

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 Monday, February 9, 1998, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator H. Kay Hedge, chair, and Representative Christopher Rants, vice chair; Senators Merlin E. Bartz, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Danny Carroll, Janet Metcalf, and Keith Weigel. Representative Minnette Doderer was excused.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor; Jackie Von Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened •Chair Hedge convened the meeting at 9 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Don Herman, and Cheryl Whitney represented the department. Senator Robert Dvorsky and Representative Romaine Foege were also present.

ARC 7755A No questions on proposed AIDS/HIV settlement payments, 75.27.

ARC 7756A •Walker told Kibbie a written comment was received from the nurses association in support of 79.3 concerning Medicaid provider documentation.

ARC 7757A No questions on limited benefit plan review, 93.138(3)"a"(3).

ARC 7758A Subrule 113.4(1) provides for emergency placements in foster homes that are over capacity. •Walker concurred with Bartz that this should help enable siblings to remain together.

Special review Review of the department's home health agency policy regarding determination of medically necessary services was requested by Kibbie on behalf of constituents of Senator Dvorsky. Press releases were distributed and a positive outcome was reported in the situation that precipitated the review. DHS director Charles Palmer and the local representative, Cheryl Whitney, made an exception to policy to the satisfaction of all parties.

•Herman responded to Kibbie's inquiry that the department prefers to continue making exceptions to home health agency policy on a case-by-case basis. The department's policy mirrors that of Medicare in that it covers skilled nursing services and intermittent home health aide services which are prescribed by a physician as medically necessary and carried out by a home health aide under the supervision of an R.N. According to policy, at least 50 percent of the services must be directed toward a diagnosable condition or disability. The exception in this case was initially granted in 1995; the department has been working with the family to help the family understand the kinds of services that are covered.

•Rittmer inquired about a change in home health agency reimbursement resulting from the Balanced Budget Act. Herman explained that Medicare reimbursements to home health agencies are changing from a cost-related basis to a prospective payment system. The state's Medicaid program will be implementing the same change.

GENERAL SERVICES DEPARTMENT David Ancell and Pam Dickey represented the department. Elizabeth Isaacson, Chief Clerk of the House, and Mary Gunderson, Secretary of the Senate, were also present.

ARC 7754A Changes are proposed in Chapter 4 regarding parking.

•Rants asked the department's plans regarding public parking. Ancell reported that Lot 15, Lot 5, Lot 4 and the area south of the Capitol are public lots and that the department's five-year plan which is being considered by the transportation, infrastructure and capitals committee proposes additional parking structures and green spaces. Maintenance of parking lots has not been funded, and the lots have deteriorated significantly. Last year's appropriation provided for rehabilitation of parking lots; however, all bids for resurfacing were in excess of appropriated funds.

•Kibbie suggested that people might be willing to pay for parking as a means of offsetting the investment.

•Weigel was informed that the number of employees and visitors far exceeds the number of spaces available.

•Ancell agreed to provide Bartz a list of nonlegislative employees who are assigned spaces in the Lot 13.

•Ancell responded to Metcalf that the city's proposed Gateway East plan includes a parking facility on the west side of the Capitol. The 900-space ramp would replace 532 spaces and protect the view of the Capitol.

Isaacson and Gunderson distributed copies of the proposed parking rules and suggested changes to specify Senate and House responsibility for parking assignments and issuance of dash placards in Lots 13 and 14.

•Metcalf requested that parking gates be raised at times the legislature is not in session, but council and committee meetings and public hearings are scheduled.

ENVIRONMENTAL PROTECTION COMMISSION

Anne Preziosi, Scott VanderHart, Diana Hansen, Dennis Alt, Jack Riessen, and Joseph Obr represented the commission. Susan Heathcoat of the Iowa Environmental Council and Merlin Tinken were also present.

ARC 7762A

Preziosi outlined the proposed updates in adoptions by reference of Code of Federal Regulations to air quality rules in Chapters 20 and 22 to 25. The national ambient air quality standards establish new and revised particulate matter standards and revised ozone standards. The amendments add the federal nitrogen oxides emissions reduction program to the acid rain program.

•Bartz asked about the particulate matter standard. VanderHart explained that the new 2.5 standard regulates smaller, combustion-source particles. Monitors in Polk and Linn counties are collecting data which is well below the standard.

•Rants inquired about federal time frames. VanderHart replied that 25 monitors must be placed across the state by January 1, 2000; the department anticipates that 20 will be in place by the end of this year.

•Bartz requested the department to find out how many states are proceeding with rule making in this area.

ARC 7759A

•Bartz questioned the use of the phrase "unless the context clearly indicates otherwise" in the definitions to Chapter 44, drinking water revolving fund. Alt answered that the phrase refers to bond language in the loan agreement.

Hanson reported that 90 applications have been received for the \$30 million available for the first two years. The applications show a need for \$104 million.

• Alt told Weigel that rankings are based on compliance with the Safe Drinking Water Act and that small communities receive an extra 10 points. Fifteen percent of the funding is set aside for small systems. The department has set a maximum of 50 percent of available funds to be awarded any applicant. The department expects to fund 30 or 40 projects this year.

•Alt explained to Metcalf that all applications submitted will be ranked and that rankings are done on a first-come, first-served basis. This fund is available to both public and private entities.

•Rittmer asked about applications with the same ranking. Alt said preference would be given smaller systems and systems with water conservation plans in place.

ARC 7760A

Riessen summarized agricultural drainage wells amendments to Chapters 50 to 52.

Heathcoat distributed written concerns of the environmental council regarding lack of state inspections and lack of monitoring of groundwater in areas where agricultural drainage wells continue to be used, particularly those draining into aquifers used as drinking water sources. Heathcoat pointed out that resources need to be provided to the department to cover the costs of inspections and monitoring.

Tinken circulated photographs of his property and expressed the need for more time to either close the drainage wells or implement alternative drainage and the need for financial help. Tinken voiced concern about the effect of federal wetlands regulations.

•Kibbie observed that the date was extended last year and there is a bill this year to extend it again. Costs to change to an alternative drainage system have been projected to average about \$700 per acre.

•Riessen replied to Weigel that the department agrees that more time is needed.

•Responding to Bartz, Riessen confirmed there is still disagreement among federal agencies on whether alternative drainage systems violate wetlands protection.

Motion to delay

Kibbie moved a 70-day delay on the amendments.

Motion amended

Metcalf requested amending the motion to be a session delay. Kibbie agreed.

Motion carried

The motion as amended carried.

ARC 7761A

No committee action on amendments proposed in Chapters 100, 102, 103, 108 and 110 for landfills.

Committee Business**Minutes**

Weigel moved the minutes be approved. The motion carried.

March meeting

The March meeting was set for Monday, March 9, 1998, at 8 a.m.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland and Dr. Walter Felker represented the department.

- ARC 7783A •Bartz asked if all states contiguous to Iowa are Class Free. Felker answered that South Dakota and Missouri are Class A, and Brucellosis testing of livestock coming from those states will continue.
- ARC 7784A No questions on milk haulers and milk graders, 68.40 to 68.71.
- Special review Hedge requested a review of emergency rule 64.8 concerning animal blood sample collection. The rule clarifies that employees or contractors of the department or the USDA may enter slaughter facilities to obtain blood samples to determine if animals are infected.

EDUCATIONAL EXAMINERS BOARD Anne Kruse and Christie Scase represented the board.

- ARC 7730A The amendment to 14.20(17) provides for a mentor endorsement, and proposed Chapter 21 establishes the beginning teacher support program. Royce pointed out that there is some question about the board's authority to implement the program. Scase asserted that the board's authority in Iowa Code section 272.2 for licensing of practitioners and professional development programs is applicable in this instance.
- Kibbie emphasized the difference between licensing and administering a program and suggested that funding for the program should be to the department of education. Kruse responded that the legislature has been requested to fund this as a pilot program for two years.
- In response to Metcalf's informal request, Scase stated that the board will be meeting to consider adoption on March 6; meanwhile, legislative action can be monitored.
- A.G. Opinion •Hedge requested a formal opinion from the attorney general regarding the board of educational examiners' authority for the program.
- Kibbie added his endorsement to the request for an opinion of the attorney general.

ECONOMIC DEVELOPMENT DEPARTMENT Bob Henningsen represented the department.

- Special review •Weigel requested a review of 59.5(1)"a" regarding determination of an eligible business and voiced concern that existing businesses might be able to move from a non-enterprise zone to an enterprise zone under the guise of expansion of the business. Following Henningsen's assurance that local commissions would determine the impact on the community before referring applications to the department, Weigel stressed that the legislature did not intend the program for existing businesses and cautioned that the department would set a precedent in allowing existing businesses to relocate.
- Metcalf summarized the purpose of the legislation as an incentive for businesses to move into an area and generate property tax revenues and added that there are many mitigating factors to be considered.

MANAGEMENT DEPARTMENT Ron Amosson represented the department. Also present were David Vestal of the Association of Counties, Mark Ramthun of Indianola, Tom Bredeweg, Tracy Kasson and Dennis Dietz of the Iowa League of Cities, Duane Feeke of Orange City, Tim Waddell of Hawarden, and Bob Layton of Urbandale.

- Special review The review of the notice of public hearing forms for use by municipalities was requested by Metcalf. Amosson stated that House File 726 authorized the the department to prescribe the forms and the department is prepared to draft rules which include a general description of the forms that are currently being used.

Vestal, general counsel for the association of counties, opposed the forms based on the department's lack of rules for the forms and the department's implied exclusion of cities and counties from the meaning of "the public." Vestal challenged the department's authority to change the substance of the forms and the use of the national inflation factor. Counties questioned covering a two-year period for budget and only one year's inflation factor. The form considers only expenditures, not revenues. The association of counties urged the committee to object to the lack of a rule and, for 1998, to allow local governments to proceed with their public hearing notices without reference to percentage changes or national inflation factor.

Bredeweg, representing the Iowa League of Cities, concurred with the points made by Vestal and added that local officials were not part of the process and were not prepared to use the forms which he characterized as both complex and incorrect. Cities oppose the standard selected by the department.

•Metcalf asked if the department would accept last year's form from municipalities that have not yet filed. Amosson responded that the department would prefer not to make that exception.

Scase reminded the committee that Iowa Code chapter 17A requires an agency to adopt rules to describe forms used by the public in dealing with the agency, but these forms are not intended to be used in dealing with the department of management.

MANAGEMENT DEPARTMENT(continued)

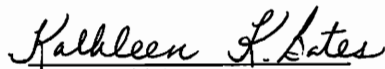
	Layton stated that the forms are not in accordance with his understanding of the legislative intent.
Motion to refer	Bartz moved a general referral of the issue.
Motion carried	The motion carried.
March agenda	Bartz requested a review of Revenue and Finance regarding remission of sales tax by cattlemen's and pork producers' county organizations.

UTILITIES DIVISION Vicky Place represented the division.


ARC 7782A No action on 39.1 and 39.2, universal service—eligible carriers.

Adjourn The meeting was adjourned at 12:48.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge


Vice chair Christopher Rants