

**MINUTES OF THE NOVEMBER 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 Friday, November 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; Representatives Marcella Frevert, David Heaton, David Jacoby, and Linda Upmeyer were 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. and welcomed Professor Gordon Allen and students from Drake University Law School.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report. Members requested information about the disbursement of jump-start funds for Rebuild Iowa.

SECRETARY OF STATE Linda Langenberg represented the secretary of state.

- ARC 7209B** No questions on termination of the Notice regarding voting centers for city and school elections.
- ARC 7264B** No action on amendments to ch 22 to delete references to touch screen voting machines, which are no longer used in Iowa.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Director Mike Tramontina, Hank Manning, Nicole Warren, Terry Vestal, Tom Wheeler, Nancy Landess, Stoney Harris, Karen Merrick, Alaina Santizo, and Amy Johnson represented the department. Other interested parties included included Martin Dougherty of Sioux City, Terry Bailey of Council Bluffs, and Dennis Hinkle of Burlington.

Director Tramontina commented that jump-start programs were established for both small business stimulus and for housing and explained that HUD has allocated funds directly to 11 cities with populations over 50,000 and IDED has allocated funds to six councils of government (COGs). Mr. Tramontina emphasized that there were no programs in place for disaster recovery and that IDED has aggressively adopted rules to provide a structure for distribution of funds under existing programs. Discussion related to temporary waivers of program requirements after a disaster emergency and accountability for the use of public funds. Director Tramontina noted that the department's annual report, which will be available online, will account for all the programs administered by the department.

- ARC 7276B** No action on amendments to ch 23 concerning sustainable community projects and downtown revitalization funds.
- ARC 7275B** An amendment to 23.4(4) provides for reallocation of CDBG funds for disaster recovery business assistance projects.
- ARC 7231B** No questions on amendments concerning eligibility for the physical infrastructure assistance program (PIAP).
- ARC 7232B** No questions on amendments to ch 25, housing fund.
- ARC 7274B** No questions on 25.6(7), waiver of the match requirement to facilitate disaster recovery housing projects.
- ARC 7247B** No action on amendments to ch 36, film, television, and video project promotion program.
- ARC 7237B** Ms. Landess reported that the department received ten applications for regional sports authority districts and ten districts have been certified.
- ARC 7248B** No questions on termination of the notice for the targeted jobs withholding tax credit program.

Economic Development Department (continued)

- ARC 7249B Proposed amendments to ch 71 pertain to the targeted jobs withholding tax credit program. Director Tramontina distributed a memorandum to explain the purpose of the proposed amendments to this unique demonstration program in the following five cities: Sioux City, Council Bluffs, Burlington, Fort Madison, and Keokuk. The program allows the communities to offer certain benefits as an incentive for companies to locate in Iowa. These amendments would require a 10 percent match from the local community and would prevent benefits from exceeding the company's investment. Discussion related to the legislative intent for the program. Rep. Wise, noting that all five cities opposed these amendments, asked that further review be scheduled for the January meeting. In response to Sen. Connolly's question about current policy, the director explained that the department has the authority to negotiate contracts on a case-by-case basis. Mr. Tramontina confirmed that the department would not adopt the amendments by emergency procedures. Rep. Wise requested written confirmation from the department that the rules are not already being implemented. Mr. Dougherty, Mr. Bailey, and Mr. Hinkle commented on the importance of the program and expressed opposition to the amendments.
- ARC 7235B No action on adoption of ch 78, small business disaster recovery financial assistance program.
- ARC 7273B Amendments to ch 78 clarify the small business disaster recovery financial assistance program. Rep. Jacoby commended the department for taking prompt action.
- ARC 7234B No questions on 103.1 to 103.13, information technology training program.
- ARC 7245B No questions on 107.1 to 107.8, targeted industries networking fund.
- ARC 7233B No questions on 108.1 to 108.8, targeted industries student competition fund.
- ARC 7246B No questions on 109.1 to 109.9, targeted industries career awareness fund.
- ARC 7243B No action on chs 110 to 112, lean manufacturing institute, supplier capacity and product database, and management talent recruitment programs.
- ARC 7244B No comments on amendments to chs 211 and 212, river enhancement community attraction and tourism fund.
- Special review Ms. Johnson commented that temporary waivers of CEBA requirements and of wage requirements under the high quality jobs creation program will assist in restoration of businesses to predisaster conditions and that amendments to implement these waivers will be reviewed at the December meeting. Sen. Kibbie requested a report documenting each business's predisaster wages, the temporary reduction during the recovery period, and the business's return to the predisaster wage.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT (ARC 7283B and ARC 7282B excused from review at this meeting.)

EDUCATION DEPARTMENT Carol Greta represented the department. Other interested parties included Ed Dickerson of the Home School Alliance, Marti Melton-Streeter of Boone, Robin Taylor of Eddyville-Blakesburg Home School Assistance Program (HSAP), Andrea Farrier of Mid-Prairie HSAP, Elizabeth Klein of Mid-Prairie HSAP, Gail Showman of Vinton-Shellsburg and Benton Community HSAP, Donna Stinson of Des Moines Schools.

- ARC 7211B Proposed amendments to ch 31 pertain to competent private instruction and dual enrollment. Ms. Greta reported receiving public comments regarding provision of instructional materials, completion of the Form A, and licensure requirements for supervising teachers. Ms. Greta indicated that school districts are not required to have home school assistance programs; but if they have such programs, instructors must be appropriately licensed for the age and grade level of the students whose schooling is supervised and that the instructor must meet four times per quarter with the student and family to discuss specified pedagogical techniques and textbooks and supplementary materials. A district that opts to have a home school assistance program must make available to home-schooled students instructional materials appropriate for a regular classroom, and such materials remain the property of the school district. Ms. Greta noted that comments have been received about the requirement for HSAPs to file a Competent Private Instruction (CPI) Form A and explained that of the seven questions on the form that are required for CPI students not participating in a home school assistance program, only questions 1, 3, and 5, which are required by statute, must be completed by HSAP students.

Education Department (continued)

Sen. Kibbie assured concerned parties that these amendments are only under notice, the board will not adopt them until its December meeting, and they will be on the February ARRC agenda.

Rep. Upmeyer expressed concern that these amendments seem to be implementing a house study bill that did not come out of committee. Mr. Dickerson noted that the amendments were included HF 2700 on the last day of Session and never went through the committee process. Mr. Dickerson stressed the importance of instructional resources for home schooled students and lamented the reduction in funding. Ms. Melton-Streeter thanked Ms. Greta for revisions to the proposed amendments and commented on the importance of the instructional materials provided through lending libraries. Ms. Taylor expressed concern that although the Network of Iowa Christian Home Educators (NICHE) provided comments to the department, not all HSAPs had an opportunity to provide input. Ms. Greta clarified that NICHE submitted comments three years ago. Ms. Taylor indicated that the Form A is unnecessary because a copy of the HSAP enrollment form is already on file with the district administrative office. Ms. Farrier expressed appreciation for the department’s response to HSAP concerns about instructional materials and asked that the rules specify that HSAP families need to complete only questions 1, 3, and 5 of CPI Form A. In regard to licensing requirements, Ms. Farrier raised a concern about the requirement for the supervising teacher to be licensed for the age and grade level and subject area of the HSAP students supervised since the supervising teacher does not provide direct instruction. Ms. Farrier also pointed out discrepancies in the rules for privately retained supervising teachers and HSAP supervising teachers in regard to licensure requirements and topics which must be discussed with families during home visits. Dr. Klein expressed concern about licensure requirements, funding, and the requirement that material must be suitable for use in a regular classroom even though such materials may not be best for special needs students who are home schooled. Ms. Showman commented on the quality of education received in home schools. Ms. Stinson expressed concerns about inequities in requirements for CPI and HSAP supervising teachers. Sen. Connolly thanked all the parties for presenting their views to the committee. Members urged the department to work with the home school community.

ARC 7212B No questions on amendments to ch 103 concerning physical restraint, confinement and detention.

PHARMACY BOARD (ARC 7230B, ARC 7241B, ARC 7228B, ARC 7229B, and ARC 7242B excused from review at this meeting.)

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

ARC 7257B No questions on proposed 19.1 in regard to the trust fund allocation plan for the project-based housing program.

ARC 7253B No questions on ch 29, jump-start housing assistance program.

ARC 7281B No questions on amendments to ch 29 to clarify the jump-start housing assistance program.

REVENUE DEPARTMENT (ARC 7256B, ARC 7255B, and ARC 7259B excused from review at this meeting.)

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Chris Schwake, Bill Blum, and Tom Anderson represented the commission. Other interested parties included Jon Kaller of MidAmerican Energy.

ARC 7220B Proposed 22.106(1) increases the maximum annual Title V operating permit fee from \$39 per ton of emissions to \$62 per ton. After distributing written comments, Mr. Kaller agreed that the fee cap must be increased and suggested a fee cap of \$50.25 per ton.

ARC 7218B No questions on 61.2(2)“h” regarding reissued Regional Permit 7.

ARC 7210B No action on 107.16 concerning the independent redemption center grant program. Mr. Blum reported that 98 applications have been received and 93 awards have been made.

ARC 7219B No questions on proposed 119.1 to 119.9 regarding used oil and used oil filters.

- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Jennifer Vermeer and Tom Cline, represented the department.
- ARC 7267B No questions on proposed amendments relative to semiannual reporting of earned income for FIP recipients.
- ARC 7261B No questions on amendments to ch 25 regarding risk pool funds.
- ARC 7263B Proposed ch 26 pertains to emergency mental health crisis services.
- ARC 7265B Proposed ch 27 pertains to mental health services for children and youth.
- ARC 7287B No action on proposed revisions to the PROMISE JOBS program. Ms. Freudenberg outlined the changes in the proposed new ch 93. Discussion related to increased needs as a result of the current economic situation.
- ARC 7223B No questions on rescission of ch 53, rent subsidy program, which is now administered by the Iowa finance authority.
- ARC 7269B No action of termination of the proposed amendments to chs 77 concerning HCBS waivers.
- ARC 7272B No action on proposed amendments to include as Medicaid providers occupational therapists in private practice.
- ARC 7224B No questions on the increase in Medicaid provider reimbursement rates.
- ARC 7227B Amendments to chs 109 and 110 prohibit smoking in child care centers and child development homes. Ms. Freudenberg reported that 23 persons submitted comments expressing concerns about signage and infringement of private property rights.
- ARC 7225B No action on the increase in child care assistance provider rates.
- ARC 7226B No questions on amendments to ch 202 concerning department service workers' monthly visits to children in foster care.
- Fiscal reviews Additional fiscal analysis was requested by Rep. Wise for each of the following:
- ARC 7137B Proposed 78.14(4) includes Medicaid coverage for periodontal and endodontic services. Ms. Vermeer distributed materials to demonstrate a cost estimate of \$800,000 and an estimated savings of between \$300,000 and \$1.4 million, for a net plus or minus \$500,000. Some members expressed concern that the department added this coverage without legislative directive. Rep. Frevert commended the department for taking this preventive measure.
- ARC 7122B An amendment to 78.13(5) increased Medicaid reimbursement for nonemergency medical transportation by car from 30 to 34 cents per mile. Ms. Vermeer noted that the average reimbursement of \$65 is the result of a few very large claims for out-of-state treatment.
- ARC 7125B The mileage reimbursement rate for the PROMISE JOBS program increased from 30 to 34 cents per mile, an increase of \$40,000 per month.
- Special review A review of mental health drugs on the preferred drug list program (PDL) was requested by Rep. Heaton. Ms. Vermeer noted that if therapeutically equivalent drugs are available, the one that costs the state less will be the one listed on the PDL. Discussion related to generic drugs, therapeutically equivalent drugs and drug derivatives. Rep. Heaton feared that a patient may have to change from a drug that is working to one listed on the PDL because of a rebate from the drug company. Sen. Kibbie asked that the department provide written information about rebates and the PDL.
- Committee business** The minutes of the October 2008 meeting were approved.
The next meetings were scheduled for December 9 and 10, 2008, and January 6, 2009.
- Adjourned The meeting was adjourned at 1:45 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise