

**MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Time of meeting: The special meeting of the Administrative Rules Review Committee (ARRC) was held Wednesday, August 2, 2000, in Senate Committee Room 24, State Capitol, Des Moines, Iowa.

Members present: Representative Clyde Bradley, chair, and Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Minnette Doderer, Geri Huser, and Janet Metcalf. Representative Danny Carroll was absent.

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

Convened •Chair Bradley convened the meeting at 9:03 a.m.

REVENUE AND FINANCE DEPARTMENT Carl Castelda and Gerald Bair represented the department. Other interested parties included Eric Witherspoon, Superintendent of the Des Moines Public Schools, Jim Wise of the Urban Education Network of Iowa, and Helen Blaney.

ARC 9954A No questions on proposed ch 7 concerning waiver or variance of rules.

ARC 9959A Amendments to ch 20 pertain to prescription drugs. A change from the notice was made in response to a request from the Iowa Chiropractic Association.

ARC 9952A Rule 20.12 pertains to the two-day sales tax holiday. Castelda reported efforts by the department to inform retailers, including posting the listing of taxable and exempt items on the department's Web site and responding to questions received at the site, mailing an explanation of the sales tax holiday to 140,000 retailers, making visits to every shopping mall in Iowa, and briefing the taxpayer services staff. Castelda outlined how retailers can rectify errors made in the collection of tax. Castelda also clarified that according to the statute, the sales tax holiday applies only to wearing apparel, not school supplies.

ARC 9955A No questions on amendments to 54.3, 54.9, and 59.29.

ARC 0003B Proposed rules 107.16 and 108.4 provide for an administrative fee for processing the local option tax. Bair reported that 80 percent of the states charge a fee for collection of the tax and stressed that the proposed fee, which amounts to sixteen one-hundredths of one percent, is the lowest in the nation. Bair also reviewed the budget deliberations, agreements reached during the negotiations process, and the budget shortfall.

•Bair explained to Rittmer that formerly the department remitted tax revenues to locals quarterly, but four years ago implemented monthly payments of 95 percent of the estimated tax with a reconciliation in November. Bair also clarified that revenue from interest remains in the state's general fund, not the department's operating budget.

•Bartz noted that the department's authority to assess the fee will expire at the end of the fiscal year.

•Gentry advised Bradley that the fee was the solution for this year's budget shortfall, but added that there will be an ongoing need.

Witherspoon opposed the fee and attributed increased cynicism to situations such as this, since the schools had assured voters that every penny of the tax collected would be reinvested in the schools.

Blaney voiced opposition because the public was not informed about this fee.

Wise questioned the timing of the assessment of the administrative fee after the measure passed in Polk County.

•Huser commented that school districts did not know that they would be assessed these fees and have planned their budgets based on the understanding that they would receive 100 percent of the tax collected. Bair suggested that if the department were to be able to return funds more quickly, districts would be able to recover the amount of the fee through interest earned on their invested funds.

•Harper asserted that it would not be fair to ask all counties to bear the cost of administering the tax when only counties with large retail centers reap the benefits from the tax collected. Kibbie added that this kind of a tax results in better school facilities in some areas of the state, while rural schools deteriorate.

•Hedge concluded that the legislature will need to address this issue and perhaps set limits on the percent that can be charged.

•Metcalf asked the department not to file an emergency document and reminded the department that if the committee objects to an emergency filing, the rule ceases to be effective in 180 days.

HUMAN SERVICES DEPARTMENT

- Karla Fultz McHenry, Mike Baldwin and Julie Ingersoll represented the department. Other parties present included Jennifer Davis of the Iowa Medical Society, Sara Patterson of Grand View Child Development Center, Curt Bolin of Bear Basics Childrens' Center, and Bill Snyder of 8th Street Child Care.
- ARC 9991A No questions on proposed rule 1.8 concerning waiver of administrative rules.
- ARC 9978A No questions on proposed amendments pertaining to FIP, Medicaid, SSA, and PROMISE JOBS.
- ARC 9993A No questions on amendments to ch 25 regarding risk pool funding.
- ARC 9979A Proposed amendments to chs 75 and 76 rescind the monthly reporting requirement for FMAP-related Medicaid and CMAP-related medically needy recipients.
- Baldwin advised Hedge that while clients are no longer required to make monthly reports, they must report changes in income, household composition, mailing address and health insurance coverage. If the client fails to report a change and an annual review shows that there was an overpayment, the overpayment would be subject to recoupment.
- ARC 9995A Proposed amendments to chs 78 and 79 would add pharmaceutical case management services to the Medicaid program. The General Assembly appropriated funds to study the impact of pharmaceutical case management services on patient outcomes.
- Davis stated that the Iowa Medical Society is supportive of the study and will be evaluating its results.
- ARC 9992A No action on proposed amendments which delete ethnic and racial considerations from routine foster care and adoption placement decisions.
- Special review Recoupment of child-care overpayments. Ingersoll summarized efforts of the department to ensure access and accountability and reduce overpayment and fraud. The department has instituted quality control measures to ensure that procedures are being applied appropriately, and two inspectors from the department of inspections and appeals have been assigned to investigate cases of suspected fraud.
- Special review •Huser requested a review of child care center investigations after an article in the Des Moines Register resulted in questions about what constitutes public information in a licensing file. Ingersoll indicated that child abuse information, criminal and child abuse record checks on staff, and unsubstantiated complaints are confidential. The department is working on a standard for determining substantiation.
- Patterson asserted that over half of the complaints in that child care center's public file are unsubstantiated and that the newspaper article had a damaging effect on staff morale. Bolin also expressed concerns about the release of information based on unsubstantiated complaints. Ingersoll clarified that the problem is due to a lack of standard criteria for determining whether or not the complaint was substantiated. Snyder reported an additional concern that centers may not receive notification of all complaints and results of investigations.
- Bartz asked the department to report next month on progress in drafting child care policy rules so that criteria for determining substantiation will be uniform statewide and asked that a draft of the rules be provided to the committee in advance of the meeting.

PUBLIC SAFETY DEPARTMENT

- Mike Coveyou, Jen Worthington, Larry Mullen, Sandy Deacon and George Howe represented the department. Marty Ryan of the Iowa Civil Liberties Union was also present.
- ARC 9988A Amendments to ch 8 implement statutory changes to sex offender registry rules.
- Bartz requested a listing of the criminal offenses that require registration.
 - Mullen told Bradley that offenders are informed of assessment results and are provided a copy of the assessment upon request.
- Ryan indicated that the civil liberties union would prefer that a copy of the assessment be provided automatically to every individual assessed.
- ARC 9989A No action on fees for fire inspections conducted pursuant to licensing of elder group homes, health care facilities, and child care facilities and renewal fees for aboveground storage tanks.
- ARC 9970A No action on proposed fire safety rules for bed and breakfast inns of up to nine rooms.
- ARC 9968A No action on ch 53 which pertains to the fire service training bureau.
- ARC 9969A Ch 54 rules provide for firefighter certification, which some employers require.
- Kibbie and Bradley questioned whether the rules would affect volunteer departments and insurers. Deacon responded that firefighter certification has been in place since 1972. Huser pointed out that industries wishing to locate in rural areas want assurances of adequate fire protection.
- ARC 9967A No questions on ch 59, death benefits for providers of volunteer emergency services.
- ARC 9987A A proposed elevator exemption for new apartment buildings of less than four stories, which was initiated by a petition received from the Home Builders of Greater Des Moines, was published to receive public comments.

NURSING BOARD Lorinda Inman and Lois Churchill represented the board. Linda Goeldner of the Iowa Nurses Association was also present.

ARC 9960A No questions on proposed 2.6(2)"c"(3).

ARC 9961A No questions on proposed 4.3 and 4.25 concerning issuance of investigatory or contested case subpoenas.

ARC 9962A Proposed amendments to require the wearing of identification badges which include the nurse's licensure are the result of a petition for rule making from the Iowa Nurses Association.

ARC 9963A No questions on termination of the proposed waiver rules.

ARC 9915A No action on amendments pertaining to the nurse licensure compact.

Committee business Huser moved the minutes be approved. The motion carried.

The next meeting will be September 12 and 13.

The October meeting was scheduled for October 9.

PUBLIC BROADCASTING DIVISION Molly Phillips and Pamela Pfitzenmaier represented the division.

ARC 0004B Proposed ch 14 pertains to competitive grants for K-12 school districts.

PERSONNEL DEPARTMENT Michael Prey, Gregg Schochenmaier, and Kelly Lovell represented the department.

ARC 9985A No questions on amendments to implement HF 2463.

ARC 9971A No action on amendments to IPERS rules.

RACING AND GAMING COMMISSION Karyl Jones represented the commission.

ARC 9948A No action on proposed amendments resulting from agency review.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division. No action on continuing education rules which will be uniform in process, with hours and content specific to each of the following boards:

ARC 9999A Nursing home administrators

ARC 9998A Physical therapists and physical therapy assistants

ARC 0001B Occupational therapists and occupational therapy assistants

ARC 9984A Psychologists

INSPECTIONS AND APPEALS DEPARTMENT Jennifer Komos and Bob Haxton represented the department.

ARC 0002B No questions on proposed amendments to ch 1 pertaining to health facilities.

ARC 9996A No questions on food establishment amendments to chs 30, 31, 34, and 37.

UTILITIES DIVISION Cecil Wright and Gary Stump represented the division.

ARC 9976A No action on proposed amendments to chs 2 and 19 pertaining to certification of natural gas marketers.

ARC 9977A No action on rule 20.13 relating to review of fuel procurement practices.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT John Schiltz represented the department. Other interested parties included Howard Hill, operations director for Iowa Select Farms, veterinarian Daryl Olsen, and pork producers including Kevin Wolfswinkel and Kirk Hall.

ARC 9997A Amendments to ch 64 pertain to eradication of pseudorabies.

In relating how the rules have affected his herd, Wolfswinkel pointed out that it may be impossible to be certain that a herd is 100 percent negative as required by law since the test itself is not 100 percent accurate. The department denied his requested waiver because statutory provisions cannot be waived. Hill added his opposition to the restrictions on movement of herds that do not meet the 100 percent requirement, warning that the restrictions will put producers out of business.

Hill, who helped develop the diagnostic test when he was in charge of pseudorabies testing at Iowa State University, stated that the test is between 99.7 and 99.8 percent accurate, but conceded there is a potential for a false negative or a false positive.

•Kibbie summarized the efforts of the legislature over the past few years to clean up pseudorabies and pointed out that the statute is very restrictive because previous efforts have not been successful in eradicating the disease.

•Schiltz responded to Bartz that every positive test is run three times and the pig is re-bled to confirm the results.

Olsen indicated that mandatory vaccination is the key to controlling the disease, but in his opinion, the statute has prevented the department from making sound decisions and exercising discretion. Hill added that after the animals that tested positive are purchased by the federal buyout program, the rest of the herd cannot be moved.

Having heard the concerns presented at the meeting, committee members concluded that no action would be appropriate since the rules mirror the statute and the statute represents bipartisan and industry agreement.

ARC 9980A No action on proposed amendments pertaining to chronic wasting disease.

AUGUST 2, 2000

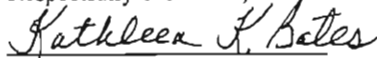
EDUCATIONAL EXAMINERS BOARD Anne Kruse and Gary Borlaug represented the board.

ARC 9927A No questions on proposed 14.15 concerning a one-year conditional license.
ARC 9929A No questions on proposed 14.16 concerning the two-year conditional license.
ARC 9920A No questions on proposed amendments to 14.20, school counselor competencies.
ARC 9928A No questions on proposed reinstatement of general science endorsement, 14.21(17)"c."
ARC 9923A No questions on proposed endorsements for school principals.
ARC 9921A No questions on proposed 14.25, two-year administrator exchange license.
ARC 9930A No questions on proposed 14.34, mentor endorsement.
ARC 9922A No action on termination of the proposed classroom monitor authorization.
ARC 9926A No questions on amendments to ch 15, special education endorsements.
ARC 9925A No action on ch 22 pertaining to paraeducator certificates.
Special review Borlaug distributed copies of the DOT rules and the rules that will be presented to the board regarding qualifications for behind-the-wheel driver's education instructors.

•Kibbie urged better utilization of the state-owned ICN network for public hearings.
Kruse related that ICN scheduling problems hamper the use of the network for hearings. At Huser's suggestion, Bradley agreed to ask the oversight and technology committee to review use of the ICN for public hearings on administrative rules.

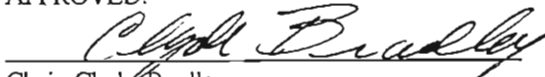
Adjourn The meeting was adjourned at 3:45 p.m.

Respectfully submitted,


Kathleen K. Bates


Teresa Vander Linden

APPROVED:


Chair Clyde Bradley


Vice Chair H. Kay Hedge