

**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 Friday, February 4, 2000, in Room 118, 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 Danny Carroll, Geri Huser, and Janet Metcalf. Representative Minnette Doderer was excused.
- 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 9:10 a.m.
- ENGINEERING AND LAND SURVEYING EXAMINING BOARD** Gleen Coates and Kay Chapman represented the board. James Doyle, a retired engineer, was also present.
- ARC 9601A No questions on amendments to ch 2 concerning land surveys.
- Special review Doderer had requested a review of 1.4(5) concerning licensure by reciprocity. Coates outlined the requirements for licensure of applicants from another state or another country.
- Coates responded to Huser that foreign applicants must meet Iowa's requirements in the areas of education, experience and examination. The board, along with all other states, has adopted the National Council of Examiners for Engineering and Surveying (NCEES) examinations as the standard. An individual who is licensed in another country must pass the NCEES examinations in order to be licensed in Iowa. Coates assured Huser that foreign applicants meeting licensure requirements, including examination, have been licensed in Iowa.
- Special review On behalf of Representative Jenkins, Bradley requested a review of the continuing education requirement.
- Pointing out that many other states do not require continuing education and there is a need to keep engineering professionals in Iowa, Doyle requested elimination of Iowa's continuing education requirement for licensure renewal. Coates responded that continuing education is required by law and that the board's ch 3 outlines several activities that are eligible for professional development credit. Chapman added that Iowa has a system of on-line renewal of licensure, whereby the applicant merely attests to the completion of the continuing education requirement.
- Bradley urged Doyle to present his concerns to the board.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker represented the department.
- ARC 9597A Walker does not expect that the department will adopt the proposed amendment to 1.8 regarding mandatory waivers.
- ARC 9612A No action on proposed rent subsidy program amendments.
- ARC 9613A Proposed 78.32 expands Medicaid coverage of services provided by an AEA to include counseling, nursing and vision services.
- Walker informed Bartz that the services are being added at the request of the department of education. Bartz asked Walker to provide Royce with additional information regarding the fiscal impact of the amendment.
- ARC 9614A Amendments are proposed to 114.2 and 185.83(4) in response to the number of exceptions to policy that have been made in the admission criteria for the highly structured juvenile program. Walker advised Bartz that there is no similar program for young females.
- ARC 9615A No questions on proposed amendments to ch 152.
- ECONOMIC DEVELOPMENT DEPARTMENT** David Lyons and Melanie Johnson represented the department. Lyons, making his last appearance before the committee as a state official, acknowledged the importance of the work of the committee. Metcalf asked that the minutes reflect Lyons' praise for the experience and attitude of the ARRC staff. Several committee members expressed appreciation to Lyons for his service and wished him well.
- ARC 9598A No action on proposed ch 104, which Lyons believes will allow the state the flexibility to respond to opportunities essential to Iowa's economy.

**EMERGENCY MANAGEMENT DIVISION** Ellen Gordon and John Benson represented the division.

ARC 9633A The emergency adoption of the enhanced wireless 911 service plan allows for implementation and operation of an enhanced wireless 911 system. The surcharge of 50 cents per phone generated \$3.6 million in revenue and \$34,000 in interest in 1999.

- Metcalf commended the division on its progress. Gordon explained that phase I, which will be completed by February of 2001, will allow 911 calls from cell phones to go to a public safety answering point which will identify tower site and call-back number. When phase II is completed, the geographic location will also be identified. Benson stated that Iowa will be one of the first states to make wireless E911 available to all wireless carriers in the state.

**ENVIRONMENTAL PROTECTION COMMISSION** Randy Clark, Wayne Gieselman, Anne Preziosi, Pete Hamlin, and Catharine Fitzsimmons represented EPC. Elizabeth Henderson represented the Iowa Association of Business and Industry, and Jack Clark represented the Iowa Utilities Association.

ARC 9599A The emergency amendment to ch 65 extends the period of time in which animal feeding operations can apply manure if a manure management plan has been filed with the department but has not been approved. The extension became necessary because the department is unable to complete the review of the 2000 plans filed within the 60 days allowed by law.

Motion to refer Bartz moved a referral of 65.16(3) to the general assembly and requested the department to appear before the natural resources committee on February 15, 2000.

Motion carried The motion to refer land application of manure pending approval of manure management plans passed.

ARC 9536A The proposed amendment to 22.106(1) would increase the maximum annual Title V operating permit fee from \$24 per ton to \$29 per ton. Fitzsimmons clarified that the amendment does not increase the fee, but increases the cap on the fee, which is established annually by the commission.

Regulatory analysis Metcalf moved the department prepare a regulatory analysis.

- Fitzsimmons informed Bradley that the expanded program will expend most of the carryforward funds this year and fee increases will be needed. Hamlin stated that a six-month study of staff time and resources has revealed a need for the increase, which is below the presumptive fee of \$33.80 established by the federal government.

- Hamlin responded to Harper that the Title V program is closely scrutinized by the private sector through monthly contact meetings with industry and the public and quarterly spread showing budget and projected expenditures for 230 line items.

Henderson voiced the association's concerns about the 20 percent increase and how funds will be used.

Hamlin informed Bradley that last year there was an increase from \$22.10 to \$23.10, but that the fees, offset by carryforward funds, were actually lowered for three years.

Clark reported that Alliant Energy and MidAmerican Energy, the largest fee payers in the Title V program, although concerned about the Title V program, do not oppose the rule making.

Motion carried The committee voted in favor of requesting a regulatory analysis.

**GENERAL SERVICES DEPARTMENT** Julie Economaki and Scott Bertness represented the department.

ARC 9602A No action on 5.21, fees paid to newspapers. Kibbie asked that the minutes reflect the department's efforts to follow the rule-making procedures correctly and in a timely manner so that governments can plan accordingly.

**INSPECTIONS AND APPEALS DEPARTMENT** David Werning and Jennifer Komos represented the department.

ARC 9610A Proposed ch 54 provides for a quality award for nursing facilities.

- Carroll was informed that although 1000 to 1100 facilities could qualify for nomination, the department intends to make only one award. Royce advised Werning that in statutes, the singular includes the plural and the plural includes the singular. Carroll requested that the department consider other options, such as awarding a facility in each county or each region.

- Hedge suggested that the department remain flexible in order to recognize all outstanding facilities. Bradley concurred.

ARC 9611A Proposed 71.6(2) pertains to collection of food stamp overpayments. At the request of DHS, this amendment will delete the option of withholding from unemployment compensation, which is allowed by the federal government but is not cost-effective.

- Komos informed Carroll that the department has eight other options, including the highly effective federal tax intercept program. Werning reported that so far this state fiscal year \$253,000 has been collected in delinquent accounts and over \$1 million in overpayments. Carroll stated that the 10 percent error rate for the food stamp program includes 3 percent that are underawarded and 7 percent overawarded.

## Inspections and Appeals Department (continued)

•Huser requested more information before the option is deleted from the list, including why the deduction is limited to \$10 and whether that restriction is subject to waiver. Bradley observed that leaving the option on the list does not require the department to use it.

**LABOR SERVICES DIVISION** Kathleen Uehling and Gail Sheridan-Lucht represented the division.

ARC 9631A No questions on proposed amendments to ch 1.

ARC 9619A No action on 10.20 concerning OSHA standards for general industry.

ARC 9620A No action on 26.1 adopting OSHA standards for construction.

**WORKFORCE DEVELOPMENT DEPARTMENT** Joe Bervid and Renny Dohse represented the department.

ARC 9630A No questions on proposed ch 41 regarding requests for waivers.

ARC 9534A No questions on proposed 2.4 pertaining to requests for waivers.

**MEDICAL EXAMINERS BOARD** Kent Nebel represented the board.

ARC 9605A No questions on proposed ch 3.

**NATURAL RESOURCE COMMISSION** Steve Derman and Terry Little represented the commission. Representative Brunkhorst was also present.

ARC 9628A The emergency amendment to ch 51 corrects errors in the previous filing.

Special review A special review of policy on issuance of deer hunting licenses to landowners and tenants was requested by Brunkhorst who reported that a constituent landowner was required to apply for a deer hunting license 30 days before the season. Little responded that electronic licensing will enable the department to accept license applications until about 4 or 5 days before the start of the season and still have an opportunity to cure in the event of a system failure. Brunkhorst expressed a preference for license applications to be accepted until the season begins.

**NATURAL RESOURCES DEPARTMENT** Anne Preziosi represented the department.

ARC 9627A No questions on proposed ch 10 pertaining to waivers.

**PUBLIC HEALTH DEPARTMENT** Jennifer Hart and Judy Solberg represented the department.

ARC 9629A Radiation rules are updated annually in conformance with federal standards. Huser questioned the accuracy of the fee for food sterilization; Hart confirmed that the fee is correct.

ARC 9623A Solberg outlined proposed changes in the WIC program.

•Bartz inquired about the cereals included in the WIC program. Solberg explained the method by which national brands and store brands are approved. Bartz voiced concern that store brands of smaller groceries in rural Iowa may not be listed. Solberg agreed to provide Bartz with the name of the WIC coordinator in his district and the list of approved cereals.

**EDUCATION DEPARTMENT** Ted Stilwill represented the department.

Special review •Bartz requested a review of 6.17, the department's appeal procedures. From personal experience at a state board of education meeting, Bartz raised concerns that the procedures are in conflict with Iowa Code chapter 17A in that there was no opportunity to file briefs or present oral arguments, that the ALJ was coached by the department's legal counsel and that the open meetings law was violated. Stilwill responded that the state board of education appointed by the governor is the final decision maker and the department's appeal procedures do not require parents to hire legal representation to access the process. In its review of approximately 80 to 90 appeals per year, the state board views comments from parties or the public as prohibited ex parte communications. Bartz maintained that rules not in compliance with chapter 17A are not legal. Stilwill, explaining the department's understanding of the rationale for the procedures, stated that acceptance of briefs from both parties may be a possibility.

Motion to object Bartz moved an objection be imposed on 6.17.

•Rittmer was informed that the board generally upholds local decisions unless there is an injustice.

Gentry pointed out that because the department's statute does accord with 17A, a general referral in this case may be more appropriate than an objection.

Motion withdrawn Bartz withdrew the motion to object and asked for a special meeting to reconsider the issues. A special meeting was set for February 14, 2000, at 10 a.m.

Motion to refer Bartz moved a referral of the appeal procedures to the general assembly.

Motion carried The motion to refer 6.17 passed.

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TRANSPORTATION DEPARTMENT Julie Fitzgerald, Tim Crouch and Peggy Baer represented DOT.

ARC 9617A Fitzgerald pointed out how DOT's proposed waiver rules differ from those of other agencies and sought feedback on a provision that would extend a granted waiver to everyone.

•Metcalf expressed a preference for determinations to be made on a case-by-case basis.

•Huser pointed out that waivers for individuals that have unique circumstances may not be appropriate for everyone else.

ARC 9622A Proposed ch 452 provides for a reflective device for slow-moving vehicles drawn by horses or mules. Crouch displayed a sample of the reflective device, which is acceptable to the Amish and the department.

ARC 9593A No action on ch 831, the rail assistance revolving fund.

March agenda Carroll requested a review of 761—117.6(5) concerning outdoor advertising devices.

PERSONNEL DEPARTMENT Gregg Schochenmaier and Greg Cusack represented the department. David Vestal represented the Association of Counties.

Special review Bradley requested a review of IPERS coverage for mental health advocates in commitment hearings. Cusack stated that by statute public employees are covered by IPERS except for specific exceptions listed in the Code. In this instance, 2 of the 51 mental health advocates in the state requested IPERS coverage. IRS Form SS8 was completed and a compliance officer found that these positions, created under Iowa Code ch 229, are appointed by the courts and compensated by the counties. The department determined that mental health advocates are employees, not independent contractors, and that counties are responsible for their compensation, including IPERS. Vestal suggested that this issue go through the rule-making process. Cusack informed Hedge that IRS considers mental health advocates state employees, while the Iowa Code specifies that counties are responsible for their compensation. Kibbie observed that mental health advocates have saved counties a lot of money.

Motion to refer Bradley moved a referral to the general assembly.

Motion carried The motion to refer the matter to the legislature passed.

REVENUE AND FINANCE DEPARTMENT Although there was no formal review of rules, Bartz advised the department that unconditioned grain picks up moisture; therefore, since conditioning grain also dries it, fuel used to condition grain should be exempt from tax.

Committee Business Minutes of the December 1999 and January 2000 meetings were approved.

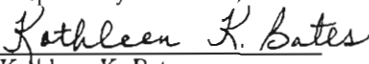
Waiver of Rules Bradley asked for committee support for a bill to provide for waivers or variances from administrative rules. Gentry commented that the governor's office has had input and is comfortable with legislative enactment of waiver provisions. Gentry stated that it is the intent of the governor's office to draft a model waiver rule that is good policy and legally sound and to encourage agencies to adopt that rule. It was agreed that agencies will be asked not to proceed with the adoption of waiver rules in March and April, pending the outcome of the legislation. Discussion followed concerning the requirement for a "summary," an "analysis," or a "report" of waivers granted; a request for a cost analysis; and the ability of the state to meet the needs of those who might otherwise be denied benefits.

Motion to sponsor bill Metcalf moved the committee sponsor the bill.

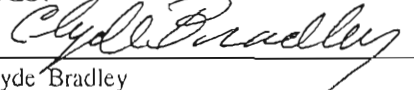
Motion carried The motion passed.

Adjourn The meeting was adjourned at 2:50 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair Clyde Bradley

  
Vice Chair H. Kay Hedge