

MINUTES OF THE SPECIAL MEETING OF THE

ADMINISTRATIVE RULES REVIEW COMMITTEE

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, June 9, 2003, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative George Eichhorn, Chair, and Senator Jeff Angelo, Vice Chair; Senators Michael Connolly, John P. Kibbie, and Donald Redfern; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Mark Kuhn. Senator Paul McKinley was excused.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant Editor; Brian Gentry, Administrative Rules Coordinator; Jennifer Vermeer and Debra Kozel of the Legislative Services Agency; caucus staff and other interested parties.

Convened Chair Eichhorn convened the meeting at 8:50 a.m.

Fiscal statements LSA presented an interim summary of fiscal impacts of the rules on this month's agenda. LSA has scheduled a meeting at 1:30 p.m. on June 19 to finalize the process by which agencies will report information to LSA. Royce clarified that this new report will provide an overview of the fiscal impact of all rules, and the committee will retain the option of requesting a detailed regulatory analysis.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Dennis Janssen represented the department. Shannon Strickler represented the Iowa Hospital Association.

ARC 2490B No questions on proposed 65.37(4) regarding food stamp eligibility for legal immigrants.

Special review Freudenberg presented rules to address Medicare crossover claims in hospitals and hospital-based skilled nursing facilities. Freudenberg estimated that the rules will result in savings to the state of \$4.2 million; however, the Centers for Medicare and Medicaid Services (CMS) must approve the state plan before the rules can be implemented. In accordance with the legislation, hospitals will be held harmless. Strickler voiced opposition to the rules, and asserted that the department is acting outside its authority in adopting the rules at this time.

Special review Discussion centered on the requirements of the statute, the department's plan, and committee options. Carroll pointed out that a delay is not necessary since the rules cannot be implemented without CMS approval. Heaton and Carroll expressed support for the department's response to the legislation. No action was taken.

Special review No questions on amendments adding services to the HCBS mental retardation waiver and removing limits on five-bed facilities.

Special review No questions on continuation of reimbursement to purchase of service and rehabilitative treatment service providers.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Jim Kenkel, Jim Saunders, and Jeff Quigle represented the department.

ARC 2488B No questions on proposed amendments to ch 5 relating to exits.

ARC 2487B Proposed amendments to ch 5 pertain to fire safety for hospitals, licensed health care facilities and assisted living facilities. Coveyou called attention to changes from the emergency rules adopted in March: Language referencing CMS certification of assisted living facilities was removed; and requirements for intermediate care facilities for the mentally retarded have been clarified. Carroll expressed frustration about requirements for compliance with the various life safety codes.

ARC 2481B No questions on amendments to 7.2 regarding certification and operation of evidentiary breath-testing equipment.

ARC 2482B No questions on amendments to ch 8 concerning criminal intelligence information.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Dr. John Schiltz represented the department.

ARC 2479B No questions on 60.4 regarding poultry exhibitions.

ARC 2480B No questions on amendments to ch 64 pertaining to health requirements for animals exhibited at fairs and district shows.

ARC 2457B No action on amendments relating to CWD monitoring and surveillance. Schiltz advised Frevert that natural resource commission rules (ch 104) address importation of deer carcasses. Schiltz reported that veterinarians have been alerted by E-mail about a virus originating in prairie dogs and Gambian giant rats, but there are no known cases of monkeypox in Iowa.

DENTAL EXAMINERS BOARD Jennifer Hart represented the board.

ARC 2473B No questions on proposed issuance of a temporary permit.

ARC 2474B Hart reported that the board has received many comments on proposed expanded functions for dental assistants. In general, dental assistants support the amendments; whereas, the Iowa Dental Association has expressed reservations.

ARC 2472B No questions on 27.7(8) regarding removal of restorations.

ECONOMIC DEVELOPMENT DEPARTMENT Melanie Johnson represented the department.

ARC 2461B No action on proposed amendments to rescind chapters that are no longer needed and to reflect the department's current three divisions instead of the former five divisions.

ENVIRONMENTAL PROTECTION COMMISSION Catharine Fitzsimmons, Jim McGraw, and Wayne Gieselman represented the commission.

ARC 2467B No action on proposed 22.1(2)"u" and "v" which exempt certain equipment from the construction permit requirement.

ARC 2465B SJR 5 nullified 28.1. Fitzsimmons reported that the commission is continuing its study of how best to protect the public from air pollutants and has received a petition for rule making.

ARC 2468B SJR 5 nullified 28.2. Ambient air sampling manual data is available online at the University of Iowa Hygienic Laboratory Web site.

ARC 2466B No action on amendments to chs 65, 70 to 72, and 75 prohibiting construction of confinement feeding operations on flood plains of major water sources.

NATURAL RESOURCE COMMISSION Steve Dermand, Jon Tack, John Walkowiak represented the commission.

ARC 2495B No questions on 15.13, wildlife violator compact.

ARC 2493B No questions on proposed amendments relating to use of decoys and stationary blinds on pools of the Mississippi River.

ARC 2596B No questions on the addition of the Pool Slough Wildlife Area to the list of wildlife refuges.

ARC 2494B No action on ch 74, forest land enhancement program.

ARC 2497B No questions on amendments to ch 99 regarding wild turkey fall hunting by residents.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 2462B No questions on proposed amendments to incorporate rules from ch 12 into ch 1.

ARC 2486B No questions on proposed amendments to reorganize chs 2, 3, 6, and 10.

ARC 2463B No questions on revisions to ch 4. Smithson pointed out that a change from the notice was made to conform to a statutory change regarding reporting of campaign property.

ARC 2478B No questions on proposed amendments relating to contested case procedures and personal financial disclosure.

PROFESSIONAL LICENSURE DIVISION Lois Churchill represented the division.

ARC 2483B No action on proposed amendments to cosmetology arts and sciences examiners' rules.

ARC 2484B No questions on proposed amendments relating to hearing aid dispensers.

ARC 2485B No questions on proposed amendments to psychology examiners' rules.

ARC 2512B No questions on proposed amendments to speech pathology and audiology examiners' rules.

Committee business Kibbie moved approval of the minutes of the May meeting. The motion carried.

The date of the next meeting was set for Tuesday, July 8.

Patricia Lantz, general counsel for the department of administrative services, provided an overview of proposed implementation of HF 534 and agreed to advise Royce of time frames.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

ARC 2469B Bervid distributed a summary of the financial impact of 23.2(6)"a" and "c" and reviewed the history of the rule.

PERSONNEL DEPARTMENT Gregg Schochenmaier represented the department.

ARC 2508B No questions on amendments to ch 21.

ARC 2509B No questions on proposed 21.33(4), which was requested by the benefits advisory committee.

PROFESSIONAL LICENSING AND REGULATION DIVISION Pam Griebel and Kay Halloran represented the division.

ARC 2510B Proposed 1.9 pertains to the division's newsletter. Publication costs are financed through advertising. The attorney general's office provided guidance as to acceptable advertising.

TRANSPORTATION DEPARTMENT John Hey represented the department.

ARC 2464B No action on proposed amendments pertaining to intermodal projects, railroads, highway-railroad grade crossing surface repair fund, and highway grade crossing safety fund.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Mark Smith represented the department.

ARC 2476B No questions on ch 9 regarding indigent defense claims processing.

- UTILITIES DIVISION** Gary Stump and Jennifer Johnson represented the division. Other interested parties included Serge Garrison of the Iowa Rural Water Association, Julie Smith of the Iowa Association of Municipalities, Mike Payette of Union Pacific Railroad, Jack Clark of the Iowa Utility Association, and Jim West of Burlington Northern Santa Fe.
- ARC 2460B No action on amendments to electric franchise rules.
- ARC 2459B No action on proposed amendments to chs 15 and 20 relating to alternate energy purchase programs.
- ARC 2507B No action on 22.24 regarding efficient use of telephone numbering resources.
- ARC 2506B Ch 42 pertains to crossing of railroad rights-of-way. Stump reported that the board has attempted to balance the interests of the utilities and the railroads and acknowledges that work remains to be done, particularly in the area of insurance requirements.
- Garrison requested that 42.9(3) and 42.9(4), which relate to excess liability coverage and railroad protective liability insurance, be delayed until the end of the next legislative session in order to allow additional time for small utilities to negotiate with the railroads. Small utilities are concerned about the cost and availability of insurance. Smith reviewed discussions that have taken place between small utilities and the railroads.
- Payette expressed support for the rules and noted that these rules represent compromise on the part of railroads following three years of working with the utilities. Payette noted that railroad protective liability insurance does not have the exclusions found in other policies and is a one-time expense during construction, not an ongoing expense. Payette confirmed that railroads are willing to discuss variances on a case-by-case basis, rather than through rules.
- Heaton asked the department of transportation to provide information about insurance requirements when utilities cross highways.
- Motion to delay Angelo moved a 70-day delay on subrules 42.9(3) and 42.9(4). West stated that delaying the two provisions would have the effect of delaying the entire chapter since the statute requires that the rules address the amount and scope of insurance; delaying only the two provisions would authorize a taking without the required protection.
- Motion carried Following discussion, the motion carried.
- Stump expressed the view that during the period of the delay insurance requirements would be met through individual negotiations.
- PUBLIC HEALTH DEPARTMENT** Ray Jones represented the department. Linda Goeldner of the Iowa Nurses Association and Shannon Strickler of the Iowa Hospital Association were also present.
- ARC 2491B Jones stated that the Iowa Nurses Association was inadvertently omitted from the list of organizations participating in the development of proposed ch 142 concerning out-of-hospital do-not-resuscitate (DNR) orders. Strickler voiced support for the rules. Frevert expressed concern about DNR orders contained in medical records not being honored. Because persons authorized to revoke the DNR order must be listed on the form, Eichhorn expressed concern about potential conflicts if persons with durable power of attorney for medical decisions are not listed on the form.
- EDUCATIONAL EXAMINERS BOARD** Susan Fischer represented the board.
- ARC 2501B No questions on proposed 14.143(3) regarding abuse identification training.
- ARC 2502B No questions on proposed 17.7(3), which provides a prorated fee structure for adding the evaluator endorsement to an administrator's license.
- ARC 2503B No questions on proposed 21.5, which pertains to abuse identification training for behind-the-wheel driving instructors.
- EDUCATION DEPARTMENT** Carol Greta represented the department. Geoff Maurer and Susan Noonan of Direct Driving Instruction were also present.
- ARC 2499B Proposed amendments to ch 12 pertain to professional development. Carroll challenged the statutory authority for inclusion of professional development in ch 12, which sets the requirements for accreditation of schools. Greta acknowledged that the authorizing statute for much of ch 12, Iowa Code section 256.17, was repealed in 1988. Carroll advised the department that the accreditation rules should include only statutorily mandated accreditation requirements.
- ARC 2500B No action on ch 19, which establishes procedures for appealing attendance center decisions.
- ARC 2498B No questions on standards for community college-employed faculty.
- Special review Angelo requested a review of fees for driver education. Greta stated that districts are required to waive fees for indigent families, even when the district contracts with private providers for driver education, and confirmed that the waiver applies whether the course is offered in the regular school year or in the summer.
- Heaton stated that although the state is responsible for children in foster care, school districts are covering their driver education fees.

Education Department (continued)

Maurer indicated that 38 to 42 percent of the students in the Red Oak and Glenwood districts are eligible for free or reduced-price lunches and suggested that students who cannot afford the fee wait until the age of 18 when completion of the course is not necessary for licensure. Noonan added that fees for driver education are affected by the number of indigent students.

There was general agreement that this is a legislative issue that cannot be addressed through rules.

Motion to refer

Angelo moved a referral of the matter to the general assembly.

Carroll suggested that behind-the-wheel instructors for home-schooled students be included in the referral.

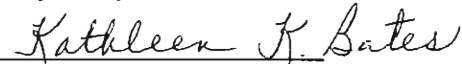
Motion carried

The motion carried.

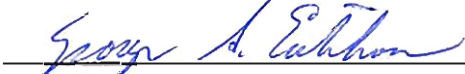
Adjourned


The meeting was adjourned at 4:30 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair George Eichhorn


Vice Chair Jeff Angelo