

**MINUTES OF THE MARCH 2001 MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

**Date of meeting:** A special meeting of the Administrative Rules Review Committee (ARRC) was held Friday, March 9, 2001, in Room 116, State Capitol, Des Moines, Iowa.

**Members present:** Representative Clyde Bradley, chair; Senator Merlin E. Bartz, Vice Chair; Senators Patricia Harper, JoAnn Johnson, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Marcella Frevert, Geri Huser and Janet Metcalf.

**Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa VanderLinden, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.

**Convened** Chair Bradley convened the meeting at 8 a.m.

**MEDICAL EXAMINERS BOARD** Ann Mowrey represented the board. Other interested parties included Jack Morelan of the Iowa Cosmetologists Association, Mary F. Winegardner of the Iowa Physician Assistant Society, and Sandy Nelson of the Iowa Medical Society.

**ARC 0465B** Proposed 13.4 pertaining to laser surgery generated wide response from a variety of professional groups. The board plans to continue study of the different grades of lasers and does not anticipate adoption of rules before July. Metcalf asked that the rules be renoticed if there are substantial changes.

On behalf of cosmetologists, Morelan pointed out that the rules are vague, lack necessary definitions, and would affect the laser removal of hair by cosmetologists. Winegardner suggested changes to reflect competency of physician assistants, rather than location at which duties are performed. Nelson stated that the Iowa Medical Society supports continued study in the development of rules.

**EMPOWERMENT BOARD** Harold Coleman represented the board.

**ARC 0434B** No questions on amendments to ch 1.

**Committee business**

**Minutes** The minutes of the February meeting were approved.

**Next meeting** The next meeting will be April 6, 2001.

**Rules** Royce reported that Agriculture and Land Stewardship's ARC 0464B, relating to farmers markets, will be adopted and filed emergency after notice. Bradley initiated discussion about how agencies might best keep track of rule-making responsibilities. Bartz suggested that the LSB drafter follow up with the agency when rules are required. Johnson added that agencies should keep the bill's sponsor informed about the status of required rule makings. Bradley noted that caucus staff might be of assistance.

Gentry reported that agencies are required to submit an annual plan for rule making and identify a contact person; this information can be forwarded to the committee.

**REVENUE AND FINANCE DEPARTMENT** Carl Castelda and Harry Griger represented the department.

**ARC 0511B** No comments on proposed 4.1(5) relating to the effective date of termination of multilevel marketer agreements.

**ARC 0513B** No questions on proposed amendments to ch 7.

**ARC 0512B** Proposed amendments relating to taxation of fuel and cigarettes and refunds granted to Indian tribes will not be adopted until agreement is reached among interested parties. Castelda explained that taxes are paid prior to retail sale and a tribe may file a claim for a refund for sales to members of the tribe.

**TREASURER OF STATE** Stephen Larson represented the treasurer. Other interested parties included Elliott Smith of the Iowa Taxpayers Association and Elizabeth Henderson of the Iowa Association of Business and Industry.

**ARC 0408B** Proposed 9.2 to 9.18 relate to unclaimed property. Larson reported that the rules were drafted following a study of similar rules in other states.

Smith presented concerns of businesses relating to business-to-business exclusions and contingency fee arrangements with third-party auditors. Larson explained that contingency fee auditors are used in conjunction with other states in reference to auditing of out-of-state corporations. Two accounting firms, Automated Clearinghouse and National Abandoned Property Processing Corporation, have contracts with all 50 states. Larson stated that it has not been the practice of the treasurer's office to use out-of-state contingency-fee auditors to audit Iowa-based corporations. Henderson indicated that the association has some proposals related to language and will continue to work with the treasurer's office.

**DENTAL EXAMINERS BOARD** Jennifer Hart represented the board.

**ARC 0457B, ARC 0458B, ARC 0459B, ARC 0460B, ARC 0463B, ARC 0462B, ARC 0461B, ARC 0456B** No action on any of the above rule makings; discussion centered on fees paid by dental assistants.

**ECONOMIC DEVELOPMENT DEPARTMENT** Rose Wazny and Amy Johnson represented the department.

ARC 0466B No questions on the proposed amendment to 24.12(4) relating to transfer of funds.  
 ARC 0467B No questions on the proposed amendment to 29.11(4) relating to transfer of funds.  
 ARC 0468B No action on amendments to ch 58. Johnson informed Bartz that value-added cooperatives are eligible for the tax credit. Bartz requested additional information about whether any statutory change is needed to ensure that the cooperatives can receive refunds. Bradley asked the department to send a letter to the department of revenue and finance outlining IDED's understanding of the statute and asking for concurrence.

ARC 0469B Amendments to ch 59 pertain to enterprise zones. Johnson expressed concern about opening enterprise zones to additional counties. The department acknowledged that any county with an economically distressed area could apply and a county may have only one enterprise zone, but only five enterprise zones will be established in the state.

**EDUCATIONAL EXAMINERS BOARD** Anne Kruse represented the board. Other interested parties included Larry Bartlett of the University of Iowa.

ARC 0478B No questions on ch 6, waivers or variances from administrative rules.  
 ARC 0479B No action on proposed "nonrefundable fees" language for ch 14.  
 ARC 0476B No action on 14.6 allowing an elementary teacher to add an endorsement to teach at the secondary level.

ARC 0477B Rule 14.14 reduces the years of experience required to become an administrator from five to three years. Frevert asked that the requirements for evaluator approval be sent to her.

ARC 0474B No questions on 17.4 concerning recency of units for renewal.  
 ARC 0482B No action on proposed "nonrefundable fees" language for ch 19.  
 ARC 0475B No questions on behind-the-wheel driving instructor authorization.  
 ARC 0481B No action on proposed "nonrefundable fees" language for ch 21.  
 ARC 0480B No action on proposed "nonrefundable fees" language for ch 22.

ARC 0377B Contested case procedures are proposed in ch 11. Kruse reported that the board received a letter of support from ISEA and a letter of appreciation from the governor's office for working out rules acceptable to the affected parties.

ARC 0378B Administrative endorsements for elementary and secondary principals have been adopted in 14.23.

Bartlett expressed a number of concerns, including not being aware of the amendments during the public comment period, the vague language of the standards, and the ability of administrator preparation programs to prepare administrators under these nonspecific standards. Kruse responded that the board sets the standards for licensure of individuals; whereas, program requirements are being proposed by the department.

Huser expressed frustration that agencies do not do a better job of communicating with their constituency groups. Gentry concurred and noted that the governor's initiatives encourage agencies to bring constituency groups into the process. Carroll stated that the committee has a responsibility to ensure that agencies are providing adequate public notice.

**EDUCATION DEPARTMENT** Ann McCarthy represented the department.

ARC 0433B No questions on policy requirement for health services, media services and guidance programs, 12.3(11).

**ENVIRONMENTAL PROTECTION COMMISSION** Cory McCoid, Jim Humeston and Pete Hamlin represented the commission. Elizabeth Henderson of the Iowa Association of Business and Industry was also present.

ARC 0472B McCoid noted three changes from the proposed amendments.

Motion to delay Kibbie moved a 70-day delay on Items 1, 2 and 3.

Motion carried The motion to delay 22.1(2), unlettered introductory paragraphs and paragraphs "g" and "i," for 70 days carried.

ARC 0470B Proposed amendments to ch 61 were excused from review.

ARC 0471B No action on amendments to 135.19(3) relating to MTBE sampling.

Special review A special review of controlling fugitive emissions was requested. Hamlin stated that the commission does not regulate indoor emissions, but particulate matter in emissions vented from buildings may be a public health concern. Bradley expressed some concern about possibly conflicting OSHA and EPC jurisdictions. Henderson advised Bradley that in the business community some confusion exists in the areas of permitting, record-keeping and reporting requirements. The review will continue in May.

**HISTORICAL DIVISION** Patricia Ohlerking represented the division.

ARC 0431B No action on ch 48, which pertains to the state income tax credit for rehabilitation. Ohlerking identified two provisions which were not included in the legislation: funding caps and an administrative review fee.

**INSPECTIONS AND APPEALS DEPARTMENT** Marvin Tooman represented the department. Other interested parties included Carey Ann Ryan of Gentle Birth Midwife and Linda Goeldner of the Iowa Nurses Association.

ARC 0473B Proposed amendments to ch 52 relate to birth centers. Ryan stated opposition to the definition of birth center and noted that the requirement for two consultations remains unchanged. Goeldner mentioned that four changes requested by the Iowa Nurses Association were not incorporated. The department is considering comments received as well as pending legislative changes which would affect the rules.

**INSURANCE DIVISION** Susan Voss represented the division. Other interested parties included Bill Boatwright of Davis, Brown Law Firm and Randy Scholer of Moyer & Bergman of Cedar Rapids.

ARC 0484B Ch 77 pertains to multiple employer welfare arrangements. Voss reported that under ERISA the division has jurisdiction over MEWAs and indicated that, if currently pending legislation passes, the rules will be amended accordingly. Bradley suggested that it might be appropriate to wait until the study committee results are in before proceeding with rules.

Boatwright voiced concern about the rules as they would apply to voluntary employee benefits associations, provisions that may be in conflict with the Internal Revenue Code, and the discretionary authority of the insurance commissioner to increase the amount of the capital surplus of a MEWA. Scholer concurred with concerns expressed by Boatwright and asked that the rules be delayed.

Motion to Delay Bartz moved a 70-day delay be imposed on ch 77.

Motion carried The motion carried; the effective date of ch 77 was delayed 70 days from 3/28/01.

**LABOR SERVICES DIVISION** Byron Orton, Kathleen Uehling and Jens Nissen represented the division. Also present was Dennis Hogan of the Iowa Sheetmetal Contractors Association.

ARC 0455B The division proposed adoption of federal ergonomics standards, which are likely to be rescinded by Congress before the compliance date of October 2001. Hogan voiced opposition to the standards.

**PROFESSIONAL LICENSURE DIVISION** Marge Bledsoe represented the division. Mary Winegardner of the Iowa Physician Assistant Society and Leila Carlson of National Association of Social Workers were also present.

ARC 0452B No questions on ch 18 pertaining to waivers or variances.

ARC 0502B No questions on amendments relating to behavioral science.

ARC 0504B No questions on rules relating to licensure of cosmetologists.

ARC 0505B No questions on cosmetology continuing education rules.

ARC 0503B No questions on rules relating to podiatrists.

ARC 0450B Proposed amendments to ch 325 pertain to licensure of physician assistants.

Winegardner voiced opposition to proposed 325.3(1)"d" and 325.3(4)"a"(3) and indicated that other concerns were presented at the public hearing. Bledsoe responded that the board has not yet met to consider public comment.

ARC 0451B No action on continuing education rules for physician assistants.

ARC 0398B A 70-day delay was imposed on 281.3(1) at the meeting held 2/9/01.

The committee asked the board to consider the comments raised by Carlson before the expiration of the delay.

**CORRECTIONS DEPARTMENT** Michael Savala and Carol Boggess represented the department.

ARC 0494B No action on proposed ch 7 concerning waivers and variances. Savala informed Metcalf that the department is required to meet with the Iowa Association of Counties, County Boards of Supervisors, Iowa State Sheriffs and Deputies Association and the Iowa Police Chiefs Association before adopting the rules. Royce added that ARRC will also be provided a semiannual summary of waivers issued by all agencies.

Special review A review of 20.20 regarding the telephone commissions fund was requested. The department receives a rebate on collect telephone calls made by inmates to be used for the benefit of inmates. MCI issues a check to the department every month along with a listing of the amount generated by each institution. Institutional requests for expenditures must be approved by the regional deputy director, the department's deputy director, the director, and then finally the board of corrections. The department is attempting to lower rates and switch to prepaid phone cards. Savala agreed to the request from Bartz to send, for informational purposes only, the chairs of the justice appropriations committees copies of the director's recommendations.

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HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 0486B No action on amendments regarding registration and risk assessment of sexual offenders at the Eldora training school.

ARC 0441B Proposed amendments relating to price-based case-mix methodology have been terminated and, pursuant to committee request, will be renoticed.

ARC 0452B No questions on amendments to ch 83 pertaining to HCBS disability waivers.

ARC 0487B No action on proposed amendments to ch 98 relative to CRSU.

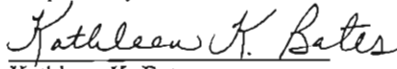
ARC 0426B No questions on amendments to ch 156 regarding foster care.

TRANSPORTATION DEPARTMENT Elizabeth Baird represented the department.

Special review Huser requested a special review because DOT had not amended RISE rules to include a rating factor for remediation of Brownfield sites as required last session. Baird indicated that the department intends to propose reallocating some or all of the 5 community builder program points to remediation of Brownfield sites.

Adjourn The meeting was adjourned at 1:20 p.m.

Respectfully submitted,

  
Kathleen K. Bates

  
Teresa VanderLinden

APPROVED:

  
Chair Clyde Bradley

  
Vice Chair Merlin E. Bart