

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

- Time of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, November 10, 1998, in Room 118, State Capitol, Des Moines, Iowa.
- Members present: Senator H. Kay Hedge, chair, and Representative Christopher Rants, vice chair; Senators Merlin E. Bartz, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, and Keith Weigel.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor and Teresa Vander Linden; Jackie Van Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened •Chair Hedge convened the meeting at 9:30 a.m.
- REVENUE AND FINANCE DEPARTMENT** Carl Castelda and Ed Henderson represented the department.
- ARC 8409A No questions on proposed retail bracket system for state sales and local option sales and service tax.
- ARC 8407A Amendments to chs 40, 42, 43 and 46 pertain to individual income tax.  
•Bartz asked how income from the conversion of traditional IRAs to Roth IRAs is taxed. Castelda explained that roll-over provisions allow the income to be spread over four years and taxed as ordinary income.
- ARC 8384A No questions on proposed 42.13 and 52.15 for eligible housing business tax credit.
- ARC 8408A No questions on amendments to chs 73, 74 and 81 pertaining to property tax.
- Special Review Sale of a business to lineal descendants, HF 2513.  
•Carroll stated that the exemption for sale of a business to lineal descendants was increased to 100 percent by HF 2513. The exemption does not, however, apply to the sale of stock, even though ownership of small businesses and family farms may be represented by stock.  
Castelda related the department's position since 1990 as it conforms with qualifying capital gain exclusions set out in Iowa Code section 422.7(21). The department has assembled a committee of practitioners from the state tax committees of the Iowa Society of CPAs and the Iowa State Bar Association, the Iowa Farm Bureau Federation, and Iowans for Tax Relief to provide assistance with proposed rules. If the general assembly enacts legislation that has been proposed, the rules can be made retroactive for tax year 1998 and amended returns can be filed.  
•Rittmer concurred with Bartz's observation that some owners who chose an advantageous business arrangement now wish to reap the benefits of a different arrangement.  
•Rants stated that many did not understand that the legislation did not apply equally to incorporated and unincorporated businesses.  
•Weigel inquired about the fiscal impact of broadening the application of the tax exclusion. Castelda reported that if all capital gains were exempted, the impact could be as high as \$150 million, but there is no estimate of the impact of the stock issue only.  
•Bartz viewed the department's handling of the exemption as statutorily correct.
- Motion to refer •Carroll moved a referral to the general assembly with a recommendation for consideration of the proposed legislation.
- Motion carried The motion to refer passed.
- TRANSPORTATION DEPARTMENT** Shawn Majors represented the department.
- ARC 8361A The department is rescinding ch 100, functional classification of highways.  
Royce informed the committee that the legislature transferred the authority to administer the secondary road designation to the farm-to-market review board, composed of engineers appointed by the Iowa Society of Professional Engineers. The department of transportation is willing to assist the board with the rule-making process, and the rules can be published in the same place the DOT rules formerly appeared.
- TREASURER OF STATE** Bret Mills represented the treasurer of state.
- ARC 8392A Ch 16 pertains to the Iowa educational savings plan trust.  
•Mills indicated to Bartz that contributions are deductible for state income tax purposes and earnings on the account are exempt from state tax. The contributions are not deductible at the federal level. Federal taxes on the earnings are deferred until the student goes to college, at which time the student pays taxes on the earnings at each distribution. Forty-four states have such plans and are working with the IRS for the exemption of earnings and with the department of education for more favorable treatment on financial aid forms. Bartz urged the treasurer's office to continue to advocate for more favorable treatment of the accounts on the federal level.  
•Commending the legislature for this program, Mills advised Rants there are now about 500 accounts and the number is growing.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Joe Mahrenholz, Cindy Haverkamp, Charlcie Carey and Jeff Terrell represented the department. Susan Rew, an adoptive parent, also addressed the committee.

ARC 8363A No questions on the rescission of 1.9.  
ARC 8364A No questions on reinstatement of the four-month work transition period for Medicaid.  
ARC 8362A Proposed amendments to ch 78 would require limitations on and prior authorization for Medicaid payment for drugs to treat male sexual dysfunction.

- Mahrenholz explained to Doderer that the proposed amendments are an attempt to regulate this class of drugs by requiring physicians to obtain prior authorization for Medicaid patients and by limiting the amount dispensed. Federal law requires that Medicaid programs pay for any prescription drug marketed by a manufacturer that has signed a drug rebate agreement with the health care financing administration.
- Rittmer voiced opposition to Medicaid payment for the drugs.
- Mahrenholz reported to Rants that, on recommendation of the Medicaid drug utilization review commission, approval would be limited to four doses in a 30-day period. Mahrenholz indicated that costs related to these drugs are not known.
- Bartz recommended that the department hold a public hearing.

ARC 8365A No questions on payment for hospice services.  
ARC 8402A No action on proposed amendments to 79.1 concerning ambulatory surgical centers.  
ARC 8366A No questions on amendments to ch 81 regarding the nurse aide training course.  
ARC 8383A No questions on the addition of five counties to the elderly waiver program.  
Special Review Adoption procedures.

- Doderer asked the department to outline policy regarding payment for subsidized adoptions and the amount of time required to adopt a special needs child. Carey and Terrell responded on behalf of the department. Terrell stated that this year about \$19 million was allocated for the support of special needs adopted children. Carey added that approximately 80 percent of the adoptions are subsidized.

- Metcalf was informed that 3,184 adopted children were subsidized last year.
- Carey confirmed for Doderer that there were 383 subsidized adoptions in 1996, 440 in 1997, and 520 in 1998 and explained that subsidies are ongoing until the child reaches the age of 18. In response to Doderer's inquiry about eligibility criteria, Carey indicated that children over the age of eight and all minority children are considered special needs children.

•Doderer inquired about the normal length of time between the department's receipt of an application until the finalization of the adoption. Carey responded that the adoption home study, which is required prior to placement, is usually completed in three to four months. After placement, the law requires a waiting period of six months, which can be waived in cases involving adoption of foster children living in the adoptive home. The process usually takes about a year. The adoption subsidy is the same as the foster care rate; however, the support services available under the programs differ.

Rew related her experiences as a foster parent attempting to adopt her special needs foster children. Stressing the need for respite care, Rew pointed out what she perceives as inadequacies of the services portion of the subsidized adoption program.

Terrell agreed that more benefits and services are available under the foster care program where the state is the legal custodian of foster children. Adoptive parents assume responsibilities they do not have in a foster care situation.

•Doderer stated that November is national adoption month and urged the legislature to facilitate the process for families moving from the foster care system to adoption.

Motion •Hedge moved a referral to the general assembly.

Motion carried The motion to refer carried.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland and Donna Gwinn represented the department; Tim Benton represented the attorney general's office.

ARC 8360A No action on 90.31 authorizing emergency storage of grain.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson, Monica Fischer, and David Lyons represented the department.

ARC 8387A No questions on amendments to ch 25 pertaining to the housing fund.

ARC 8386A Johnson related changes in amendments to ch 59 pertaining to enterprise zones.

- Weigel stated that in his view the department's policy on businesses moving from one part of a city into an enterprise zone in another part of the same city is contrary to the intent of the legislation and that such moves result in no net gain to the state.

Economic Development Department (Cont'd)

Lyons referenced the board's response to the issues raised by the committee and summarized the department's role in assisting struggling communities through this targeted program. Lyons pointed out that all applications coming to the department have already been approved by local commissions and have met the requirements for new jobs and capital investment. Companies in Waterloo and Dubuque that have generated the most controversy qualified for enterprise zone activity prior to relocation within those cities. While the department's primary objective is to make good things happen, the department also intends to remain vigilant in overseeing the program to prevent abuses.

- Weigel noted that because population restrictions disqualify several of the state's neediest areas, he disagrees with the department's claim that the program is consistent with legislative intent.

Lyons agreed that whenever qualifying criteria are established, some communities are left out but denied alleged abuses and made available copies of all projects.

**EDUCATION DEPARTMENT** Ann Marie Brick, Ann McCarthy, Evelyn Anderson, Don Wederquist, Julia Thorius, Jerda Garey, Leland Tack and Terry Voy represented the department.

ARC 8377A No action on proposed amendments to ch 6 pertaining to appeal procedures.

ARC 8375A Ch 21 was amended to include the course for drinking drivers.

- Wederquist told Metcalf that the department selected the curriculum prepared by Prevention Research Institute (PRI) of Lexington, Kentucky, and PRI conducts the four-day training of instructors. Community colleges may make recommendation regarding the approval of instructors.

- Rants was advised that the rate of recidivism has remained the same for second- and third-time offenders; the rate for first-time offenders has dropped from about 16 percent to about 8 percent. Wederquist will supply actual figures to the committee.

ARC 8369A No action on 21.45, the distribution plan for state aid to community colleges.

ARC 8376A No action on driver education instructor qualifications in ch 26.

ARC 8373A No questions on ch 44 pertaining to school buses.

ARC 8374A No action on ch 48, the certified school to career program approval.

ARC 8378A Ch 69 pertains to waiver of the school breakfast program requirement.

- Bartz was informed that of the 237 schools without breakfast programs, 33 have enrollments in which over 35 percent are eligible for free or reduced price meals, leaving 204 schools eligible for a waiver.

ARC 8372A McCarthy reported that 370 national board certification applications were received and 76 reimbursement awards of \$2,000 each were made.

- McCarthy told Kibbie that the number of teachers in each AEA was used to determine the formula for the distribution of awards.

- In response to Metcalf, McCarthy indicated that \$120,00 to \$130,00 will be used to award 12 or 13 teachers \$10,000 in January.

ARC 8370A No action on ch 96, local option sales and services tax for school infrastructure.

**EMPOWERMENT BOARD, IOWA** Donna Eggleston of the department of education and Linda Swenson of the department of human services represented the board.

Special review •Eggleston informed Rittmer that the newly appointed board will meet with the transition board on November 18 and will assume authority on December 1.

- Rants was assured an effort has been made to achieve geographic representation of the state on the board.

- Eggleston responded to Metcalf that each applicant has received a copy of the report of the review committee and that, when possible, the board intends that empowerment status be granted, even in the absence of funding, to areas in recognition of their ongoing processes.

- Rants determined that the board will try to ensure the review team represents both geographic areas of the state and areas of expertise.

- Carroll was advised that although community action agencies may be involved, only counties and school districts are eligible to apply.

Committee business  
Budget

- Legislative Service Bureau Director Diane Bolender presented a proposed budget for 1999-2000. Doderer moved approval of the budget. The motion carried.

Minutes

- Kibbie moved the minutes be approved. The motion carried.

December meeting

The next meeting will be Tuesday, December 8 and Wednesday, December 9. Royce will make arrangements for and invite former committee members to a Christmas party on December 8. January 5 is the tentative date for the subsequent meeting.

**ENVIRONMENTAL PROTECTION COMMISSION** Allan Stokes represented the commission.

ARC 8419A Ch 12 pertains to environmental self-audits.

- Stokes told Weigel that the statute specifies that audits can be conducted by owner-operators, consultants hired by owner-operators, or employees thereof.

NATURAL RESOURCE COMMISSION Judith Pawell and Richard Bishop represented the commission.

- ARC 8393A No questions on proposed amendments to ch 15 anticipating electronic licensing.
- ARC 8394A No questions on proposed amendments allowing all horsepower motors operated at a no-wake speed on Avenue of the Saints Lake in Bremer County.
- ARC 8396A No questions on amendments to ch 53 regarding increased harvest of snow geese.
- ARC 8395A No action on proposed amendments to ch 98 concerning wild turkey spring hunting.

PHARMACY EXAMINERS BOARD Terry Witkowski represented the board.

- ARC 8411A No questions on proposed 1.3 concerning waiver or variance from rules.
- ARC 8413A Amendments to chs 6, 7, and 19 are proposed to implement HF 2275.
  - Doderer asked about pharmacists requesting a "conscious clause" and was informed that pharmacists are free to execute professional judgment and there is no requirement that a pharmacist fill every prescription.
- ARC 8412A No questions on proposed 6.6(2) pertaining to temporary absence of pharmacist.
- ARC 8414A No questions on proposed disciplinary provisions in 9.2.
- ARC 8415A No questions on proposed corrective amendment to 15.9.
- ARC 8416A No questions on proposed 22.13 and 22.21, delegation of functions to pharmacy technicians.
- ARC 8417A No questions on proposed amendments to ch 25 to include all licensees in child support noncompliance provisions.
- ARC 8418A No questions on proposed ch 31 pertaining to CSAC noncompliance.

PUBLIC SAFETY DEPARTMENT Mike Coveyou represented the department.

- ARC 8404A No action on amendments to ch 4 incorporating the NICS system for screening prospective purchasers of firearms.

RACING AND GAMING COMMISSION Jack Ketterer represented the commission. Also addressing the committee were Ed Jorgensen and Susan Cameron.

- ARC 8389A No questions on proposed amendments to chs 4 and 10 on thoroughbred racing.
  - ARC 8388A Amendments to ch 20 pertain to nonprofit distributions.
    - Metcalf was told there are no criteria for what constitutes a benefit.
    - Ketterer explained to Rittmer that an opinion issued by the attorney general indicates that distributions to out-of-state charities are allowed by statute. Cameron summarized Dubuque's view of the rule as subjective and difficult to enforce.
    - Kibbie perceived the amendments to be unnecessary.
- Jorgensen told of Nebraska entities that have widely supported projects in Council Bluffs without asking Iowa to prove a benefit to Nebraska.  
 Royce questioned the authority for the commission to collect the information and asked how the information would be used. Ketterer replied that the commission does not intend to evaluate the information but merely wants applicants to consider the benefit to Iowans.

- Motion to delay Metcalf moved a session delay be imposed on ARC 8388A.
- Motion failed The motion failed.
- December agenda The committee will review the committee rules of procedure in December. Metcalf requested that Terry Voy return in December to respond to concerns of day care centers related to school buses.
- Adjourn The meeting was adjourned at 2:10 p.m.

Respectfully submitted,

*Kathleen K. Bates*  
Kathleen K. Bates

APPROVED:

*H. Kay Hedge*  
Chair H. Kay Hedge

*Christopher Rants*  
Vice Chair Christopher Rants