

**MINUTES OF THE JULY 2001 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting:** A special meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, July 10, 2001, in Room 118, State Capitol, Des Moines, Iowa.
- Members present:** Senator Merlin E. Bartz, Chair; Representative Clyde Bradley, Vice Chair; Senators Patricia Harper, JoAnn Johnson, John P. Kibbie, Sheldon Rittmer; Representatives Danny Carroll, Marcella Frevert, and Janet Metcalf. Representative Paul Scherrman was excused.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor and Teresa VanderLinden, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened** Chair Bartz convened the meeting at 9:30 a.m.
- REVENUE AND FINANCE DEPARTMENT** Carl Castelda represented the department. Other interested parties included Jamie Cashman of the department of agriculture and land stewardship and elk breeders Steve Daugherty, Richard Garrels, Don Childers, and Jeff and Peni Tussey.
- Special review** Rule 17.9 provides a tax exemption for receipts from the sale of breeding livestock. While elk breeders contend that elk are livestock, the department has not allowed the exemption for elk. Castelda stated that the statute does not define livestock and exemption statutes must be narrowly construed. In the past, the general assembly has specified species to be included, such as ostriches, rheas, and emus. A bill introduced last session to include farm deer and elk passed in the senate, but not in the house. Castelda indicated to Bartz that when the department reverses its stand, exemptions are allowed retroactively and refunded.
- Daugherty stated that small Iowa farms survive through alternative agriculture, such as raising elk. Cashman reported that 1995 Iowa Acts, Senate File 85, classified elk as livestock under the department of agriculture and land stewardship. Garrels urged the department of revenue and finance to recognize elk as livestock.
- Frevert expressed concern about the lack of communication among departments affected by legislation. Castelda agreed to consult the attorney general's office and the department of agriculture and land stewardship and to ask the department of revenue and finance to hold audits in abeyance for 30 days if possible.
- Motion to refer** Kibbie moved a referral to the general assembly and a request for an attorney general's opinion as to whether a conflict between revenue and agriculture statutes can be resolved by interpretation or if a statutory change is necessary.
- Motion carried** The motion to refer the matter to the general assembly carried; Royce will draft a letter to the attorney general's office.
- ELDER AFFAIRS DEPARTMENT** Stephanie Laudner, Carla Pope and Beth Bahnson represented the department.
- ARC 0706B** No action on proposed amendments to ch 27 relating to assisted living programs. Bahnson indicated that review by the department's facilities engineer takes approximately three weeks; whereas reviews by the fire marshal and the department of inspections and appeals may take much longer. The three departments are working together to improve the process.
- PUBLIC HEALTH DEPARTMENT** David Fries, Cathy Calloway, and Don Flater represented the department.
- ARC 0729B** No questions on the Iowa fatality review committee.
- ARC 0730B** No action on ch 151 concerning the tobacco use prevention and control community partnership initiative.
- ARC 0597B** Subrule 38.8(11) regarding fees for transport of radioactive waste is under a 70-day delay. Flater reported meeting with concerned parties. Because there is no precedent for fees for low-level radioactive waste, the department will be meeting with national groups and seeking more input before implementing the fees which are intended to offset costs of education and training for first responders. Metcalf requested that all members of the Iowa Congressional delegation be contacted regarding this federal problem. Discussion continued regarding whether to train every responder on both sides of an interstate highway or only at designated points along the highway. Federal requirements for protective casings and escorts apply only to high-level radioactive waste.
- Motion to delay** Rittmer moved a session delay be imposed on 38.8(11) and review be scheduled for the December meeting.
- Motion carried** The motion carried; 38.8(11) was delayed until adjournment of the 2002 session of the general assembly.

INSPECTIONS AND APPEALS DEPARTMENT Jennifer Fiihr and Ralph Wilmoth represented the department.

Special review Metcalf requested a special review of 31.7 regarding licensing of temporary food establishments at farmers markets. Representatives of the department and Polk County have met with concerned parties and worked out a solution for this summer. Wilmoth distributed an emergency amendment and reported receiving no opposition from the 25 entities contacted.

Motion to refer Metcalf moved a referral to the general assembly to resolve statutory ambiguity.

Motion carried The motion to refer carried.

CORRECTIONS DEPARTMENT Michael Savala represented the department.

ARC 0746B No questions on 38.2 adding criminal transmission of HIV as an aggravated offense requiring registration with the Iowa sex offender registry.

INSURANCE DIVISION Scott Galenbeck and Craig Goettsch represented the division.

ARC 0727B No questions on rules relating to waivers and variances.

ARC 0750B No action on proposed ch 23 concerning motor vehicle service contracts.

IOWA FINANCE AUTHORITY Donna Davis, James Smith, Lori Beary, Loyd Ogle and Mike Tramontina represented the authority.

ARC 0748B No questions on ch 18 concerning waivers and variances.

ARC 0749B Ch 11 relates to the Iowa main street loan program. Ogle indicated to Bartz that the waiver references need to be corrected. Metcalf expressed concern about the emergency after notice filing of the rules.

ARC 0764B Proposed amendments to ch 12 modify the qualified allocation plan (QAP) for the 2002 low-income tax credits. Metcalf requested a copy of the proposed QAP. Davis responded to inquiries about the hard-to-house population by explaining that they have incomes at or below 40 percent of the median income of the area and have a supportive services plan. Davis reported that "hard to house" is only one of the options for the 40 points available in the supportive services part of the allocation.

ARC 0765B Ch 15 pertains to the housing assistance fund (HAF). Bartz read the definition of "hard-to-house populations" and expressed concern about the definition and the emergency after notice filing. Davis responded that because no housing assistance funds have been disbursed for two years, the emergency implementation was in response to public outcry for transitional housing.

Motion to object Metcalf moved an objection on the definition of "hard-to-house populations" in rule 15.6 on the grounds that it is unreasonable and expressed disappointment over the lack of legislative input.

In response to Bradley's uneasiness about the listing of hard-to-house categories, Ogle reported that the definition resulted from an advisory committee's investigation of the homeless shelter population and added that the categories were not an issue at the ten public hearings or while the rules were under notice. Nineteen applications for transitional housing and supportive services have been received. Following discussion about the relationship of these rules to an economic development bill that was vetoed, Carroll asked that the vote be deferred until the end of the meeting.

At the conclusion of the meeting, discussion continued. Tramontina clarified that HAF grants are made to organizations that provide supportive services and that funds are from IFA's reserves. A summary of the 19 applications for the \$300,000 allocated to transitional housing was distributed to give the committee a sense of the type of services that may be funded. Bartz stated that while concern about the definition remains, he would not want to jeopardize the awarding of grants to the current applicants. Gentry asked the committee to provide the IFA board with clear direction regarding their concerns. Bartz asked Royce to draft a letter on behalf of the committee.

Motion withdrawn Metcalf withdrew the motion to object, pending further review.

TRANSPORTATION DEPARTMENT Thomas Reis, Donna Buchwald, and Shirley Andre represented the department. Other interested parties included Ken Owens, Mark Maxwell, and Dennis Danks of ABATE of Iowa Rider Education.

ARC 0744B No action on proposed amendments to standard specifications for highway and bridge construction in ch 125 and rescission of ch 126 relating to contracts set aside for disadvantaged business enterprises.

Special review A review of the department's motorcycle driving examinations was requested following discovery that cone placement results in failure of the test by those operating certain bikes. Andre indicated that the test, which was based on manufacturers' specifications, was last revised about eight to ten years ago. Motorcycle safety instructor Owens tested the test and found that the steering radius of some motorcycles causes failure of this test, which is aimed at slow speed balance, rather than accident avoidance skills and stopping. Andre agreed to work with ABATE and review cone placement.

UTILITIES DIVISION Cecil Wright and Chuck Seel represented the division.

ARC 0725B No questions on proposed 9.3(1) concerning a correction to the land restoration rules.
 Special review Seel explained the three-consecutive-month limit on estimated meter readings and outlined proposed changes to procedures for computing estimates. In addition Seel reported on radio technology that will allow utilities to obtain meter readings remotely.

NURSING BOARD Eileen Gloor and Lois Churchill represented the board.

ARC 0758B No questions on proposed ch 2 concerning nursing education programs.
 ARC 0757B No action on proposed mandatory training on abuse identification and reporting.
 ARC 0763B No action on proposed 6.6(5) regarding supervision of LPN's via teleconferencing.
 ARC 0762B No comments on proposed 7.1, ARNP electronic access to pharmacy law and information manual.
 ARC 0761B No action on proposed amendments to ch 12 which result from agency review of rules in accordance with executive order.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division. Other interested parties included Steven Clark, Pamela Duffy, and Lorelei Heisinger of the Iowa Physical Therapy Association and Lawrence Carl, Matt Eide, and Tim Lawyer of the Iowa Chiropractic Society.

ARC 0740B Proposed 44.1(7) pertains to advertising by chiropractors. Bledsoe reported that there is an overlapping scope of practice issue and the board of chiropractic examiners and the board of examiners for physical therapists have long disagreed on use of the terms "physical therapy" and "physiotherapy" by chiropractors. The Iowa Code uses the term "chiropractic physiotherapy procedures." Dictionaries define "physical therapy" and "physiotherapy" as synonymous.
 Duffy, Clark and Heisinger voiced opposition to use of both terms by chiropractors and differentiated between the use of a physiotherapy procedure and the practice of physical therapy.
 ARC 0737B No questions on licensure rules relating to optometry.
 ARC 0738B No questions on proposed licensure rules pertaining to social workers.
 ARC 0739B No questions on proposed 281.3(1)"F" regarding acceptable continuing education subjects.

PUBLIC EMPLOYMENT RELATIONS BOARD No representative attended the meeting.

ARC 0726B Not reviewed.

LABOR SERVICES DIVISION Kathleen Uehling represented the division. Linda Goeldner represented the Iowa Nurses Association.

ARC 0741B No action on proposed amendments to chs 1, 10, 26, 71, 155, and 215.
 ARC 0742B Proposed 10.20 adopts OSHA standards for bloodborne pathogens in compliance with the Needlestick Safety and Prevention Act. Goeldner noted that the Iowa nurses association views this rule making, which gives a voice to the nonmanagerial personnel who use the equipment, as an important measure to improve the work environment of nurses.

RACING AND GAMING COMMISSION Jack Ketterer represented the commission.

ARC 0743B No action on proposed amendments to chs 4, 5, and 6.

SECRETARY OF STATE Bob Galbraith, Dean Lerner and Joelyn Gast represented the office.

ARC 0767B No action on UCC rules which went into effect on July 1, 2001.
 ARC 0728B No action on proposed 21.30 regarding inclusion of annexed property in reprecincting and redistricting plans.

SOIL CONSERVATION DIVISION Ken Tow and Bill McGill represented the division.

ARC 0751B Proposed amendments to ch 12 relate to the water protection fund.

TREASURER OF STATE Stephen Larson represented the office. Other interested parties included John Gilliland of the Iowa Association of Business and Industry, Elliott Smith of the Iowa Taxpayers Association, and Scott Weiser of the Iowa Motor Truck Association.

ARC 0747B Unclaimed property rules were adopted as published under notice. Smith, Gilliland and Weiser expressed disappointment that the association of business and industry received no response to the written comments submitted to the treasurer's office in opposition to use of contingency fee payment arrangements and in support of adoption of a holders' bill of rights. Larson responded that auditing contracts are public information, but the treasurer has received no requests for copies of the contracts, nor have any allegations of unethical or inappropriate practice on the part of auditors been received. Larson stated that the treasurer's office has not used contingency fee auditors to audit Iowa-based companies and the auditing contracts base payment on collections, not assessments. Bartz stated that the treasurer's office should have responded to the written comments received from ABI and possibly clarified the rules to reflect areas of agreement. Carroll, Bradley and Metcalf concurred that state agencies should both meet with and respond to concerned parties.

ENVIRONMENTAL PROTECTION COMMISSION

- Pete Hamlin, Randy Clark, Jon Tack, Francis Hallada and Wayne Ferrand represented the commission. Joe McGuire of Cessford Construction Company was also present.
- ARC 0736B No action on proposed amendments to chs 20 and 22 which facilitate the permitting process. McGuire stated that the amendments have the support of the limestone, concrete and asphalt associations.
- ARC 0735B No questions on general permits for dewatering and process water discharge from mining and quarrying operations.
- ARC 0732B No action on the amendment to 65.16(3) extending the time for land application of manure without an approved manure management plan.
- ARC 0731B No action on a proposed deadline for requesting the extension in 65.16(3).
- ARC 0733B No questions on 100.4 and 100.5 regarding solid waste disposal.
- ARC 0734B Proposed 102.16 pertains to emergency response and remedial action plans for permitted sanitary disposal projects. Hallada summarized comments received and stated that a clarification will be made to specify that the rule does not apply to satellite facilities and waste tire facilities.

EDUCATION DEPARTMENT Anne McCarthy and Mary Beth Fracek represented the department.

- ARC 0760B No action on proposed ch 83 concerning the beginning teacher mentoring and induction program. McCarthy updated the committee on the information posted through the teacher compensation link on the department's web site. Fracek pointed out differences between the original beginning teacher induction program and the proposed beginning teacher mentoring and induction program, which is part of the teacher compensation package. The new program is open to all public school districts that wish to participate and is for first-year teachers only. The new two-year program is standards-based and affects promotion and licensure. In response to Frevert's inquiry, McCarthy indicated that the department has contracted with an individual who will be developing the comprehensive evaluation system.

Carroll asked the department to advise Royce of its intentions regarding ch 12.

Committee business Johnson moved approval of the June minutes. The motion carried.

Harper moved the August meeting be on the statutory date: Tuesday, August 14. The motion carried. Rittmer reported that he will not be in attendance.

Bartz called attention to two objections to rules that have since been amended. Rittmer moved the objections to 441—81.6(11) and 571—106.11 be lifted. The motion carried.

At the June meeting, Johnson had requested information from the racing and gaming commission regarding charges for information released by RACI, a private nonprofit corporation. Royce reported on the response received. Johnson requested a formal review at the next meeting.

Adjourn The meeting was adjourned at 4:10 p.m.

Respectfully submitted,


Kathleen K. Bates


Teresa VanderLinden

APPROVED:


Chair Merlin E. Bartz


Vice Chair Clyde Bradley