley on behalf of Microsoft and CGI Technologies, Joe Shannahan on behalf of IBM, David Adelman of the Technology Association of Iowa, Craig Schoenfeld of Enterprise Rent-A-Car, and Nick Mauro of the Crawford Law Firm. Joseph Barry of the department of management was also present.

ARC 6982B No questions on proposed amendments to ch 20.

ARC 6983B No questions on proposed amendments to ch 25.

ARC 6809B Proposed ch 108 pertains to contractual limitation of liability for information technology vendors. Discussion related to whether the rules comply with legislative intent, the appropriate balance between state liability and vendor liability, policies in other states, the SPPG report and recommendations, the cost of some vendors’ opting not to participate.

Administrative Services Department (continued)

Mr. Oakley asked that the rules comply with SPPG recommendations, that comments submitted by vendors be considered, that the state's newly hired risk manager become involved, that liability limitations be extended to all state contracts, and that the committee refer the rules to the government oversight committee. Mr. Shannahan stated that the proposed rules are a step in the right direction, but include too many exceptions to the limitations on liability. Mr. Adelman commented that most Iowa companies cannot afford the liability insurance required by the state. Mr. Mauro asked that the state do a better job of assessing risks and limiting liability to the risks associated with the contract. Mr. Schoenfeld provided an example of a situation in which the vendor withdrew from a contract due to liability issues.

Committee business The minutes of the July 2008 meeting were approved.

The next meeting was scheduled for Tuesday, September 9, 2008, at 8:30 a.m. Members asked that the inspections and appeals department's ARC 7010B be reviewed at the September meeting.

Adjourned The meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise