

**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, October 13, and Wednesday, October 14, 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 10 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker and Barbara Bosch represented DHS.
- ARC 8285A No questions on amendments concerning rehabilitative treatment and supportive services; eligibility for child day care services; foster care and adoption rate increases; and group care expenditure target and regional allocation formula.
- ARC 8286A No questions on amendments to chs 9, 41, 65, 75, 76, 83, and 95.
- ARC 8339A No questions on ch 25, division IV, incentive and efficiency pool funding.
- ARC 8332A Proposed amendments to ch 75 expand appeal provisions for attribution of resources.
•Doderer suggested that terms not in common usage be defined in the rules.
- ARC 8333A Walker stated that proposed 78.1(17), payment for abortions, may be terminated due to possible misreading.
•Walker will respond to Bartz's inquiry about the history of 78.1(17)"b."
- ARC 8287A No questions on Medicaid reimbursement rates.
- ARC 8334A No questions on 79.1(8)"a," proposed pharmacy reimbursement methodology.
- ARC 8289A No action on 81.6(18)"e," nursing facility reimbursement.
- ARC 8290A No questions on 84.3(6)"c," schedule for lead toxicity screening.
- ARC 8291A No questions on postsecondary educational funding for PROMISE JOBS participants.
- ARC 8292A No questions on amendments to ch 98 concerning withholding of income for delinquent child support payments.
- ARC 8293A •Bosch indicated to Bartz that the department may recommend statewide expansion of the child day care center pilot project.
- ARC 8294A No questions on purchase of service reimbursement rates in 150.3(5) and 150.22(7).
- ARC 8295A In ch 169, funding for empowerment areas, the language to which the committee objected in July was replaced by statutory language. Royce noted that the objection, although recorded in the minutes, had not yet been filed or published.
- Motion** Bartz moved that the objection to 169.4(1) be lifted.
- Motion carried** The motion to lift the objection carried.
•Kibbie observed that administrative costs of empowerment areas could be offset by 5 percent of the grant; but while 28 applicants incurred the costs of establishing empowerment areas, only 3 grants were awarded.
•Rittmer asked if appointments to the board would be made prior to the December awarding of grants. Walker, although uncertain about the composition of the board, observed that the areas funded were largely from one part of the state.
•Hedge requested a special review of the empowerment board in November.
- ARC 8296A Amendments to 170.2(3) prioritize the waiting list for state child care assistance; however, due to sufficient funding, there is currently no waiting list.
•Palmer expressed the view that higher levels of quality should be required. Bosch responded that there are requirements in the areas of basic health and safety and the training and experience of providers for licensed child care providers and registered homes. Walker added, however, that the federal government does not require parents to choose licensed or registered providers.
•Bartz pointed out that the change in 170.2(3)"d" and "e" regarding "families whose members are employed" should also be made in 170.2(3)"a." Walker concurred.
- ARTS DIVISION** Mark Peitzman represented the division.
- ARC 8338A Rules pertaining to operational policies and granting programs have been amended.
•Metcalf cautioned the division against stating that the rules are identical to the Notice if there are any changes, including changes considered nonsubstantive.
- COMMUNITY ACTION AGENCIES DIVISION** James Smith and Joan Moll represented the division.
- ARC 8335A Proposed amendments to ch 22 pertain to the community services block grant.

Community Action Agencies (Cont'd)

•Metcalf expressed surprise that religion had not previously been included in the nondiscrimination provisions. Moll, the department's fiscal officer, stated, in response to Metcalf's inquiry about the increased threshold for equipment expenditures, that the amount was increased to \$2500 because state and federal guidelines allow the higher level and the \$500 threshold was too cumbersome to administer.

ARC 8336A No questions on ch 25, community food and nutrition program.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson, Mary Lawyer, Monica Fischer, and Mike Doyle represented the department.

ARC 8313A Amendments pertain to organization of the department and to the CEBA program.
•Bartz was informed by Johnson that moneys collected by the attorney general's office after being written off the department's books would revert to the CEBA accounts.

ARC 8312A Proposed ch 11 pertains to the certified school to career program.
•Lawyer explained to Kibbie that if a student does not complete the program, moneys withheld for postsecondary educational expenses would be handled in accordance with the terms of the worksite agreement.
•Carroll was informed that this program is not currently coordinated with DMAC's Skills 2000 program.

ARC 8310A •Fischer will report more specific information to Weigel about the requirement for wages to meet or exceed 75 percent of the average county wage or \$7 per hour.

ARC 8311A •Doyle confirmed for Bartz that the export trade assistance program limits of \$4,000 per event and three events per year might be met in one trip.

EDUCATIONAL EXAMINERS BOARD Susan Fischer and Gary Borlaug represented the board.

ARC 8315A The proposed amendment removes the sunset from the middle school endorsement.

ARC 8314A •Fischer informed Carroll that the two-year administrator exchange license would be available to all states.

•Hedge supported the need for the provision.

EDUCATION DEPARTMENT Donna Eggleston, Dwight Carlson, and Leland Tack represented the department.

ARC 8279A No questions on rescission of ch 8, ICN subsidization reimbursement procedures.

ARC 8280A No questions on rescission of ch 11, general approval standards.

ARC 8281A Subrule 36.15(7) allows local school boards to determine whether nonschool team participation is permitted.

•Bartz voiced concern about potential inequities statewide and wondered if the subrule would allow local boards to permit paid participation. Carlson responded that paid participation is covered by other provisions.

•Rittmer viewed local board determination of nonschool athletic participation and allowing student athletes to be paid as two separate issues.

•Weigel pointed out that this subrule is consistent with the authority of local boards in disciplinary action.

ARC 8282A Eggleston stated that amendments to ch 64 increase eligibility in conformance with welfare reform standards and extend the time frames for accreditation of programs. The amendments also provide for reversion of surplus funds, reallocation of funds to other programs and subsequent budget reductions.

•Kibbie asked what circumstances would result in reversions and if reversions and subsequent budget reductions would lead to unnecessary spending. Eggleston replied that if a program is still not accredited after a 6-month waiver, the council will terminate funding and reallocate the funds to other programs. Further, programs that revert more than 3 percent of their budget will have their budget reduced by that amount the following year.

•Eggleston told Rants that grants may range from \$18,500 to over \$200,000 and that while established programs may have other funding streams, newer programs face start-up costs and rarely have unspent dollars. Collection of reversions is not a problem since new funds are not released until reversions are paid. The reduction in future awards is intended to require program administrators to authorize needed expenditures.

•Palmer commented that dollars invested in at-risk children are dollars well spent.

•Rittmer echoed Kibbie's concern that reversion of funds and reductions in future awards would lead to unnecessary spending.

•Weigel moved a general referral to the legislature of 281—64.18(256A,279).

Motion to refer
Motion carried The motion to refer Item 6 of ARC 8282A to the legislature passed.

ARC 8283A No questions on rescission of ch 90, standards for graduate teacher education programs.

ARC 8284A Proposed ch 96 pertains to the local sales and services tax for school infrastructure.

Education Department (Cont'd)

•Tack responded to Rants that the rules were written according to statutory specifications for actual enrollment; however, in cases where more than one county is included in a district, school boards have inquired about the effect of using the total enrollment of the district, not just the enrollment of residents of the county passing the tax.

•Metcalf was advised that open enrollment students are counted in their county of residence and that local option dollars stay with the district of residence rather than following the students to the open enrolled district. Tack also clarified that districts can pay existing bonds with these tax dollars.

Committee business

Minutes

•Bartz moved the minutes of the September meeting be approved. The motion carried.

November meeting The next meeting was set for Tuesday, November 10.

EMERGENCY MANAGEMENT DIVISION Ellen Gordon, John Benson and David Miller represented the division.

ARC 8344A Gordon reported that four comments have been received regarding proposed ch 10, enhanced 911 telephone systems, which was simultaneously adopted and filed emergency.

•Metcalf asked about prorating the wireless E911 surcharge funds so that local entities would not be left out. Benson indicated that Senate File 530 established certain considerations such as volume of calls, population served, number of wireless telephones in the area and public safety of the citizens and he was uncertain whether prorating would be within the guidelines of the Senate File.

•Rittmer was informed that the 50 cent surcharge is collected on wireless phones and remitted to the emergency management division where it is used first for administration of the program and then for reimbursement of actual expenses of the service providers in making enhanced wireless service available. Remaining moneys, if any, are for local or state public safety answering points to enhance their operations to receive enhanced 911 wireless calls. Benson further responded that 88 counties have enhanced 911, 8 have basic 911, and remaining counties have no 911 service. Miller reported there are 138 potential PSAPs in the state, including 6 department of public safety communication centers. Average start-up costs for enhanced 911 wire are about \$320,000 per county. Gordon indicated to Rittmer that administrative costs are expected to run \$200,000 in the first year.

ENVIRONMENTAL PROTECTION COMMISSION Anne Preziosi and Scott VanderHart represented the commission.

ARC 8328A Preziosi reported changes made in response to public comment.

•Rants was told that no applications for MACT determinations have been received.

ARC 8329A No questions on acid rain exemptions and national emission standard for hazardous air pollutants for aluminum reduction plants.

ARC 8327A National ambient air quality standards are adopted in 28.1.

•Bartz expressed concern over the adoption of the PM_{2.5} standard. VanderHart responded that although there are no nonattainment areas in the state, the rules are needed to conduct testing and sampling. The state is required to have an implementation plan and the Iowa Code requires adoption of federal standards.

NATURAL RESOURCE COMMISSION Janet Ott, Steve Derrand, and Richard Bishop represented the commission.

ARC 8323A Ch 29 governing the local recreation infrastructure grants program was filed emergency after notice. Ott stated that 159 applications have been received, applying for \$7.5 million.

•Weigel was advised that grants are likely to be fully funded rather than be awarded partial funding.

ARC 8324A The pilot program for state and local cooperative lake rehabilitation, 30.14, was filed emergency after notice. The first grant, awarded to Clear Lake, is for \$69,523.

ARC 8325A No action on proposed no-wake zones on the Mississippi at Sabula.

ARC 8322A Ch 61 amendments pertain to policy for cabin and shelter reservations and deposits and allow for motorized vehicle use for persons with disabilities.

ARC 8326A No questions on waterfowl and coot hunting amendments to ch 91.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

ARC 8321A No questions on behavioral science examiners amendments to chs 30 and 31.

ARC 8297A No questions on amendments to chs 100 and 101 concerning funeral directors.

ARC 8347A No questions on proposed massage therapist amendments to chs 130 and 131.

ARC 8345A No action on amendments to ch 141, licensure of nursing home administrators.

ARC 8346A No questions on 220.102 concerning continuing education for podiatrists.

PUBLIC HEALTH DEPARTMENT Mike Marshall represented the department.

- ARC 8357A No questions on the proposed addition to the list of reportable diseases.
- ARC 8358A No questions on the proposed amendment to the immunization schedule in 7.4(6).
- ARC 8318A Proposed amendments to ch 69 concerning the lead hazard notification process conform with EPA requirements.
- Bartz inquired about the definition of target housing and pointed out that paint which predates 1978 might be used on housing constructed after 1978.
- ARC 8319A Proposed changes in the lead professional certification process in ch 70 are in conformance with EPA requirements.
- ARC 8317A Rules for the Iowa domestic abuse death review team are proposed in ch 91.
- Doderer noted that the rules provide for reimbursement of expenses, but not for per diem. Marshall will address compensation of board members when rules are adopted.
- ARC 8359A No questions on proposed amendments to chs 132 and 139.

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

- ARC 8320A Proposed amendments pertain to location of satellite terminals, certificates of noncompliance from the college student aid commission, requests for additional gaming machines, safety vests for persons exercising horses, and submission of poker proposals.
- Palmer suggested that criteria in 5.1(5)"c" be weighted and prioritized.
 - Metcalf concurred that assigning points to the criteria would be helpful to applicants.
 - Ketterer advised Bartz that safety vests are required during racing and that locations of nongaming areas vary from facility to facility.
- Ketterer explained to Royce that proposed 5.1(5)"c"(8) refers to the purposes of debt retirement of the facility and development of the pari-mutuel industry.
- Ketterer responded to Kibbie that the term "satellite terminal" is used instead of "ATM" to be consistent with statutory language.
- Jorgensen expressed the opinions that requirements for expansion are similar to licensure requirements and are unduly burdensome and, further, that the commission's authority to regulate the number of slot machines at a licensed facility is questionable.
- Schroeder viewed the changes as more massive than may be apparent.
- Doderer was informed that riverboats remain at the dock between November 1 and April 1. In 1994 the commission determined that boats must cruise at least once a day for 100 days during the cruising season.

INSPECTIONS AND APPEALS DEPARTMENT Rebecca Walsh and Nancy Ruzicka represented the department.

- ARC 8340A Ruzicka stated that the proposed rule on critical access hospitals is more stringent than the federal rule in that 51.52 requires that an R.N. be present at all times, and Iowa critical access hospitals will have to meet all general hospital license requirements. The rule should allow smaller rural hospitals increased revenue from Medicare patients through usual and customary, rather than DRG, reimbursements.
- Ruzicka listed for Kibbie the hospitals that have applied to be critical access hospitals and clarified that only existing hospitals can qualify for the program. It is not intended to create new hospitals.

INSURANCE DIVISION Susan Voss and Craig Goettsch represented the division.

- ARC 8298A No action on emergency adoption of Medicare supplement insurance minimum standards.
- ARC 8348A •Goettsch explained to Rants the purpose of proposed rules 50.94 to 50.97 pertaining to investment advisers, investment adviser representatives and federal covered advisers.

LIBRARIES AND INFORMATION SERVICES DIVISION Sharman Smith and Linda Robertson represented the division.

- ARC 8337A Proposed amendments include new chs 6 and 7, regarding the LSTA program and the Internet use policy.
- Carroll asked why the mission statement of the state library was changed. Smith responded that the mission has not changed, but the way of expressing it is revised.
 - In response to Metcalf's question about the appropriateness of the role of advocacy, Smith stated that advocacy involves promoting libraries with many organizations in addition to the legislature.

REVENUE AND FINANCE DEPARTMENT Carl Castelda, Ed Henderson, and Richard Stradley represented the department. Interested parties included Joe Kelly and Roger Wahl of Landlords of Iowa and David Barker of Barker Apartments.

- ARC 8341A Tax exemptions for sales and services are proposed in chs 13, 17, 19, 20, and 26. Castelda explained that according to statute rural water districts that hire a contractor can apply for a refund of tax paid by the contractor, but rural water districts that do their own construction are not exempt from tax on construction materials purchased. Castelda requested legislation to address the issue.
- Metcalf requested a report on refunds requested from the \$25,000 appropriation.
- ARC 8308A No action on proposed sales and use tax amendments to chs 17, 18, 20, and 32.
- ARC 8307A No questions on 50.5 and 50.7, apportionment of income for resident shareholders of S corporations.
- ARC 8342A Proposed amendments to 71.1(4) and 71.1(5) require condominiums rented for commercial purposes to be taxed as commercial property rather than residential property.
- Castelda told Doderer that the department is working with local assessors.
 - Carroll was informed that three or more units in a building used for rental purposes are considered commercial; single-family dwellings and duplexes are taxed as residential. Condominiums sold for residential dwelling are subject to residential tax; but condominiums rented out by developers are subject to commercial property tax.
 - Bartz suggested that the legislature might want to address the issue of investors who own large numbers of rental houses which qualify for residential tax rates as single-family dwellings.
- Kelly, Barker and Wahl all opposed the rule, citing higher rents for lower income people, building design modifications and subsequent higher housing prices, the effect on investments that have been made, and subjective interpretation of owners' intent.
- Bartz requested an economic impact statement. Carroll supported the request.
- Castelda confirmed that the department has brought the issue to the general assembly because the issue is controversial.

- ARC 8309A No action on proposed ch 108 concerning local option school infrastructure sales and service tax.

TRANSPORTATION DEPARTMENT Margaret Roetman, Dick Hendrickson, Dave Titcomb and Eric Erickson represented the department.

- ARC 8330A Ch 132 pertains to the Iowa scenic byway program.
- Roetman indicated to Rants that the cost per designation has dropped from \$750,000 per route to approximately \$245,000.
- ARC 8331A Amendments proposed to driver's license rules resulted in discussion of remedial driver improvement action under House File 2528, section 5.

WORKERS' COMPENSATION DIVISION Clair Cramer represented the division.

- ARC 8356A No questions on amendments to chs 1 to 3, 6 and 11.


WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION JoAnn Callison represented the division.


- ARC 8299A No questions on ch 4, coordinating service provider.
- ARC 8300A No questions on amendments to ch 10.
- ARC 8301A No action on amendments to ch 11, the work force investment program.
- ARC 8302A No questions on the welfare-to-work program, ch 14.
- ARC 8303A No questions on ch 15, strategic workforce development fund.
- Adjourn The meeting was adjourned at 11:50.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge


Vice chair Christopher Rants