

# MINUTES OF THE REGULAR MEETING OF THE

## ADMINISTRATIVE RULES REVIEW COMMITTEE

**Date of meeting:** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, May 13, 2003, in Room 116, State Capitol, Des Moines, Iowa.

**Members present:** Senator Jeff Angelo, Chair, and Representative George Eichhorn, Vice Chair; Senators Michael Connolly, John P. Kibbie, Paul McKinley, and Donald Redfern; Representatives Danny Carroll, 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 Editor; Jennifer Vermeer and Sue Lerdal of the Legislative Services Agency; caucus staff and other interested parties.

**Convened** Chair Angelo convened the meeting at 9:06 a.m.

**Committee business** Angelo requested nominations for committee chair. Kibbie nominated Representative Eichhorn to serve a two-year term. Frevert moved that nominations close and Eichhorn be elected by acclamation. The motion carried.

~~Chair Eichhorn~~ requested nominations for committee vice chair. McKinley nominated Senator Angelo to serve a two-year term. Frevert moved that nominations close and Angelo be elected by acclamation. The motion carried.

At last month's meeting, the committee voted to refer dramshop insurance to the 2004 Session of the General Assembly. Royce asked members to review the referral and suggest any changes at next month's meeting.

House File 636, section 27, requires that the legislative services agency prepare a fiscal statement for all proposed rules having an annual impact of \$100,000, or \$500,000 over a five-year period. Royce distributed a proposed form and raised some questions for the committee to consider. Carroll and Kibbie were in agreement that the fiscal note should consider all dollars, not just state dollars, if the impact is known.

Freudenberg commented that while DHS can identify parties that will be affected, the department cannot accurately determine their costs. Vermeer stated that LSA plans to operate on the same basis as for legislative fiscal notes, considering costs to state and local governments, rather than industry. Eichhorn noted that the statute requires that the impact on the public be considered. Redfern suggested that the impact on the public could be categorized rather than quantified. Kibbie added that since the committee can request a detailed regulatory analysis at any time, the rule's fiscal note does not need to detail costs to the public.

Angelo requested that the June agenda include a review of 641—12.2 regarding fluids tested for the presence of alcohol or other drugs.

Angelo also requested that at the June meeting department of education staff respond to the question of whether students who receive free or reduced-price lunch can be charged for driver's education.

Carroll requested that the effectiveness of nursing home fines be reviewed at the July meeting. Heaton asked that the review include the DIA's new policy of not including an explanation with the letter advising a facility of sanctions.

Kibbie suggested that, unless the agency is already before the committee, special reviews be scheduled to take place after the committee has completed current reviews. Carroll moved approval of the minutes of the April meeting; Kuhn seconded. The motion carried.

The next meeting was scheduled for Monday, June 9, 2003.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Susan Bergwall represented the department.

**ARC 2444B** No action on amendments to ch 7 concerning contested cases. Freudenberg reported that no comments were received and there is no fiscal impact.

**ARC 2415B** Proposed ch 15 relates to disputed county billings. Freudenberg confirmed that the department honors the postmark date in computing the 30-day period for appeals.

**ARC 2451B** No questions on federally funded amendments to the refugee services program pertaining to eligibility of victims of trafficking.

**ARC 2455B** A proposed amendment to ch 83 pertains to the age limit for eligibility for supported employment services under the home- and community-based mental retardation waiver. Freudenberg reported that until the amendment becomes effective the department will handle these cases as an exception to policy. Carroll expressed support for the amendment.

**ARC 2445B** Amendments relating to child support recovery and services are expected to result in a savings of \$5000 per month. A comment was received regarding use of the date of the check when the date of payment is not reported by the employer. Freudenberg responded that the department reviews, on a case-by-case basis, employers who are not correctly reporting the date of the payment. Bergwall stated that when a problem is reported, it can usually be resolved within days.

**COLLEGE STUDENT AID COMMISSION** Julie Leeper represented the commission.

Frevert raised a concern about the definition of "located in Iowa," particularly as it applies to proposed ch 35, teacher shortage forgivable loan program, and expressed the belief that the restriction is detrimental to those in border communities. Many community colleges have articulation agreements with other colleges, and Frevert's concern is that Iowa students receiving credits from out-of-state institutions would be disqualified for the forgivable loan.

Leeper responded that the definition was added to rules governing scholarships, tuition grants and financial aid because the legislature required that students attend colleges or universities located in Iowa, and that legislative action would be required to change the rules. Leeper noted that the public comment period is still open, and comments will be considered.

- ARC 2435B No action on proposed amendments to ch 10 resulting from the review mandated by executive order 8.
- ARC 2443B No action on amendments to ch 11, which include the definition "located in Iowa."
- ARC 2447B No action on amendments to ch 12 concerning the Iowa tuition grant program.
- ARC 2441B No questions on amendments to ch 13, which specify the approved application for the vocational-technical tuition grant program.
- ARC 2434B No questions on proposed ch 14, osteopathic physician recruitment program.
- ARC 2439B No questions on the rescission of ch 17.
- ARC 2438B No questions on amendments to ch 19, which specify the approved application for the accelerated career education grant program.
- ARC 2437B No action on 20.1, which adds the definition "located in Iowa" to the national guard assistance program.
- ARC 2440B No questions on the proposed rescission of ch 23.
- ARC 2436B No action on 27.1 concerning the definition "located in Iowa" and specifying the approved application form for the Iowa grant program.
- ARC 2433B No questions on proposed amendments to ch 32, chiropractic forgivable loan program.
- ARC 2432B No action on proposed amendments to ch 35, teacher shortage forgivable loan program. Frevert's concerns have been noted.
- ARC 2431B No action on proposed amendments to ch 36, the Terry E. Branstad Iowa state fair scholarship program. Frevert was advised that funding is from an endowment from Governor Branstad's inaugural.

**ECONOMIC DEVELOPMENT DEPARTMENT** Melanie Johnson and Ken Boyd represented the department.

- ARC 2403B Proposed amendments to ch 53 pertain to modernization projects under the community economic betterment program. Boyd outlined criteria for modernization projects, which are usually in the area of \$250,000. Discussion related to amounts awarded and criteria for determining whether those amounts are repayable, deferred, or forgivable. McKinley asked that the July agenda include a review of the strategic investment fund.
- ARC 2404B No action on proposed ch 169, public records and fair information practices, which are set out in full in lieu of the previous adoption by reference.

**EDUCATIONAL EXAMINERS BOARD** Anne Kruse and Chris Scase represented the board.

- ARC 2417B No action on proposed 11.4(1) to add the department of transportation, which has authority for the behind-the-wheel instructor authorization, to the list of those who can initiate a complaint.
- ARC 2416B No action on proposed 11.21(3), which is in conformance with other licensing boards and has the support of the school board association.
- ARC 2418B No questions on proposed 14.107, which provides for correction of errors on licenses.
- ARC 2419B No action on amendments to ch 14 to clarify names of licenses.
- ARC 2421B No questions on proposed 15.3(8) regarding school psychologists.

**EMERGENCY MANAGEMENT DIVISION** David Miller represented the division.

- ARC 2424B No action on ch 9, Iowa comprehensive plan.

**ENERGY AND GEOLOGICAL RESOURCES DIVISION** Monica Stone represented the division.

- ARC 2453B Proposed rescission of chs 4, 7, 8, 16, 17, and 19 and the amendment of ch 18 result from the review mandated by executive order 8.

**ENVIRONMENTAL PROTECTION COMMISSION** Wayne Ferrand represented the commission.

- Special review The commission received a petition for rule making regarding fees for stormwater discharge permits. In phase II, federal regulations require a permit for construction projects over one acre; previously areas under five acres were exempt. The annual permit fee is \$150. The department has not yet made a recommendation to the commission. Ferrand clarified exceptions to the permit requirement.

**LOTTERY DIVISION** Brandi King and Mary Neubauer represented the lottery.

- ARC 2448B These amendments are the result of the review conducted pursuant to executive order 8. Angelo inquired about whether applicants for employment are asked if they have had a gambling problem; King agreed to find out and provide an answer to the committee.
- ARC 2450B No action on proposed amendments to chs 1 and 4.
- ARC 2446B No action on emergency amendment to 2.4(4) to remove a reference to a \$100 fee that is no longer charged retailers.
- ARC 2449B Proposed amendment to 11.6 removes the \$100 limit on the value of prizes in pull-tab games.
- ARC 2447B No action on adoption of definitions pertaining to computerized lottery games.

**PHARMACY EXAMINERS BOARD** Terry Witkowski represented the board.

- ARC 2410B No questions on proposed amendments to ch 2.
- ARC 2409B No questions on proposed amendments to ch 6.
- ARC 2427B No questions on emergency correction of a cross-reference in ch 6.
- ARC 2426B No action on correction of a cross-reference in ch 9. Witkowski reviewed the function of automated medication distribution systems.
- ARC 2408B No questions regarding the amendment to ch 22 to include normal saline for irrigation in the emergency drug supply for hospice and home health agencies.
- ARC 2407B No action on the proposed amendment to 36.1(4)

**PROFESSIONAL LICENSURE DIVISION** Lois Churchill represented the division.

- ARC 2413B No action on proposed amendments to ch 42 regarding colleges for chiropractic physicians.
- ARC 2412B No action on proposed amendments relating to massage therapy. Churchill reported that the board is working with concerned parties to reach compromise on two issues: whether those teaching in massage therapy programs in Iowa need to have Iowa licenses and the amount of training students need to have completed prior to working on clients.
- ARC 2411B No action on proposed amendments to athletic trainer rules.

**REAL ESTATE APPRAISER EXAMINING BOARD** Susan Griffel and Bill Schroeder represented the board.

- ARC 2430B Proposed amendments to 3.5 and 12.1 pertain to work product review. These amendments are intended to standardize licensure requirements with those in other states.

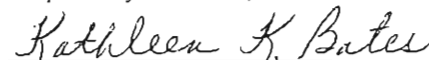
**REAL ESTATE COMMISSION** Roger Hansen represented the commission.

- ARC 2430B Amendments pertaining to trust accounts and closings were made at the recommendation of the attorney general's office in light of a recent supreme court ruling involving interest on attorney trust accounts in the state of Washington. In response to Royce's inquiry regarding designation of a third party, Hansen indicated that the Iowa association of realtors requested that option.


**WORKFORCE DEVELOPMENT DEPARTMENT** Joe Bervid represented the department.


- ARC 2324B No questions on amendments to ch 22.
- ARC 2351B Bervid summarized proposed amendments to ch 23. Discussion centered on value of board, rents, housing, lodging, and meals, which had not been adjusted for inflation in over 20 years.
- Motion Concerned about the impact of Item 3, Carroll moved that the committee request a regulatory analysis pursuant to 17A.4A.
- Motion carried The motion carried.
- Committee business Members reviewed the rule makings for which no representative was asked to appear. Carroll expressed an interest in reviewing licensure of school bus drivers who are insulin-dependent diabetics.
- Adjourned The meeting was adjourned at 12:55 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair George Eichhorn

  
Vice Chair Jeff Angelo