

# 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 Friday, February 21, 2003, in Room 116, State Capitol, Des Moines, Iowa.

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

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested parties.

Convened: Senator Kibbie convened the meeting at 8 a.m.

Committee business: Kibbie welcomed new members, Senators Connolly and Redfern and Representatives Eichhorn and Heaton, and asked for nominations for a chairperson to serve until April 30, 2003. Redfern nominated Angelo, and Carroll seconded the nomination. There being no other nominations, Kibbie declared Angelo elected by unanimous ballot.

Angelo requested nominations for vice chair. Heaton nominated Eichhorn, and Kuhn seconded the nomination. There being no other nominations, Angelo declared Eichhorn elected by unanimous ballot.

Kibbie moved approval of the minutes of the January meeting, and Frevert seconded the motion. The motion carried.

The next meeting of the committee was set for Monday, March 10, 2003, at 8 a.m. Gentry summarized progress on the four executive orders pertaining to administrative rules. The first tier of the process, agency review of rules and assessment of proposed changes, has been completed. A rule-making manual has been drafted and distributed to agencies. A rule-writing academy will be offered this fall. The summary of waivers requested and granted is being revised to provide more detailed information.

**ENVIRONMENTAL PROTECTION COMMISSION** Ralph Turkle, Wayne Ferrand, Kelly Stone, Wayne Gieselman, Jon Tack, and Mel Pins represented the commission. Stuart Feldstein represented the city of Garnavillo. Other interested parties included Representative John Whitaker, Frank Jones of SE Iowa CCI, Calvin Rozenboom of Iowa Farm Bureau, Stephanie Weisenbach of the Humane Society of the U.S., Elizabeth Horton Plasket of the Iowa Environmental Council, Gary Hoskey of the Iowa Farmers Union, former Environmental Protection Commission member James Braun, Barbara Klubal, and Robin Pruisner.

ARC 2228B Proposed amendments to ch 61 would expand designations for Class A waters to include: primary contact, secondary contact and children's recreational use. The amendments would change the bacteria indicator from fecal coliform to E. coli, adopt by reference the surface water classification document, correct names and locations of water bodies, and add a Class B(CW) Cold Water use designation to a one-mile segment of the upper portion of South Cedar Creek in Clayton County near Garnavillo. Turkle indicated that Garnavillo discharges treated wastewater into that segment of stream and noted that the CW designation will require more stringent effluent limitations on ammonia, resulting in increased costs to Garnavillo. Feldstein distributed information including a map of the area and preliminary project costs and user charges. Feldstein maintained that the stream review was conducted in November according to methodology developed for warm water streams and intended for reviews conducted no later than mid-October. Feldstein reported that no cold water species were identified in the review and noted the existence of conflicting information from prior reviews and the fisheries bureau's Web site.

Motion Kibbie moved that a regulatory analysis of Item 8 be requested. Redfern seconded the motion.

Motion carried The motion carried. A regulatory analysis of Item 8 must be completed and published prior to adoption of the amendment affecting the designation of the segment of the South Cedar Creek near Garnavillo.

ARC 2241B No questions on 64.13(2)"a" and "b" pertaining to permit coverage for storm sewer systems.

ARC 2229B Stone outlined comments on proposed amendments prohibiting construction of confinement feeding operations in the 100-year flood plain of major water sources. Stone noted that the definition of "one hundred year flood plain" proposed in chs 65 and 70 differs from statute and will be removed.

ARC 2242B No questions on 65.10(3) to 65.10(9) concerning evaluation of proposed confinement feeding operations by county boards of supervisors using the master matrix.

ARC 2240B Tack reported that all concerns relating to beverage container deposits have been addressed and parties are in agreement.

*See file for letter from Royce correcting the request for Reg. analysis in protected stream (Cold Water Item 7, not in Item 8)*

**Environmental Protection Commission (continued)**

**ARC 2230B** No action on proposed ch 116 pertaining to registration of waste tire haulers. Carroll and Heaton commended the department's efforts in cleaning up stockpiles and developing markets that use waste tires.

**ARC 2321B** The master matrix will become effective March 1, 2003. Gieselman reviewed the development of the master matrix directed by SF 2293. An advisory committee representing diverse interests made recommendations based on consensus, but was unable to reach consensus on four issues. The commission held 27 hearings across the state and received approximately 300 comments on those issues. An informal attorney general's opinion supported the commission's legal authority to require minimum passing scores in each of the subcategories of the matrix.

Angelo expressed disappointment in the use of the consensus approach and in the definition of critical public use areas. Carroll viewed the requirement for minimum scores in each of the subcategories as contrary to legislative intent and requested copies of comments the department received concerning the use of subcategories. McKinley agreed that the crux of the issue is whether the matrix reflects legislative intent. Gentry observed that in deciding to sign a bill, the governor must rely on the principles of statutory construction to determine intent. Frevert expressed support for the work of the committee and the consensus approach. Kibbie asserted that the matrix will in no way be harmful to family farmers. Kuhn reviewed the role of the public in the compromise solution of the matrix and stated that an objection at this time would undercut the 51 county boards of supervisors that have already approved using the matrix. Kuhn stated that citizens do not want this issue resolved in the courts.

Public comment was accepted. Whitaker clarified the difference between a checklist and a matrix and expressed support for the consensus approach. Jones addressed the importance of all the subcategories and asked that the matrix go into effect without objection. Rozenboom expressed opposition to the establishment of subcategories and to the definition of critical public use areas and warned of possible harmful effects of the matrix on small producers and family farms. Voicing concern for the environment, Klubal urged the committee not to impose an objection. Weisenbach asked that the site-specific criteria of the matrix be given a fair trial and that no objection be imposed. Praisner explained that the consensus approach was agreed upon by the committee in working with federal mediators. Praisner noted that a definition was added to the master matrix rules because the term "critical public use areas" was used in the interim matrix, but not defined. Plasket submitted a statement in support of the matrix from the Des Moines Water Works and the Iowa Association of Water Agencies to be incorporated into the minutes. Plasket implored the committee not to impose an objection. Braun pointed out the potential costs of an objection to taxpayers, and instead urged legislators to change the law if the wording of SF 2293 does not accurately reflect the intent of the legislature. Hoskey urged the committee to restrain from objecting to the matrix.

**NATURAL RESOURCE COMMISSION** Richard Bishop represented the commission.

**ARC 2226B** No action on amendments to ch 22 concerning wildlife habitat on private lands.

**ARC 2227B** Excused from review.

**CITY FINANCE COMMITTEE** Steve Ford represented the committee.

**Special review** Ch 2 pertains to local budgeting. Ford explained that workshops have been held around the state and software is provided to assist communities, and paper filings are still available to communities that do not choose to file electronically. No action was taken.

**PROFESSIONAL LICENSURE DIVISION** Marge Bledsoe represented the division.

**ARC 2225B** No action on proposed amendments to ch 100 addressing permanent identification of bodies and cremains.

**Special review** The board uses the national certification examination for licensure of massage therapists. This examination includes modalities such as energy fields and aroma therapy; however, in Iowa, only hands-on modalities are recognized as the practice of massage therapy. Massage therapists may practice those other modalities, but the board does not regulate the practice of them or give continuing education credit for them. Bledsoe reported that the average passing rate for the national certification examination is 73.2 percent; whereas the rate for Iowans is 77.6 percent. Bledsoe indicated that other national examinations will be reviewed by the board.

**REVENUE AND FINANCE DEPARTMENT** Dick Stradley represented the department.

**Special review** Stradley provided an overview of how primary use determines the classification of property as residential or agricultural and noted that if the assessor's judgment is questioned, a local board of review resolves the dispute.

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

ARC 2249B Due to a decrease in federal funding, 64.156(2) was amended to extend the period of validity of the pseudorabies monitoring test.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department. Deb Westvold represented the Iowa State Association of Counties.

ARC 2235B No action on amendments to ch 41 pertaining to assistance for battered aliens.

ARC 2244B No questions on the rescission of ch 48.

ARC 2236B No action on amendments implementing cost-of-living adjustments to the SSA and Medicare programs.

ARC 2239B No action on disqualification provisions for food stamp applicants.

ARC 2248B No action on 65.37 regarding food stamp eligibility for some legal immigrants.

ARC 2237B No action on 75.1(36) extending benefits for specified low-income Medicare beneficiaries.

ARC 2221B No action on amendments to ch 78 pertaining to Medicaid coverage for durable medical equipment and supplies.

ARC 2233B Freudenberg noted that the 70-day delay on prior authorization for targeted case management services expires March 11, 2003. Freudenberg reported that differences have been resolved, an authorization document has been developed and case managers will be trained. Heaton expressed concern about Magellan's financial condition and ability to meet contractual obligations with the state. Westvold commented that counties have reached a compromise with the department, but the association maintains that Magellan should not have authorization authority.

ARC 2234B No action on substance abuse services under the Iowa plan for behavioral health.

ARC 2238B No questions on the rescission of the 4.3 percent cut in reimbursement rates for services under the state payment program.

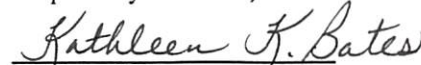
Special review Amendments to chs 77 and 78 relating to waiver beds are under 70-day delay.

Motion to delay Carroll moved a session delay be imposed on ARC 2161B.

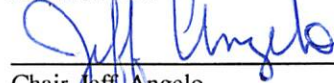
Motion carried The motion carried. The amendments in ARC 2161B are delayed until adjournment of the 2003 Session of the General Assembly.

Adjourned The meeting was adjourned at 12:03 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair Jeff Angelo

  
Vice Chair George Eichhorn