

# 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, April 7, 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; Stephanie Pickens, Office of 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 8 a.m.

**EDUCATION DEPARTMENT** Ann McCarthy, Leland Tack, Julia Thorius and James Tyson represented the department.

ARC 9640A Tack asked the committee to lift the delay on 63.18(4) imposed at the March meeting. The department has met with juvenile home providers and their representative. In response to ARRC request, the department has estimated that renting classroom space for all AEAs would cost approximately \$262,000.

Motion to lift delay Kibbie moved the delay on 63.18(4) be lifted.

Motion carried The motion passed; the delay was lifted.

ARC 9707A No questions on amendments to ch 17 pertaining to open enrollment.

ARC 9708A No action on amendments to ch 69 concerning access to school breakfast programs.

**EDUCATIONAL EXAMINERS BOARD** Chris Scase of the attorney general's office and Anne Kruse represented the board. Jim Smith represented the Iowa State Education Association.

ARC 9727A Proposed 14.35 relates to a temporary one-year classroom monitor authorization. Kruse reported that the comment period had just ended, and the board has not had time to evaluate the many comments received on the proposed requirements.

•Bradley suggested that classroom monitor be defined. In response to Bradley's inquiry about the limitation of five consecutive days per assignment, Kruse indicated that lesson plans would probably be in place for about a week; longer periods would require a licensed teacher. Kruse stressed that the classroom monitor is a supervisory, noninstructional position under the supervision of the administration.

•Huser inquired about the content of the 50 clock hours of preparation. Kruse responded that the specific coursework would be determined by the providers and approved by the board of practitioners.

ARC 9669A Ch 11 was delayed at the March 2000 ARRC meeting. Kruse urged the committee to lift the delay as the rules in ch 11 are necessary for compliance with Iowa Code chapter 17A.

Smith outlined the concerns of ISEA, particularly the due process rights of individuals, and pointed out that ISEA raised a number of questions during the comment period. Smith reported that legal counsel for the board responded that the board did not anticipate having sufficient time to prepare a response. Subsequent to imposition of the delay, counsel for the board responded to the questions noting, however, that the board could not be bound by these responses. Smith expressed the opinion that delaying the rules is the only way to ensure meaningful discussion between the board and the ISEA. In addition, ISEA considers these rules interrelated with rules required by Iowa Code section 272.2(15) which, although mandated since 1996, have not been adopted.

In response Scase countered that these rules implement only the requirements of chapter 17A, not 272, and do not relate to points of concern raised by ISEA.

•In response to Metcalf, Kruse acknowledged that, although drafts have been put forth, the board has not adopted the rules required since 1996 by 272.2(15).

•Rittmer and Bradley urged the board and ISEA to overcome their mutual mistrust and advised the board to adopt the rules required by 272.2(15).

Motion to lift delay Metcalf moved the delay on Chapter 11 be lifted and the board be placed on the May agenda to report progress on the adoption of rules pursuant to 272.2(15).

•In response to Huser's inquiries, Kruse indicated that the board views adoption of these rules as phase I and adoption of rules to implement the 272.2(15) requirement as phase II, and expressed a commitment to proceed with the phase II adoption. Pickens informed Huser that if the delay were to be lifted, the governor's office would work with the board to implement the 1996 statute and mediate with ISEA.

•Rittmer cautioned the board not to adopt emergency rules.

Motion carried The motion lifting the delay on Chapter 11 and requiring the board to report to the committee in May passed.

**ENVIRONMENTAL PROTECTION COMMISSION** Anne Preziosi and Pete Hamlin represented EPC.

ARC 9745A Agreement has been reached with the Association of Business and Industry regarding the cap on the fee for the Title V operating permit, which will be \$26.50 this year and \$29 next year. Because the agreement was reached subsequent to adoption of the amendments, EPC requested permission to file an emergency adoption of an amendment to implement the agreement. The committee did not oppose the emergency filing.

ARC 9744A National emission standards for hazardous air pollutants and generic national standards for pollution control were adopted by reference.

•Bartz noted that the standards may have an impact on small business and asked that, when data becomes available, the committee be informed of the impact.

**REAL ESTATE COMMISSION** Roger Hansen represented the commission. Paul McLaughlin represented the Iowa Association of Realtors and Susan Boe represented Iowa Realty and First Realty.

ARC 9739A •In response to Carroll's inquiry about a press release from the Coalition for Consumer Choice in Real Estate, Hansen indicated that the commission had been unaware of any opposition to the amendments until after they were adopted. Hansen stated that the amendments had been adopted at the request of the Iowa Association of Realtors. McLaughlin, on behalf of the association, asked that certain amendments be delayed.

•Kibbie expressed frustration that concerns and opposition are not being raised during the comment period. Boe concurred and added that licensees want the rules to coincide with the statute to prevent abuses that may result from language in the rules that may need clarification.

Motion to delay Bartz moved a 70-day delay be imposed on Item 1, the definition of "referral fee"; the introductory paragraph of rule 1.41; and subrules 1.41(3) and 1.41(7).

Motion carried The motion passed.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker represented the department.

ARC 9705A No action on amendments to ch 25.

ARC 9737A No questions on proposed amendments concerning changes in income and determination of self-employment income.

ARC 9704A No questions on annual adjustments for SSA program.

ARC 9703A No questions on transitional Medicaid quarterly report.

ARC 9710A No questions on proposed rate of Medicaid reimbursement for non-state-owned nursing facilities.

ARC 9702A Amendments to 170.2(2) pertain to payment for child care services when the parent is in academic or vocational training.

•Bartz inquired about certain instances in which payment would not be approved. Walker responded that "low employment potential" may refer to certain occupations in a specific area. Walker will find out if the cumulative grade point average is a statewide figure or if it varies from institution to institution.

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Ron Rowland represented the department.

ARC 9724A No action on 85.33 prohibiting retail sale of fuel containing greater than 2 percent MTBE.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Mike Fastenau, James Crean and Kathy Hill represented the department.

ARC 9726A •Crean will respond to Metcalf's question regarding the department's authority regarding the "annual wage cap" as opposed to the specific amount established by the legislature.

ARC 9725A Proposed amendments to ch 68 pertain to the export trade assistance program.

•Bartz pointed out that the definition of "exporter" should be clarified to include any services, not just agricultural services.

•Carroll indicated that in the definition of "trade mission" the language "may include any of the following" may also be confusing since some of the listed items might be necessary for all trade missions; others may be optional.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 9741A Proposed ch 155 pertains to licensing and permitting of asbestos abatement activities.
- Uehling informed Carroll that there are approximately 1000 licensees and 80 to 90 permittees. Carroll suggested that the division notify permittees and organizations of proposed changes during the comment period so that they can inform their members and licensees.
  - Bradley expressed concern about the requirement that a nonrefundable fee of \$500 accompany the application and that applications not approved within 60 days are deemed denied. Pickens clarified that the "deemed denied" language allows an applicant to begin appeal procedures when an application has not been approved within 60 days.
  - Metcalf voiced concern about the loss of the \$500 fee if the department does not approve the application within 60 days.
- Royce suggested that the applicant be provided the reasons for denial and actions which the applicant must take to become approved.

NATURAL RESOURCE COMMISSION Arnie Sohn, Steve Derrand and Jim Zohrer represented the commission.

- ARC 9714A No questions on amendments to ch 27 concerning lands and waters conservation fund application deadline.
- ARC 9711A No action on 40.20 pertaining to increased horsepower limit on Lake Icaria.
- ARC 9712A No action on 49.5 correction to meandered streams list.
- ARC 9720A No action on 51.9, proposed additions to wildlife areas requiring use of nontoxic shot.
- ARC 9713A No questions on 83.2(1)"e" and "k."
- ARC 9719A No action on proposed amendments to ch 91, waterfowl and coot hunting seasons.
- ARC 9721A No action on proposed amendments to 99.2, wild turkey fall hunting.
- ARC 9722A No action on proposed amendments to ch 106 concerning deer hunting.

UTILITIES DIVISION Gary Stump represented the board.

- ARC 9716A No questions on proposed amendments pertaining to individual meter measurement.
- ARC 9717A No action on proposed amendments to 19.4 and 20.4 regarding disconnection and reconnection of service.
- ARC 9729A No questions on proposed 20.13 concerning review of fuel procurement practices.

Committee Business

Minutes Bartz moved approval of the minutes of the March 2000 meeting.

The motion carried.

Meeting date The next meeting was set for Tuesday, May 9, 2000.

Adjourn The meeting was adjourned at 11:05 a.m.

Respectfully submitted,

*Kathleen K. Bates*

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APPROVED:

*Clyde Bradley*  
Chair Clyde Bradley

*H. Kay Hedge*  
Vice Chair H. Kay Hedge