

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, May 11 and Wednesday, May 12, 1999, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.

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

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, assistant; Stephanie Pickens, office of Administrative Rules Coordinator; caucus staff and other interested persons.

Convened •Chair Hedge convened the meeting at 9:02 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Shellie Goldman and Shari Seivert represented the department.

ARC 8865A No questions on chs 3 to 5 governing administrative procedures.

ARC 8867A Walker summarized changes to the limited benefit plan amendments made in response to comments received, including correction of dates, removing the first limited benefit plan requirement for persons abandoning their FIP agreement to complete 20 hours of employment, defining misconduct, and clarification of the department's oversight role in the review process.

•Seivert reported to Metcalf that the amendments respond to legislative changes and input from the welfare reform advisory committee and PROMISE JOBS and noted that consequences for subsequent limited benefit plans have been increased.

•Bartz asked about the impact of the LBP on the federal five-year limit on benefits. Seivert responded that since there is no cash assistance, the LBP does not count toward the five years.

•Huser clarified that the five-year period applies only to cash assistance, not food stamps.

ARC 8918A No questions on proposed amendments to the family investment and medical assistance programs.

ARC 8866A No questions on amendments pertaining to FIP and FMAP-related Medicaid.

ARC 8864A No questions on proposed amendments pertaining to SSI-related Medicaid.

ARC 8868A No questions on annual amendment of ch 75 pertaining to average statewide costs and charges.

ARC 8869A No questions on ch 78 amendments relating to diabetic supplies and binaural hearing aids.

ARC 8916A The HAWK-I program was amended to define extreme economic hardship.

•Bartz pointed out that extreme economic hardship for an employer is not defined although the legislation included economic hardship of both employee and employer.

•Carroll stated that there has been ongoing concern that employers would drop insurance and shift coverage to the state through the HAWK-I program. Carroll also provided an example to illustrate that 5% of the yearly gross income may be too little to result in extreme economic hardship. Seivert stated that under the Social Security Act, annual aggregate cost sharing with respect to a low-income child may not exceed 5% of the family's gross income.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Rose Wazny, Melanie Johnson, LaBrent Lawler and Allen Williams represented the department.

ARC 8913A Proposed ch 24 pertains to organization of emergency shelter grants program rules in accordance with other HUD programs.

ARC 8914A Proposed ch 29, which is administered jointly with ch 24, governs the state-funded homeless shelter operation grants program.

ARC 8915A The definition of full-time employee in 59.2 was amended to allow greater flexibility in the enterprise zone program.

•Johnson concurred with Bartz that the language "including paid holidays, vacations and other paid days" should appear in both descriptions of full-time. If the board agrees to the change, a draft of an emergency amendment will be forthcoming.

•Williams responded to Rittmer that some sources indicate that less than 40 percent work the traditional eight-hour day, five days a week.

ARC 8912A Ch 72 was filed emergency so that the A Taste of Iowa logo could be used at spring trade shows.

•Lawler informed Hedge that meat is included if 51 percent or more of the wholesale value of the product is derived in Iowa.

EDUCATIONAL EXAMINERS BOARD Anne Kruse represented the board.

- ARC 8898A No questions on ch 9 pertaining to student loan default.
- ARC 8899A No action on 14.21(17) concerning the science endorsement.
- ARC 8897A Amendments pertaining to the coaching authorization will be applicable in July of next year.
 - Kruse reported to Bartz that last year's fee increases are being updated in the rules.
 - Kibbie voiced concern about how long it takes to implement legislative changes.

EDUCATION DEPARTMENT Robert Wills and Ann McCarthy represented the department. Senator Bill Fink representing District 45 was also present.

- ARC 8896A Wills distributed a time line delineating the process followed for the proposed amendments to ch 12 which implement HF 2272.
 - Kibbie asked about the last sentence of the legislation which requires school districts to report to the community by individual attendance center. Wills suggested that could be accomplished by using ITBS and ITED data.
 - Wills explained to Harper that rules relating to guidance counseling and school media services were eliminated because of the repeal of Code sections pertaining to them.

Senator Fink expressed concern that the proposed amendments exceed the authority of HF 2272 which addressed accountability, but did not require a complete revision of the accreditation standards. Fink suggested the rules would be burdensome on teachers and administrators and expressed concern about cost, especially to small school districts. Further, the rules add new areas in which schools will be held accountable.

 - In response to Kibbie, Wills summarized comments received at the public hearings. Wills added that the department expects the technical assistance manual will assist districts in accomplishing accountability without a great burden. Comments will be received until May 27 and the department intends to adopt amendments on June 5.

Royce inquired about the reduction in student health services. Wills responded that Iowa Code section 280.23 requires health services only for special needs students.

 - In response to Hedge's inquiries about costs to local districts and why reports are being directed to AEAs, Wills asserted "there should be no additional costs and the information provided to AEAs should enable them to better assist the LEAs with their comprehensive school improvement plans. In response to Hedge's questions about provisions for talented and gifted students, McCarthy stated that while not all districts levy for TAG, the Code requires that they provide programs.
 - Bartz noted an increase from four to eight categories for equal opportunity in programs and requested the legal source of the categories. In particular, Bartz suggested implications of the socioeconomic criteria in the area of school fees. Bartz made an informal request for an economic impact statement.
 - Huser questioned the authorization for consolidation in 12.8(1)"d"(2). Wills stated that this provision allows flexibility by consolidating reports for various funding sources. McCarthy added that the legislation directed the department to consolidate state and federal reporting when possible.

The department agreed not to adopt the amendments until after the June ARRC meeting.

- Wills clarified for Hedge that schools set their own annual improvement goals.
- ARC 8737A No questions on proposed ch 2 regarding agency procedure for rule making.
- ARC 8736A No questions on ch 3 pertaining to declaratory orders.
- ARC 8738A No questions on the proposed rescission of ch 4.
- ARC 8735A No questions on proposed amendments to ch 6 pertaining to appeal procedures.

PUBLIC HEALTH DEPARTMENT Carolyn Adams and Don Flater represented the department.

- ARC 8873A No questions on maternal and child health program, ch 76.
- ARC 8927A No questions on amendments pertaining to radiation.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

- ARC 8891A to ARC 8882A All documents were considered as a group. Bledsoe reported that the division is attempting to standardize rules for all of the licensing boards.
 - Bledsoe reported to Metcalf on the resolution of the controversy regarding the chiropractic board's rules.

Committee Business Since appointments to the committee have not yet been made, the committee agreed to Kibbie's request for unanimous consent to wait until next month to elect a chair and vice chair.

Minutes The minutes of the April meeting were approved.

Meeting dates The committee will meet June 8 and 9 and July 13 and 14.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

ARC 8894A No questions on sales and use tax amendments.

ARC 8920A •Metcalf asked Castelda to provide information to accountants about eligibility for the HAWK-I program and the new college savings plan.

TRANSPORTATION DEPARTMENT Steve Westvold, Jan Hardy and Kirsten Bandow represented the department.

ARC 8872A No questions on amendments to ch 117 pertaining to outdoor advertising.

ARC 8871A No questions on amendments to chs 400 and 401.

ARC 8870A No questions on aircraft registration amendments to ch 750.

NATURAL RESOURCE COMMISSION Steve Dermand represented the commission.

ARC 8904A No questions on 40.31(5)"d" and "e."

NATURAL RESOURCES DEPARTMENT Anne Preziosi represented the department.

ARC 8924A No questions on proposed adoption of uniform rules.

ENVIRONMENTAL PROTECTION COMMISSION Michael Andersen, Diane Moles, Lavoy Haage, Wayne Ferrand and Ubbo Agena represented the commission.

Water supply chapters were reviewed as a group.

ARC 8903A Proposed amendments to ch 40 pertain to public and private drinking water supplies.

ARC 8902A Proposed amendments to ch 41 pertain to water supplies.

ARC 8901A Proposed new ch 42 pertains to public notification and education.

ARC 8905A Proposed amendments to ch 43 pertain to design and operation of water supplies.
•Moles informed Rittmer that the tables reflect current EPA analytical methodology. Additionally, some of the tables have been combined.

•In response to Bartz, Moles indicated that ANSI/NSF Standard 60 requires that chemicals added to the drinking water supply be certified so they are of known chemical property and are mixed and stored properly.

•In response to Kibbie's concern about costs to small communities, Moles stated that EPA has mandated that water supplies issue a consumer confidence report. In addition, if certified chemicals had not been used previously, some cost may be involved.

ARC 8909A Andersen summarized proposed ch 55 pertaining to aquifer storage and recovery.
•Huser voiced concern that the long-term impact of the pilot isn't yet known and suggested that the rules should require that all available information regarding testing be provided to entities within a certain distance who use the site as their primary water source. Andersen made reference to 55.6(1)"d" and provisions in ch 54 and agreed that the long-term outcome of the pilot is not known.

ARC 8910A No action on proposed amendments to ch 83 regarding laboratory certification.

ARC 8907A Proposed ch 105 pertains to organic materials composting facilities.

•Haage advised Kibbie that landfills are not required to have composting facilities. Any entity can compost yard waste since no permit is required.

•Haage responded to Bartz that a revision will be made to allow farmers with multiple sites to bring animals from all sites to one composting facility.

•Haage informed Rittmer that composting of dead animals is generally limited to poultry and small pigs. Odor is not a problem when dead animals are properly composted.

ARC 8908A Amendments to ch 209 concern the landfill alternatives financial assistance program.

•In response to Carroll, Andersen stated that while recycling has increased and more material types are being accepted, the number of recycling facilities has not increased. Solid waste production at landfills has remained stable.

ARC 8900A Ferrand summarized changes from the proposed livestock feeding operations amendments, including 65.2(9)"e" which provides for a waiver of the release notification requirement.

•Following discussion and various example situations offered by Bartz, Kibbie and Rittmer, Agena emphasized that a waiver would not be granted if there was a potential for discharge into waters of the state.

•Carroll was informed that the forms which will be needed for reporting manure management plans after January 1 will be available through the DNR, extension and RCF offices and the Internet.

•Agena clarified for Kibbie that distance is measured from the residence, rather than outbuildings or property lines. Existing facilities will be grandfathered in, whereas expansions of facilities would need to meet the new requirements or have a secondary containment barrier.

•Bartz urged the department to require owners of permitted sites to advise the department when there is a change of address. Agena indicated that the information should be kept current through the annual inspection process and through the applicator certification process. Bartz was also advised that permits can be revoked for any violation, not just habitual violation.

•Agena informed Hedge that no habitual violators have been identified.

CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION Richard Moore and Steve Michael represented the division.

ARC 8740A Ch 5 pertains to the juvenile accountability incentive block grant program.
•Bartz, noting that purpose area #8 targets firearms offenders, supported inclusion of all weapons offenders. Michael responded that the federal grant specified the target areas.
•Michael reported to Metcalf that the program has also been funded for next year and that applications for juvenile drug court were received from Polk County and a cluster of Jasper, Marion, and Warren counties.
•Michael told Kibbie the grant required a 10% match and the state has covered that. Purpose area #1 requires 50% from state or local funds for building, expanding or renovating a juvenile corrections facility.

ARC 8802A No questions on chs 6 to 8 concerning administrative procedures.

PUBLIC SAFETY DEPARTMENT Michael Coveyou, Roy Marshall and Tim McDonald represented the department.

ARC 8895A No questions on proposed amendments to ch 11 pertaining to criminal history records.
ARC 8928A Fire safety requirements for small group homes are proposed in 5.620(1). Marshall explained that the evacuation capabilities of the residents will be considered when rules are developed. When doors are locked, as in Alzheimer's facilities, sprinklers will be required for the safety of the residents. Marshall indicated the cost of retrofitting plastic pipe with sprinklers is about \$1.50 per square foot.

•Rittmer pointed out that the intent was to allow for flexibility rather than impose restrictions on all small group homes. Facilities that remain unlocked will not be required to have sprinkler systems.

ARC 8929A No action on proposed amendments to ch 5 pertaining to fire safety in school and college buildings. Most provisions pertain to new buildings and renovations; however, Marshall reported that corridor smoke detectors will be required in existing buildings at a cost of about \$100 to \$150 per unit, including labor and installation.

SECRETARY OF STATE Sandy Steinbach and Don Stanley represented the office of secretary of state.

ARC 8893A No action on proposed amendments to ch 22 pertaining to alternative voting systems.

SOIL CONSERVATION DIVISION Ken Tow and William McGill represented the division.

ARC 8815A No questions on proposed chs 3 to 5 concerning administrative procedures.
ARC 8759A Proposed amendments to ch 12 pertain to recall of REAP funds and the addition of practices regarding restored wetlands in buffer systems and bioengineering for stabilization of banks along waterways.
•McGill explained to Bartz that REAP funds are being made available for planting because WRP funds are generally for larger projects (2,000 to 3,000 acres). Locally elected commissioners in each soil and water conservation district determine which practices will be implemented.

UTILITIES DIVISION Gary Stump represented the division.

ARC 8921A No action on proposed amendment pertaining to establishing a ten-year limit on utility refunds and back billings, with limits on the maximum amount of the billing.

LAW ENFORCEMENT ACADEMY Gene Shepard represented the academy.

ARC 8875A No action on 3.1(4) pertaining to certification of law enforcement officers.

ARC 8876A No action on amendments to ch 13 on telecommunicator training.

PAROLE BOARD James Tweedt represented the board.

ARC 8853A Tweedt called attention to changes from the notice including the number of votes required for release, based on risk assessment indicators and vacancies on the board, and specification that ch 12 pertains to the 6th judicial district only.

WORKFORCE DEVELOPMENT DEPARTMENT Pat Sampson, Dan Anderson, Joe Bervid and Iris Post represented the department. Other interested parties included Nancy Robertson of the Iowa coalition against domestic violence, Russell Samson representing the association of business and industry, and Jan Laue of the Iowa federation of the AFL-CIO.

ARC 8648A Subrule 24.26(14), pertaining to allowance of unemployment benefits for victims of domestic abuse at or near the workplace, is under a 70-day delay. Discussion followed detailing the number of such cases, the intent of unemployment benefits and the connection of domestic violence to the workplace.

•Doderer was informed by Bervid that several other states are in the process of revising their laws.

•Bervid responded to Huser that it had been policy to award benefits in such cases and the amendments to the IAPA require that policy decisions be incorporated into the rules. Huser contended that the issue should have come before the full legislature, not just the committee.

Robertson expressed the view that this rule gives employers incentive to do everything possible to ensure that the workplace is safe for all employees.

•Bartz voiced concern that the department did not attempt to meet with the parties involved and make revisions to the language, especially since the committee had delayed the rule. Bervid asserted that ABI insisted that the term "domestic violence" be removed from the rule even though the burden of proof is on the claimant to establish a connection to the workplace.

•After determining that there are no cases of this nature pending, Kibbie stated that he favored making a referral to the legislature.

Samson asked that the committee object to the rule on the basis that the department has exceeded its authority.

Laue reminded the committee that unemployment benefits are intended to help those who are unemployed through no fault of their own. In this situation neither the employer nor the employee is at fault.

Motion to object Metcalf moved an objection be imposed on subrule 24.26(14).

•Rittmer stated his view that the legislative process was avoided.

•At the request of Kibbie, Bervid set out the appeal process.

•Hedge determined that the reason for the employee's quitting would become part of the employee's work record, and potential or subsequent employers could become aware of it.

Motion carried The motion to object passed.

Motion to refer Kibbie moved referral to the general assembly.

Motion carried The motion to refer passed.

Motion to lift delay Kibbie moved the 70-day be lifted.

Motion failed The motion to lift the delay on 24.26(14) failed.

ARC 8809A No questions on proposed amendments pertaining to organization of the department.

ARC 8791A Proposed amendments to ch 26 establish contested case procedures. Because proposed legislation did not pass, the department will change 26.14(1) to transfer to the division of administrative hearings of the department of inspections and appeals all employer liability cases, with appeal to the district court. Unemployment benefits cases will be retained as they are subject to review by the employment appeal board of the department of inspections and appeals.

•Huser requested that the committee have the opportunity to see the revisions before they are adopted.

•Hedge indicated that this will be on the June agenda.

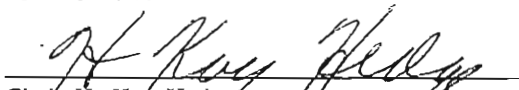
ARC 8849A No questions on proposed amendments pertaining to administrative procedures.

Adjourn The meeting was adjourned at 11:45 a.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge