

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

Time of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, January 5, 1999, in Room 116, 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, 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, assistant; caucus staff and other interested persons.

Convened •Chair Hedge convened the meeting at 9:35 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Don Herman, Eileen Creager, JoAnn Kazor, Joe Mahrenholz, Cheryl Clark and Sue Stairs represented the department.

ARC 8578A No questions on proposed amendments to ch 24 concerning providers of services to persons with mental illness, mental retardation and developmental disabilities.

ARC 8582A No questions on community spouse resources and SSI cost of living increases.

ARC 8583A No questions on 65.47 regarding food stamp eligibility of legal aliens.

ARC 8544A Walker outlined proposed HCBS services waiver program amendments.

ARC 8584A Amendments to ch 78 require prior authorization and impose limitations on Medicaid coverage of drugs for treatment of male sexual dysfunction.

Clark reported that HCFA requires states to cover the drugs if prior authorization is given. The Medicaid drug utilization review commission determined that the limit of four per month is on the conservative side of what is currently being covered by insurance providers in Iowa and is an amount that would not encourage diversion (resale) of the drug.

•Doderer was informed that Medicaid also covers oral contraceptives and that approval for drugs to treat male impotence is not affected by marital status, alcoholism or drug addiction.

•Mahrenholz advised Rants that from April to November, with no rule limiting coverage, the cost to the state for these drugs was \$108,000.

•Clark told Doderer that yohimbine, which must be taken daily, costs \$4 per month.

•Herman indicated to Metcalf that the department closely monitors the dispensing of the drugs in order to prevent diversions.

•Responding to Bartz, Clark clarified that organic and psychosexual dysfunction have different diagnostic codes and confirmed that some insurers have not covered psychosexual dysfunction. Herman added that the state would lose rebates from the manufacturers if the department were to refuse to cover the drugs. The fiscal impact to the state from just one of the four manufacturers amounts to \$1 million per year.

•Herman responded to Doderer's concern about safety by explaining the requirement that persons not be taking medications that are medically contraindicated for concurrent use with drugs prescribed for treatment of male sexual dysfunction.

•Weigel was informed that drug rebates revert to the state's Medicaid program.

•Bartz asked Herman to provide a list of quality of life drugs covered by Medicaid.

Motion to refer Doderer moved a referral of payment for quality of life drugs to the legislature.

Motion carried The motion to refer passed.

•Rants requested a letter from DHS estimating the annualized cost to the state for those drugs.

•Kibbie asked Herman to include in the letter the amount of rebates received from all drugs, which Herman had suggested would be in the range of \$18 to 20 million.

ARC 8579A No questions on termination of the notice concerning ambulatory surgical centers.

ARC 8585A No questions on inclusion of all counties in the elderly waiver program

ARC 8543A No questions on proposed prioritization of the waiting list for state child care assistance.

EDUCATION DEPARTMENT Ann McCarthy, Ann Marie Brick, Jerda Gary, Julia Thorius, Jayne Sullivan, and Lee Crawford represented the department. Dr. James Sutton represented ISEA.

ARC 8550A No questions on amendments to ch 6 concerning appeal procedures.

ARC 8549A No questions on rescission of ch 8, ICN subsidization reimbursement procedures.

ARC 8548A No action on 26.1 and 26.2(3) pertaining to driver education instructor qualifications.

ARC 8551A No questions on certified school to career program approval, ch 48.

ARC 8545A No action on ch 69, which provides a procedure for waiver of the school breakfast program. Thorius summarized comments and reported that, because of the specificity of the statute, there are no changes from the notice.

Education Department(cont'd)

- ARC 8547A No action on financial incentives for national board certification, ch 84.
- Carroll was informed that the department has reimbursed 124 candidates, and 43 candidates are seeking certification at their own expense. With initial funding to reimburse 74 candidates, the department received about 300 applications; selections were made by lotteries conducted by AEAs. Additional federal funds were subsequently received from unused allocations to other states.
- Sutton commended the department but pointed out areas that may need attention. Approximately 50 percent of the candidates pass, so an additional \$1.5 million will be needed to cover the \$10,000 bonuses. Eligibility issues and funding for the support program also need to be addressed. The support program, which operates on soft federal money and was designed for 35 people, needs to support 270 candidates.
- McCarthy confirmed for Hedge that the statute guarantees reimbursement of the entire \$2000: one half upon registration and the other half upon certification.

- ARC 8546A No questions on the rescission of ch 90.

LABOR SERVICES DIVISION Walter Johnson represented the division.

- ARC 8565A No questions on proposed amendments to ch 3 and rescission of ch 120.

INSURANCE DIVISION Susan Voss and Craig Goettsch represented the division.

- ARC 8574A No questions on proposed 19.24 regarding CSAC noncompliance.

- ARC 8573A Proposed 50.6 pertains to CSAC noncompliance.
- Goettsch confirmed for Bartz that the rules apply to nonresidents who do business in Iowa as well as to residents who only do business outside of Iowa.
 - Kibbie questioned the need for every agency to formally adopt the same rule. Royce maintained that adoptions by each agency are necessary unless the statute specifies a procedure or charges the attorney general's office with adopting model rules.
 - Metcalf requested that Royce draft a letter to LSB suggesting that, when possible, bill drafters consider those options.

- ARC 8564A No action on proposed amendments pertaining to investment advisors.

- Goettsch explained to Weigel that although the proposed rules are new for Iowa, they are based on national model regulations and federal requirements.

- ARC 8518A No action on the state exemption for self-funded life and accident and health plans, carried over from December. Voss reported that the inadvertent exemption of the state from the insurance code has been corrected.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE

Pat Rounds represented the board.

- ARC 8557A Proposed amendments to ch 4 pertain to reimbursements for upgrades.

- In response to Bartz, Rounds acknowledged that assistance would not be available for USTs discovered after the program ceases to exist.
- Rounds replied to Carroll that the contract with Williams has been extended until the end of April and bids are being taken for a new contract.

PERSONNEL DEPARTMENT ARC 8563A rescheduled for February meeting.

INSPECTIONS AND APPEALS DEPARTMENT Rebecca Walsh represented the department.

- ARC 8560A No questions on proposed adoption of 1997 U.S. Food and Drug Administration's Model Food Code, chs 30 and 31.

Committee Business •Doderer moved approval of the minutes of the December meeting.

The motion passed.

- Weigel introduced Representative Geri Huser, who succeeds him on the committee. The February meeting was set for Monday, February 8 at 7:30 a.m.

Royce called attention to the proposed changes in the committee's rules of procedure.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Mary Lawyer, Melanie Johnson and Lane Palmer represented the department.

- ARC 8553A Proposed ch 4 is intended to implement tracking of wages and enhancement of skills of trainees in the Iowa workforce training program.

- Lawyer responded to Weigel that social security numbers will be used to access workforce development's unemployment insurance system for wage information.
- Bartz was informed that self-employed individuals would not be tracked because information in tax returns is not stored by line item and there would be no way to differentiate the trainee's income from that of the spouse. Bartz urged the department to continue to seek an identifier other than social security number.

- ARC 8552A No action on ch 11, which implements the certified school to career program.

- ARC 8554A No action on proposed amendments to the CDBG program.

RACING AND GAMING COMMISSION Jack Ketterer represented the commission.

- ARC 8556A No questions on amendments pertaining to hearings and thoroughbred racing.
- ARC 8555A Proposed amendments pertain to gambling treatment program and integrity of racing and gaming.
- Rittmer asked about policy relating to the serving of alcohol to intoxicated persons. Ketterer responded that intoxicated persons are prohibited from gambling, and individual licensees have policies to ensure that alcohol is not served to intoxicated persons.
 - Ketterer told Metcalf that the change from "promote gaming industry" to "gaming integrity" better reflects the regulatory nature of the commission.
 - Rittmer observed that "substantial" is not defined in the requirement for inclusion of information about the gambling treatment program in advertising. Ketterer noted that the requirement was intended primarily for print advertising, rather than television and radio advertising.
 - Ketterer assured Hedge that "1-800-BETS OFF" is displayed in gambling areas.

EMERGENCY MANAGEMENT DIVISION Ellen Gordon represented the division.

- ARC 8517A •Metcalf commended the division and the council for working together to resolve the issues raised at the December meeting.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

- ARC 8592A No questions on 10.2(18), interest rate for 1999.
- ARC 8570A No questions on 14.2, retail bracket system.
- ARC 8591A No questions on amendments to ch 67 and 68 concerning motor fuel tax.
- Held over from December:**
- ARC 8437A No questions on the proposed 1999 interest rate.
- ARC 8495A Castelda reported that \$25,000 was appropriated for refunds retroactive to 1988, and the department received refund applications from nonprofit agricultural associations totaling \$181,000. All but 11 refund applications were denied. The department has not paid approved claims because if any claims being protested are approved, it will be necessary to prorate all refunds.
- ARC 8433A No questions on sales and use tax amendments.
- ARC 8535A Castelda stated the department's intent to file emergency after notice the amendments to 40.38 pertaining to net capital gains received by individual taxpayers.
- ARC 8534A No questions on 42.13 and 52.13, eligible housing business tax credit.
- ARC 8436A No action on motor fuel tax amendments proposed for chs 67 and 68.
- ARC 8434A No questions on ch 108, local option school infrastructure sales and service tax.
- Castelda updated Carroll on the rule regarding taxation of condominiums. The economic impact statement requested by the committee will be published in the January 27, 1999, Bulletin. When adopted, the rule will be effective for assessments that occur after January 1, 2000.

TRANSPORTATION DEPARTMENT Erik Eriksen and Dave Titcomb represented the department.

- ARC 8461A DOT and the board of educational examiners were unable to resolve differences that resulted from conflicting provisions in 1998 Iowa Acts, House File 2528.
- Motion to refer •Rants moved a referral of 761—600.13, behind-the-wheel instructor's certification, to the general assembly.
- Motion to amend •Kibbie moved amending the Rants motion to be a session delay instead of a referral.
- Hedge noted that a session delay is automatically referred.
- Royce reviewed Iowa Code sections 4.7 and 4.8 regarding construction of statutes.
- Motion carried The motion to amend the original motion passed.
- Motion carried The motion to delay 600.13 until the end of the 1999 Session of the General Assembly passed.

NATURAL RESOURCE COMMISSION Steve Dermand and Janet Ott represented the commission.

- ARC 8599A No action on proposed amendments to ch 29 which consolidate criteria for scoring local recreation infrastructure grants program applications. Ott reported that 159 applications seeking \$7.5 million were received for the \$2.5 million available. The commission approved 54 projects, providing grants for one-third of the eligible project costs with a maximum grant of \$100,000.
- ARC 8598A No action on 40.31(5) concerning five-mile-per-hour speed zones on Little Millers Bay and Little Emmerson Bay.
- Kibbie asked that public hearings be held in affected areas rather than in Des Moines.
 - In response to Hedge, Dermand stated that information is disseminated through local newspapers and by prominent posting at the sites.
- ARC 8597A No questions on 45.4(2), which allows unrestricted horsepower operated at a no-wake speed on Avenue of the Saints Lake in Bremer County.
- ARC 8596A No questions on amendments to chs 52 and 61 concerning state parks and recreation areas and wildlife refuges.

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ENVIRONMENTAL PROTECTION COMMISSION Darrell McAllister and Wayne Ferrand represented the commission.

ARC 8595A

Proposed amendments to chs 22, 23, 65, 68, 70 and 72 concerning animal feeding operations are in response to 1998 Iowa Acts, House File 2494. In order to receive comments on amendments proposed by commission staff and those offered by the Animal Agriculture Consulting Organization, the commission included language proposed by AACO in addition to EPC's proposed rules.

•After comparing AACO recommendations with those of the department concerning permit revocation provisions and the definition of "release," Bartz voiced concern about rules being proposed by an entity that is not a state agency and expressed the view that some of the 29 changes submitted by AACO may exceed the scope of the legislation. Bartz cautioned the committee that inclusion of recommendations made by AACO may be setting an ill-advised precedent.

•Weigel concurred with Bartz and added a concern about the feasibility of the March 1 deadline for testing and certification. McAllister indicated that the test has not yet been developed and the department will use enforcement discretion to allow people time to become certified.

Motion to refer

•Weigel moved referral of 65.19, which provides for examination and establishes a deadline for certification of manure applicators, to the general assembly.

Motion carried

The motion to refer passed.

•Weigel stated his opposition to publication and consideration of rules proposed by nongovernmental agencies.

•Kibbie strongly urged the commission to present a single set of rules.

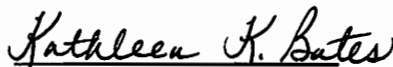
•Metcalf echoed Bartz, Weigel and Kibbie's opposition to the commission's decision to include the AACO recommendations and requested that the committee be on record as discouraging such a practice.

•Weigel suggested Royce draft a letter to the commission voicing the committee's displeasure and its preference for a single set of rules in future rule makings.

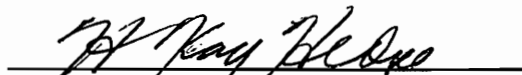
Adjourn

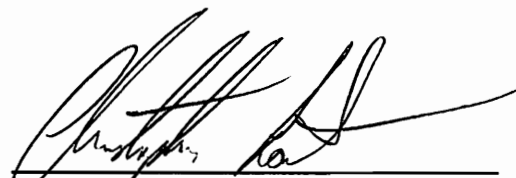
The meeting was adjourned at 3 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge


Vice chair Christopher Rants