

**MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Time of meeting:** The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, December 14, 1999, in House Committee Room 19, State Capitol, Des Moines, Iowa.
- Members present:** Representative Janet Metcalf, temporary chair; Senators Merlin E. Bartz, H. Kay Hedge, John P. Kibbie, and Sheldon Rittmer; Representatives Clyde Bradley, Danny Carroll, Minnette Doderer, and Geri Huser. Representative Patricia M. Harper was excused.
- Also present:** Joseph A. Royce, Legal Counsel; Brian Gentry, Administrative Rules Coordinator; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant; caucus staff and other interested persons.
- Convened** •Chair Metcalf convened the meeting at 9:03 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker represented the department. Cal Hultman represented Pharmaceutical Research and Manufacturers of America.
- ARC 9443A** No questions on proposed amendments to chs 40 and 41 concerning adult care income deduction for FIP eligibility.
- ARC 9445A** No comments on 65.10 relating to reporting changes in food stamp households.
- ARC 9489A** No questions on proposed amendments to ch 65 pertaining to able-bodied adults without dependents.
- ARC 9444A** No action on proposed 75.13(2), valuation of life estates and remainder interests.
- ARC 9494A** No action on 75.24(3)"b"(1) and (6), charges for nursing facility and PMIC care.
- ARC 9495A** No action on HCBS waiver program.
- ARC 9446A** No action on amendments to ch 78 pertaining to drug prior authorization. Hultman distributed written comments opposing prior authorization requirements.
- ARC 9496A** No questions on amendments to skilled nursing facility rates.
- ARC 9497A** No questions on amendments pertaining to family and group child care homes.
- ARC 9447A** No comments on 156.12(1), maintenance payment for a child in independent living.
- ARC 9498A** No comments on amendments to ch 185, RTSS rates.
- Special Review** Walker advised the committee of amendments pertaining to Medicaid that will be emergency adopted.
- Walker distributed three examples of requests for exceptions to DHS policy. Of the 1798 requests received so far this year, the department has made a decision on 1434: 72% of the requests were approved, 23% were denied and 5% were withdrawn.
- Walker responded to Metcalf that the department monitors the exceptions closely and occasionally modifies rules.
 - Kibbie expressed an interest in learning about waiver provisions of other states.
 - In response to Bradley, Walker outlined DHS procedure and criteria for granting exceptions to policy.
 - Walker gave Huser an example of how cost effectiveness is considered.
 - On behalf of the committee Metcalf thanked Walker for bringing cookies.
- CORRECTIONS DEPARTMENT** Fred Scaletta and Kip Kautzky represented the department.
- ARC 9490A** Amendments to 20.18 relate to violator programs.
- Scaletta explained to Bradley the difference between prison and violator program confinement and the rationale for increasing the length of the program.
 - Kautzky clarified for Bartz that violator program beds will be reallocated to other programs.
- ARC 9525A** Proposed 20.20 pertains to inmate telephone commissions.
- Metcalf was advised that the corrections board makes a quarterly review of expenditures.
 - Kautzky responded to Carroll that although the governor vetoed the oversight which included the Ombudsman's office, these amendments establish a central fund that can be tracked and monitored and provide for external oversight.
 - Doderer expressed concern that high telephone rates discourage contact with families essential to decreasing recidivism. Kautzky explained that the system, which allows for blocking of calls and monitoring of every telephone call and provides assistance in law enforcement activities, is costly.
 - Bradley identified expenditures, such as construction and medical equipment, that should be funded by the legislature rather than borne by the inmates and their families.
 - Metcalf asked the department not to proceed with an emergency adoption.
 - Huser stated that the appropriateness of the expenditures should be determined by the legislature, not the ARRC.

Corrections Department (continued)

Motion to refer Hedge moved a general referral to 20.20 to the legislature.

Motion carried The motion to refer carried.

- Kibbie suggested that the legislature ought to look at telephone contracts of all departments.

- Doderer recommended that the commissions be used to pay tuition for inmates.

- In response to Bradley's suggestion, Kautzky stated that the corrections board is made up of members of the general public who are not employees of the department.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Ken Boyd and Melanie Johnson represented the department.

ARC 9475A Amendments to the SELP program were simultaneously noticed and filed emergency.
•Metcalf expressed concern about the department's authority to make these changes and about the emergency procedure. Boyd indicated that the department wanted the amendments effective immediately to improve the success rate of the clients receiving SELP funding because clients completing training have better success rates than those that have not had the training.

- Bartz was informed that the increase in the percent of poverty level may result in an additional 15 applicants.

Motion to object Bradley moved objection to the emergency filing.

Johnson indicated that the emergency rules will be rescinded when the simultaneously published notice is adopted. Boyd added that the department sought input from its constituency groups prior to drafting the rules.

Motion failed The motion to object to the emergency filing did not pass.

EDUCATION DEPARTMENT Lee Tack, Su McCurdy, Sandra Renegar, and Ann McCarthy represented the department.

ARC 9465A Proposed ch 63 pertains to programs and services for pupils in juvenile homes.

- Tack clarified for Bartz why juvenile home providers would prefer that rent be an eligible expense. The rules require an annual waiver to allow for rent. Bartz stated a preference for longer-term waiver provisions on a case-by-case basis. Tack responded that the annual waiver was proposed because of the annual approval of the budget.

ARC 9470A No action on ch 79, practitioner preparation programs.

ARC 9469A Ch 83 pertains to the beginning teacher induction program. McCarthy pointed out that points have been added to the evaluation criteria as a result of a request from the committee.

ARC 9468A No action on 84.1 to 84.4, implementing the two-tiered award system of financial incentives for national board certification.

- Bartz reported hearing concerns that the change from 5 years to 10 years discourages participation of teachers over a certain age.

- Bradley reported hearing similar complaints that the change discriminates against teachers 45 and older.

ARC 9466A No action on ch 97 pertaining to supplemental weighting which will be used for next school year's budget.

- Tack summarized for Carroll that for the 2000-2001 year, supplementary weighting will not be allowed for students attending alternative high school programs held at community colleges; however, high school students attending community colleges for community college credit are eligible for supplementary weighting. Two options have been presented to the director by a task force studying the issue, and the director is soliciting feedback on those options.

SCHOOL BUDGET REVIEW COMMITTEE Lee Tack and Su McCurdy represented the committee.

ARC 9467A Ch 7 relates to on-time funding for increased enrollment.

- Tack informed Kibbie that \$4 million has been allocated to the 44 districts that applied.

IOWA FINANCE AUTHORITY Darlene Jeris, Libby Nelson and Dennis Dietz represented the authority.

ARC 9509A Proposed 1.11 allows for waiver of the authority's rules. The authority planned to adopt the rule emergency after notice in order to process a backlog of requests for housing assistance funds.

- Metcalf asked that the authority not proceed with the planned emergency after notice adoption.

ARC 9508A No action on 9.20, mortgage release certificates.

ARC 9439A Low-income housing tax credits have been awarded under ch 12 rules, and challenges and appeals have been settled.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

- ARC 9456A No questions on interest rate on interest-bearing taxes for 2000.
- ARC 9455A No action on proposed amendments to excise, use and cigarette and tobacco taxes.
- Rittmer was informed that a person may possess only two packs of cigarettes that do not bear Iowa stamps. Castelda reported that a person may be held responsible for payment of the tax on cigarettes purchased from Indian reservations or over the Internet.
 - Castelda responded to Huser that the department is working with the sellers of cigarettes over the Internet to make them aware of Iowa tax requirements.
- ARC 9459A No action on proposed sales and use tax amendments.
- Hedge inquired about purchases made in an area that does not have a local option tax but delivered to an area with a local option tax. Castelda explained that regular deliveries into a local option tax area would be taxable; but isolated, de minimus deliveries would not. No tax is collected on purchases delivered to areas that do not have a local option tax.
- ARC 9487A No questions on proposed individual income tax amendments.
- ARC 9458A No questions on amendments to chs 67 to 69.
- ARC 9500A No action on proposed property tax amendments.
- ARC 9457A No action on proposed inheritance tax amendments which reflect recommendations made by the bar association.
- ARC 9499A No action on proposed amendments to chs 107 and 108.
- Rittmer was informed that repeal of local option tax is made by election, and a board of supervisors can authorize an election.
 - Castelda clarified for Hedge that a local option tax can sunset at any time, but the school district infrastructure tax ends by statute after 10 years.

TREASURER OF STATE Karen Sinclair and Bret Mills represented the treasurer's office.

- ARC 9449A Rule 4.11 pertaining to the value-added agricultural linked investment loan program was filed emergency.
- Metcalf stated that she had specifically asked and received assurances from the treasurer's office that there would not be an emergency adoption of the rule. In addition to the concern about the emergency filing, Metcalf questioned the method by which awards will be made, expressing concern that if awards are made as applications are received, there may not be sufficient funds for all worthy projects. Additionally, the rules do not specify coordination with the department of agriculture and land stewardship and IDED. A final concern is that the rules give the governor authority to increase funding limits. Although the legislation did not specify a limit on funding, Royce pointed out that the department cannot delegate its statutory power to someone else. The department can set a limit and identify circumstances under which the limit might be increased. Sinclair indicated that they are working closely with IDED and do not intend to prorate funding.
 - Bartz noted that 4.11(7) eliminates approximately 800 participants in the livestock emergency assistance program from receiving funding under this program. Sinclair confirmed that the LIFT program has reserved \$10 million for borrowers to invest in the Excel beef processing plant.
 - Huser requested evidence of coordination with the department of agriculture and IDED before the rules are adopted. Sinclair responded that the department has already adopted and filed the rules emergency after notice. Mills assured the committee that no moneys will be disbursed until the changes requested by the committee are made and pointed out that 4.11(4) was intended to provide the evidence of cooperation the committee requested. The emergency after notice filing was made in an attempt to accommodate the deadlines of the Excel plant.
 - Bartz indicated accord with the emergency filing in light of the February deadline by which Excel must generate \$40 million in producer equity.
 - Metcalf directed the department to file an emergency correction of 4.11(10) after submitting it to the committee through Royce.
- ARC 9453A No action on amendments to ch 16, the Iowa educational savings plan trust.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Excused from review.**STATE PUBLIC DEFENDER** Tom Becker, state public defender, Mark Smith and Jennifer Komos represented the agency.

- ARC 9476A Chs 11 to 13 pertain to indigent defense services. Definitions were clarified as a result of comments from the bar association. Royce raised the issue of mileage reimbursement. Becker responded that mileage is a contract issue. The hourly rate for the attorney's time during travel is not reimbursed.

Committee Business

- Election Hedge moved Bradley be elected chair to serve until May 2001. The motion carried. Metcalf moved Hedge be elected vice chair. The motion carried.
- Minutes Bartz moved approval of the minutes of the November 1999 meeting. The motion carried.
- Meeting The next meeting will be January 4, 2000, and the committee will discuss Kibbie's suggestion to meet on Fridays during session.
- DOT notice Royce distributed copies of a notice that the department of transportation would like to publish in the Bulletin pertaining to the review of DOT rules. The committee authorized publication of the notice in the Bulletin.
- Doderer asked Royce for a copy of the governor's veto based on separation of powers.

NATURAL RESOURCE COMMISSION Steve Dermand, Richard Bishop and Marion Conover represented the commission.

- ARC 9514A Proposed 40.20 concerns increasing the horsepower limit on Lake Icaria.
- Doderer voiced concern that this amendment might lead to increases at other lakes and damage to shorelines.
 - Dermand explained to Bartz that some limits are established legislatively, others are set by rule. The conservation board that manages Lake Icaria was the petitioning body for this increase.
- ARC 9511A No questions on 42.2, concerning boating accident reports.
- ARC 9510A No questions on shooting ranges in game managements areas.
- ARC 9461A No review of amendments to ch 61.
- ARC 9512A No questions on amendments to ch 81 pertaining to fishing.
- ARC 9516A No review of nonresident deer hunting.
- ARC 9515A No review of wild turkey spring hunting.
- ARC 9517A No action on issuance of shooting permits to landowners and tenants when agricultural crops have been damaged.
- ARC 9513A No review of colony traps.

ENVIRONMENTAL PROTECTION COMMISSION Diana Hanson and Wayne Ferrand represented the commission.

- ARC 9479A No questions on updating of references to federal effluent limits and analytical methods.
- ARC 9478A No questions on proposed amendment to 61.2(2)"h," water quality certification.
- ARC 9477A No action on amendments to ch 64 concerning stormwater permits.
- Bartz asked to be advised of the penalty for noncompliance with the spill notification requirements.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

- ARC 9502A Proposed ch 18 pertains to waiver of administrative rules for all licensing boards.
- Metcalf asked that the rules not be emergency adopted. Bledsoe was advised to reword 18.3(4) to clarify the intent. Royce added that the standards should be set out in the rules. Discussion ensued about responsibility for notification of potentially affected parties.
 - Carroll was informed that the attorney general's office assisted in the writing of the rules.
 - Huser was informed that the division anticipates requests for waivers from anyone who is dissatisfied with a renewal requirement or a fee.
- ARC 9480A No questions on amendments affecting nursing home administrators.
- ARC 9460A No questions on proposed amendment to the definition of direct and immediate supervision.

PUBLIC HEALTH DEPARTMENT Jennifer Hart and Gary Ireland represented the department.

- ARC 9518A No questions on lead professional certification.
- ARC 9519A No action on amendments pertaining to lead inspector/risk assessor.
- ARC 9521A No action on amendments to the WIC program.
- ARC 9522A No action on proposed EMS amendments.
- Ireland responded to Metcalf that the amendments are proposed in order to bolster the volunteer program.
 - Huser asked to be advised of any definitions that have changed.
- ARC 9520A No questions on amendments to ch 201 concerning organized delivery systems.

GENERAL SERVICES DEPARTMENT

Jerry Gamble represented the department. Andrea Fogue represented the Iowa League of Cities. Keith Luchtel represented the newspaper association.

ARC 9471A

The proposed amendment to 5.21 establishes the fees paid to newspapers.

Fogue asserted that fee increases exceed inflation and cities have limited streams of revenue.

Luchtel supported the increase and pointed out there had been no increase in the rate from 1978 until 1996.

RACING AND GAMING COMMISSION

Karyl Jones represented the commission.

ARC 9488A

Jones summarized proposed amendments.

•Jones informed Bradley that although video machines are prohibited by law, there is no definition of what constitutes a video machine. These amendments allow video technology in slot machines.

Motion to refer

Metcalf moved a referral of Item 24 to the general assembly.

Motion carried

The motion to refer Item 24 of ARC 9488A passed.

Executive Orders

Bradley asked Royce to review executive orders as they pertain to separation of powers of legislative and executive branches. Royce summarized the issue as being whether the governor's executive orders exceed establishment of policy within the executive branch and stray into law making. Bradley raised questions about how the executive order relates to provisions in 17A and suggested that the executive order pertaining to waivers is not in accord with the intent of legislation on waivers. Huser raised concerns about the expense of processing waiver requests and the amount of staff time that will be required; the lack of any possible oversight; and the absence of a legislative voice in the decision. Kibbie observed a difference between granting waivers in order to provide necessary care for individuals and waiving regulatory or administrative requirements. Gentry distributed copies of waiver rules that have already been through the rule-making process and are in use by agencies. Gentry stated that the governor viewed representation by Royce and the ombudsman's office on the task force and the committee's review of the rules proposed and adopted as a result of the executive orders as legislative involvement. Noting that the order is broadly applied to all agencies, Carroll disagreed with Gentry's statement that the order pertaining to waivers is narrow. Metcalf held that the waiver order erodes the concept of equal application of the law. Hedge characterized the waiver order as divisive, and Rittmer concluded that the executive order on waivers may be legal but is not good policy. Bradley speculated that the waiver order may have an effect on future legislation.

Adjourn

The meeting was adjourned at 3:20 p.m.

Respectfully submitted,

Kathleen K. Bates
Kathleen K. Bates

APPROVED:

Clyde Bradley
Chair Clyde Bradley

H. Kay Hedge
Vice Chair H. Kay Hedge