

**MINUTES OF THE OCTOBER 2001 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting:** The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, October 9, and Wednesday, October 10, 2001, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Senator Merlin E. Bartz, Chair; Representative Clyde Bradley, Vice Chair; Senators Patricia Harper, JoAnn Johnson, John P. Kibbie, and Sheldon Rittner; Representatives Danny Carroll, Marcella Frevert, Janet Metcalf, and Paul Scherrman.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Bruce Carr and Teresa VanderLinden, Assistants; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened** Chair Bartz convened the meeting at 10 a.m.
- IOWA FINANCE AUTHORITY** Loyd Ogle and Mike Tramontina represented the authority. Other interested parties included Jim Conlin and Kris Saddoris of Conlin Properties and Jim Cain of the Iowa Coalition for Housing and the Homeless.
- ARC 0764B** Tramontina distributed the proposed 2002 QAP, annotated with public comments, and summarized changes that would be recommended to the board. To illustrate the financial feasibility of projects intended to serve populations whose income is SSI or SSI plus a small income, Tramontina provided examples of successful projects by both nonprofit and for-profit developers.
- Bradley advised IFA that receipt of written materials a few days in advance of the meeting would have been preferable. Metcalf concurred with Bradley and expressed disappointment that IFA's response to committee requests was not available prior to the meeting. Kibbie suggested that IFA be asked to return Wednesday morning. Royce noted that IFA's rules will be back on the agenda after the board adopts the 2002 QAP.
- Conlin expressed concern that the program is moving in the direction of more projects for the subsidized low-income population and that such projects are not economically feasible. Conlin urged sound business practices and underwriting standards and added a reminder that nonprofit entities do not pay property taxes. Kibbie noted that some hard-to-house people, such as the disabled, have a more secure income than working people who may lose jobs.
- When IFA returned on the second day of the meeting, Metcalf inquired about comments pertaining to the one-year viability of local contributing effort, reliance upon other subsidies to meet rents, material participation of qualified nonprofit entities, the tie-breaking procedure, and IFA's provision of credits for the 40 percent income level population. Tramontina responded that the federal program mandates that states favor projects which serve the lowest income for the longest period and explained that Iowa's scoring encourages for-profit and not-for-profit partnerships in which the nonprofit entity is responsible for 10 percent of the development fee. Tramontina addressed Johnson's concern that units for the 40 percent level may result in fewer interested developers by explaining that the federal Section 8 vouchers or SSI payments can cover the rent at the 40 percent level.
- Cain reported that the Iowa Coalition for Housing and the Homeless has been under contract with HUD for the past four years to provide technical assistance to nonprofit entities across the state. Cain provided examples of lowest income housing developed with layered financing and clarified that both for-profit and nonprofit entities must demonstrate the financial feasibility of the project.
- Conlin distributed written comments and reiterated the need for sound economic judgment.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Mary Ellen Imlau represented the department.
- ARC 0933B** No questions on proposed 25.13(2)"j" regarding the county management plan appeal process.
- ARC 0934B** No questions on proposed amendments to ch 25 relating to risk pool funding.
- ARC 0956B** No questions on the rescission of ch 25, transitional child care program.
- ARC 0957B** No questions on the amendment to 65.1 regarding suspension of food stamp benefits.
- ARC 0958B** No action on amendments to the food stamp program to comply with federal regulations. Freudenberg advised Bartz that approximately 10 of the 165 clients in the workfare program for able-bodied adults enter full-time employment each month.
- ARC 0959B** No questions on Medicaid coverage for women without creditable health insurance coverage who are receiving treatment for cervical or breast cancer.
- ARC 0960B** Amendments to ch 75 relate to statewide average costs and charges for nursing care. Johnson asked the department to advise employees statewide not to encourage residents to drop long-term care insurance.

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Human Services Department (continued)

- ARC 0961B No questions on proposed amendments concerning independent laboratories.
- ARC 0962B No questions on proposed corrective amendment to 77.40.
- ARC 0935B No action on proposed prior authorization for Medicaid payment for certain drugs.
- ARC 0936B No questions on Medicaid reimbursement rates.
- ARC 0964B No questions on Medicaid waiver services.
- ARC 0965B No action on amendments to ch 88 relating to accreditation of managed health care providers.
- ARC 0966B No action on amendments to ch 93 increasing mileage reimbursement and extending the time limit for postsecondary education for PROMISE JOBS recipients.
- ARC 0967B No action on 110.35 concerning group child care homes. Freudenberg advised Frevert that child care provider registration indicates the existence of some minimum safeguards, for example, fire extinguishers, exit signs, immunization records, CPR and first aid.
- ARC 0968B No questions on amendments to ch 130 relative to child care services.
- ARC 0969B No questions on proposed amendments to ch 152 pertaining to contracting for rehabilitative treatment supportive services(RTSS).
- ARC 0970B No questions on the increase in payment rates to foster family and adoptive homes.
- ARC 0971B No questions on 162.3(1) concerning nursing facility conversion grants.
- ARC 0972B No questions on amendments to chs 176 and 177 pertaining to access to adult abuse information.
- ARC 0973B No questions on the rescission of ch 179, wrap-around funding program.
- ARC 0974B No questions on 185.112(1)"k," implementing the RTSS rate freeze.

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

ENVIRONMENTAL PROTECTION COMMISSION Ralph Turkle and Wayne Gieselman represented the commission.

- ARC 0940B No action on amendments to ch 61 relating to water quality standards. A change from the notice involves the antidegradation procedures exemption relating to repair and maintenance of drainage ditches. EPA recommends deletion of the exemption. After receipt of significant public comment from affected parties, the commission established a subcommittee to address concerns of drainage district associations and the EPA. Turkle assured Metcalf there is no EPA time limit or penalty involved.
- ARC 0939B This amendment incorporates by reference the concentrated animal feeding operation registration program. To date, 990 registrations have been received and 202 environmental assessments have been completed. In response to Johnson's inquiry, Gieselman outlined the criteria, e.g., location, number of cattle, distance from watercourses, slope of land, type of soil, by which the department identifies and prioritizes sites as having an adverse effect on the environment and then establishes compliance schedules. Johnson was advised that EQUIP assistance is available for facilities with fewer than 1,000 animals, but no assistance is available for operations requiring a permit. Frevert commended the commission for the education tour in northwest Iowa.
- ARC 0938B Proposed 65.16(2) would require owners of confinement feeding operations to file manure management plans 30 days prior to construction. Kibbie stated that the plan should be approved, not just filed, prior to beginning construction. Bradley concurred and expressed a preference for requiring a 60-day lead time and submission of drawings, site specifications and land analysis for input from the county engineer. Rittmer, Frevert and Scherrman expressed support for more local control.
- ARC 0941B No department representative was present for the review.

NATURAL RESOURCE COMMISSION Arnie Sohn, Steve Dermand, Janet Ott, Don Bonneau, and Richard Bishop represented the commission. Dan Kleen represented the Iowa OHV Association.

- ARC 0919B Proposed ch 28 pertains to the snowmobile and all-terrain vehicle registration revenue cost-share program. Sohn reported that these rules incorporate the commission's ATV acquisition policies which require local sponsorship, operational plans and soil erosion containment. In response to Frevert's concern about liability, Sohn stated that the department requires \$1 million in liability insurance with the state as a coinsured party. Kleen commented on age restrictions and safety measures and differentiated between single-operator ATVs and two-seated utility implements. Bartz requested further information from the department to clarify differences between ATVs and utility vehicles.
- ARC 0920B No questions on proposed removal of Badger Creek from list of shooting ranges.
- ARC 0924B No questions on amendments to ch 61 regarding state parks and recreation areas.
- ARC 0922B No questions on proposed amendments to ch 81, sport fishing rules.
- ARC 0923B No questions on season dates for waterfowl and coot hunting.
- ARC 0921B No questions on wild turkey spring hunting.

Natural Resource Commission (continued)

ARC 0995B No action on proposed ch 114 concerning permitting for professional pest control companies.

UTILITIES DIVISION Chuck Seel represented the utilities board.

Special review Carroll requested a review of billing procedures in response to a consumer's complaint that estimates made at one rate might be adjusted at a lower rate. Seel reported that the consumer has the option of submitting a meter reading to avoid estimated bills.

TRANSPORTATION DEPARTMENT Thomas Reis, Donna Buchwald, Scott Neubaur, and Alan Beddow represented the department.

ARC 0902B These amendments include adoption of standard specifications for highway and bridge construction and rescission of ch 126, contracts set aside for disadvantaged business enterprises. The department is applying DBE requirements to all contracts statewide. Discussion centered on affirmative action, equal employment and DBE requirements. Bartz asked the department to provide a citation of the federal regulation that excludes vehicles leased by a prime contractor to a DBE subcontractor from counting toward DBE participation.

ARC 0932B No questions on proposed ch 181 concerning standards for permitting certain implements of husbandry.

ARC 0930B No action on proposed amendments to ch 717 pertaining to general aviation airport infrastructure.

REVENUE AND FINANCE DEPARTMENT Carl Castelda and Ed Henderson represented the department.

ARC 0944B No questions on proposed sales and use tax amendments.

ARC 0936B No action on amendments resulting from Executive Order Number 8.

ARC 0937B No questions on 52.1(9) relating to foreign corporations storing goods in Iowa warehouses.

ARC 0980B No questions on proposed amendments pertaining to investment tax credits.

ARC 0909B No questions 53.6 and 59.6 regarding taxation of income from sale of obligations issued by the state or its subdivisions.

ARC 0908B No questions on proposed amendments relating to motor fuel.

ARC 0907B No action on proposed amendments relating to property tax and manufactured home tax.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

ARC 0950B No questions on proposed amendments to chs 23 and 24.

UTILITIES DIVISION Gary Stump and Cecil Wright represented the division.

ARC 0947B No questions on definition of "pipeline construction," 9.1(3)"f."

ARC 0991B Proposed amendments to chs 19 and 20 clarify rights and remedies for gas and electric customers.

ARC 0992B Proposed amendments to chs 19 and 20 pertain to application of payments to level payment accounts.

ARC 0994B No questions on amendments relating to disconnection and reconnection of gas and electric utilities.

ARC 0993B No action on proposed ch 41 concerning filing requirements for a ratemaking principles proceeding.

INSURANCE DIVISION Craig Goettsch, Roseann Mead and Susan Voss represented the division.

ARC 0948B Proposed ch 10, division I, pertains to licensing of insurance producers in conformance with the new producer licensing model adopted last session. Mead reported that these rules will facilitate reciprocal licensing among states. Johnson asked Mead to check on a communication from NCSL recommending a change in Iowa's statute.

ARC 0949B No questions on proposed termination of ch 38, coordination of benefits.

ARC 0946B No questions on electronic filing of investment advisor registration.

ARC 0931B Amendments to ch 77 relate to multiple employer welfare arrangements. At the time an application is filed, each MEWA must provide the division with a plan for dealing with a payment problem of the members. Waivers of the capital surplus requirements may be granted on a case-by-case basis.

ARC 0865B NAIC drafted the model for the proposed amendments to ch 90, which pertain to disclosure of nonpublic personal health information.

INSPECTIONS AND APPEALS DEPARTMENT Nancy Ruzicka, Marvin Tooman, Deb Anderson, Jennifer Fiihr and Jean Davis represented the department. Chris Harshbarger, Dennis Westerman and Norman Glaw represented Iowa Ducks Unlimited. Representative Willard Jenkins was also present.

ARC 0979B No questions on amendments to ch 51 relating to hospital pharmaceutical service.

ARC 0978B No questions on 51.28(1)"b"(2) pertaining to records of staff authorized to administer anesthesia.

Inspections and Appeals Department (continued)

ARC 0892B

Proposed amendments to chs 100 and 102 govern bingo and raffles. The department has taken the position that the common practice of discounting raffle tickets and bingo games is illegal but has not adopted a rule to that effect. The department has taken no enforcement actions, but does advise raffle applicants of its interpretation of the statute. Royce cautioned against general application of a policy that has not been adopted as a rule. Gentry and Davis concurred that the department needs to proceed with a rule making.

Harshbarger raised concerns about Iowa Code chapter 99B and voiced opposition to any rule that would reduce funds raised by charities. Harshbarger distributed a letter which he asked be entered into the record; a copy is on file in the office of the administrative code editor. Jenkins expressed support for charities and indicated that the legislature needs to consider this issue.

Following discussion, the consensus was that the department should, as soon as possible, initiate a rule making regarding discounting of raffle tickets and bingo games and a committee should be formed to draft a bill to amend Iowa Code chapter 99B.

GENERAL SERVICES DEPARTMENT

Stanley Kuhn represented the department. Michael Savala, Roger Baysden and Clint Schmidt represented the department of corrections. Denny Applegate Jr. represented OSE Office Furniture. Jan Corderman of AFSCME was also present.

Special review

Kuhn reported that the department renewed TSB contracts but not other contracts for office furniture. Kuhn explained that a contract amounts to an agreed-upon price at which agencies can buy products directly from the vendor without going through the department. Without contracts, agencies can either go through prison industries or ask the department for competitive bidding. Kuhn indicated a desire to limit procurement choices and stated that the department's goal is to work with prison industries to develop standards for office components. Kuhn noted, however, that many entities, e.g., DOT, Lottery, ICN, Regents, Fair Board, and other branches of government, have independent procurement authority.

Savala clarified that prison industries will store and inventory surplus office components to be used by state agencies in lieu of purchasing new product. Discussion about agency use of prison industries ensued. Metcalf voiced concern about the department's cancellation of contracts with private industry. Bartz noted no reference to TSBs in Iowa Code section 904.808 and asked the department to send Royce written justification for selective termination of contracts.

On behalf of OSE, which has had a contract with the state since 1994, Applegate criticized the department's decision to terminate contracts and noted that the contract does not obligate the state to purchase from OSE. Applegate contended that prison industries products are required by Code to be comparable in quality and price to those available from alternative sources; the contracts ensure that agencies know the comparable price. Applegate provided examples of OSE bids for revenue and finance and DOT acquisitions with prices significantly less than the prison industries bid and offered a comparison that showed OSE prices to be lower than those of the TSB. Applegate clarified the meanings of recycling, refurbishing and remanufacturing. Members expressed concern about some agency bidding practices.

Baysden noted that prison industries is self-funded and plays an important role in the rehabilitation of inmates. Baysden held that in the revenue and finance acquisition, the original bid was for new product and the lower bid was for refurbished product. Corderman voiced opposition to any cut in prison work programs.

Kibbie was informed that a rule would be forthcoming by the end of the calendar year. Metcalf asked Baysden to provide Royce information about prison industries' products. Since there was no rule under review, Bartz requested a voluntary fiscal analysis of the department's policy.

ELDER AFFAIRS DEPARTMENT Excused from review.

INFORMATION TECHNOLOGY DEPARTMENT Excused from review.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

ARC 0945B

No questions on 13.6 regarding automated dispensing systems.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

ARC 0987B

Amendments are proposed to the licensure rules governing marital and family therapists and mental health counselors. Metcalf suggested that in each relevant rule, the degree requirements appear before course hour requirements.

ARC 0953B

No action on rules pertaining to dietitians. Bledsoe pointed out that provisions for temporary licensure have been deleted.

ARC 0990B

No action on proposed revision of licensure rules for physical and occupational therapists.

ARC 0989B

No questions on proposed chs 205 to 209.

ARC 0951B

No questions on continuing education rules pertaining to social workers.

Professional Licensure Division (continued)

- ARC 0954B No questions on 281.3(1)"f."
 ARC 0952B No questions on licensure rules for speech pathologists and audiologists.
 ARC 0988B No action on licensure rules for athletic trainers. Metcalf suggested the practice of each profession be defined in the licensure rules.

PUBLIC HEALTH DEPARTMENT Ed Schor, Cort Lohff, Barb Nervig, Rita Gergely, and Dennis Klein represented the department.

- ARC 0998B Proposed amendments to ch 1 relate to communicable diseases and reporting of biological, chemical, and radiological terrorism events.
 ARC 0999B No questions on the amendment to 1.3(1) to include diseases required to be reported, through the end of the calendar year, to the University of Iowa Hygienic Laboratory for a special study.
 ARC 0918B No action on 1.6(5) relating to reporting of sexually transmitted diseases.
 ARC 0996B Proposed amendments to ch 5 relate to maternal deaths. Metcalf suggested changing "within one year of delivery" to "one year after delivery."
 ARC 0981B Ch 69 relates to the lead hazard notification process. Gergely indicated that the rules require contractors engaged in renovating, remodeling and repainting homes to notify property owners and occupants of hazards.
 ARC 0986B No action on ch 70 relative to lead professional certification.
 ARC 0984B No questions on ch 72 concerning lead abatement and childhood lead poisoning prevention.
 ARC 0985B Proposed amendments to ch 8 specify the fee for the state medical examiners acting in the capacity of a county medical examiner. Klein reported that each county should hire a county medical examiner or use the services of the medical examiner of a neighboring county. Discussion continued regarding deaths requiring an autopsy and responsibility for costs of an autopsy.
 ARC 0983B Klein outlined the proposed new chapter 127 concerning county medical examiners.

ECONOMIC DEVELOPMENT DEPARTMENT Rick Schloemer represented the department.

- ARC 0915B No action on proposed amendments to ch 7 relating to use of funds by community colleges for entrepreneurial training.
 ARC 0916B No questions on proposed amendments to ch 11 concerning the certified school to career program.
 ARC 0917B No action on proposed additional points on applications for financial assistance in brownfield, blighted or distressed areas.

EDUCATIONAL EXAMINERS BOARD Jean Davis of the attorney general's office, Jane Heinsen and Susan Fischer represented the board.

- ARC 0910B The proposed amendments to 12.2 regarding criteria for licensee discipline or license denial based on a criminal conviction or founded reports of child abuse generated discussion. Bartz expressed concern that the board will consider factors in determining whether to revoke or suspend a license in the case of offenses for which the board may not issue a license. Davis responded that the board is required by Iowa Code section 272.14 to take factors into consideration and offered assurance that in practice the board is extremely cautious in cases involving child abuse or sexual abuse. Bartz suggested the board propose legislation to resolve apparent differences between 272.6 and 272.14. Johnson concurred with concerns raised by Bartz.
 ARC 0925B Rule 14.113 pertains to the master educator's license. Royce advised Fischer that the department's grandfathering policy needs to be stated in the rules.
 ARC 0912B No action on amendments to ch 15 which terminate selected instructional endorsements and institute competency-based framework for special education endorsements.

EDUCATION DEPARTMENT Ann McCarthy represented the department.

- ARC 0896B No action on amendments to ch 12 which incorporate programs for at-risk students.
 ARC 0897B No questions on the rescission of ch 61.
 ARC 0898B Amendments to ch 72 relate to accreditation of area education agencies. References to inclusive schools do not appear in the adopted rules. McCarthy explained use of conditional accreditation which may be granted to portions of an agency's services.
 ARC 0899B Amendments to ch 79 pertain to practitioner and administrator preparation programs, which are performance-based rather than curriculum-based. Frevert expressed a concern about evaluation of performance; McCarthy responded that evaluation models are being developed.
 ARC 0900B No action on ch 83 pertaining to the beginning teacher mentoring program.

PERSONNEL DEPARTMENT Greg Cusack and Kelly Lovell represented the department.

- ARC 0904B No action on 21.33 regarding the benefits advisory committee.

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PUBLIC EMPLOYMENT RELATIONS BOARD Jan Berry represented the board.

ARC 0905B No action on 1.8 relating to increase in per diem fee for fact finders, arbitrators and teacher termination adjudicators.

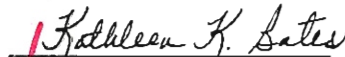
ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.


ARC 0906B Smithson reported that proposed amendments to ch 12 would allow board members and staff to attend events and make campaign contributions up to \$100 per candidate per year. Smithson noted that political activity on the part of board members is not prohibited by statute. Johnson expressed reservations about the perception that may result from contributions made to a candidate under the jurisdiction of a member of the board. Kibbie voiced support for allowing everyone to participate in the political process. Bradley expressed support for allowing attendance at political events but opposed direct contributions to a candidate. Bartz indicated that he is not comfortable with contributions to candidates under the jurisdiction of the board but would not oppose or limit contributions to a political party or a federal candidate. Rittmer indicated that limited contributions to a party would be more acceptable than direct contributions to a candidate under the jurisdiction of the board.

ARC 0901B No questions on ch 15 concerning waiver of administrative rules.

Adjourn The meeting was adjourned at 12:30 p.m.

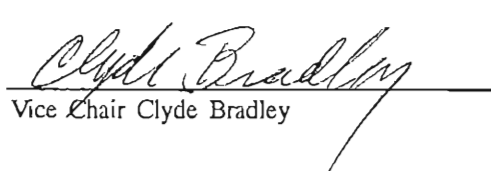
Respectfully submitted,


Kathleen K. Bates


Bruce Carr/ Teresa VanderLinden

APPROVED:


Chair Merlin E. Bartz


Vice Chair Clyde Bradley