

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 on Tuesday and Wednesday, September 10 and 11, 1991, in Senate Room 22, State Capitol, Des Moines, Iowa.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle, Dale E. Tieden, H. Kay Hedge, John P. Kibbie (excused a portion of the day to attend another meeting); Representatives David Schrader, Ruhl Maulsby (excused on September 11), Janet Metcalf and Jane Teafor.

Also present: Joseph A. Royce, Legal Counsel; Paula S. Dierenfeld, Administrative Rules Coordinator; Phyllis Barry, Administrative Code Editor; Mary Ann Scott, Administrative Assistant; Caucus Staff; representatives of the news media and other interested persons.

Convened

Chairman Priebe called the meeting to order at 10 a.m. and announced review of the following rules of Personnel.

PERSONNEL

PERSONNEL DEPARTMENT[581]

Definitions; classification; recruitment, application and examination; grievances and appeals; benefits, 1.1, 3.1(1), 3.2(1), 3.5(5), 5.2(7), 5.4(2)"e," 12.1(1)"e," 12.2(5), 15.6(4)"a" to "d," 15.6(5)"b," 15.6(7)"a" and "g," 15.6(8)"e," 15.6(10)"e," 15.6(11)"f," 15.7, 15.8, Notice ARC 2275A 8/21/91
Conduct of employees--selling of goods or services, 18.2, Notice ARC 2278A 8/21/91
Background checks, 5.3(3) ARC 2056A - 70 day delay.....6/12/91

Representing the Department were Clint Davis, Bureau Chief of Employment and Training; T.A. Meyer; DeeAnn Assmann; and Jennifer Dixon.

1.1 et al.

Meyer briefed the Committee on amendments to Chapters 1, 3, 5, 12 and 15. Teafor inquired about psychological testing and Davis responded that the Department of Corrections, for correctional officers, and the Department of Transportation, for motor vehicle enforcement officers, were required to use this evaluation as part of their screening process.

18.2

Amendments to Chapter 18 were before the Committee. Tieden inquired about written agency guidelines for selling goods or services. Meyer replied that each agency has the responsibility to develop methods and procedures based upon criteria set forth in rules of the Personnel Department. Tieden saw the need for consistencies.

5.3(3)

Subrule 5.3(3) relative to security background checks for eligible applicants was before the Committee. The Department of Corrections had voiced opposition to the subrule and the ARRC delayed it at their July meeting.

PERSONNEL
Cont'd

Davis reported that an agreement had been reached with Corrections on Monday, September 9, and he distributed copies of the revised subrule. He continued that Corrections had misunderstood Personnel's intent regarding the director's approval of background investigations. Personnel wants to ensure that the questions asked, as part of the background investigations, have clear connection to the job being investigated.

Davis pointed out that the provisions had been rewritten, beginning with the second paragraph--the words, "and following approval of the director" were deleted. He indicated that Corrections was willing to work with Personnel to develop the areas to be investigated with applicable standards. There was discussion of the procedure to be followed to implement the revision.

Schrader took the position that an Emergency filing would be inappropriate and, for the benefit of the new members of the Committee, he reviewed reasons for the 70-day delay. He recalled that the Committee had been told that a compromise was near in September. However, until today, they had heard nothing from either side on the issue. Schrader wanted the Department to follow the regular Notice and Filing process.

Davis and Doyle discussed procedures for corrections officers. Davis stated that the Department of Personnel was interested in the relationship of the corrections officer to the security issues. He added that positions other than corrections officers could involve similar security issues. He suspected that the Department would review the procedure followed by Public Safety--a three-tiered approach to their background investigations based upon the level of security and confidentiality of the job. He opined that Corrections attempts to apply some sort of differentiation.

Doyle asked what was expected of each department and Davis replied that the Corrections Department has a policy concerning background investigations. Yesterday it was agreed that the separate departments would cooperate to further define the policy and include standards to indicate what would be investigated and what the outcome would be with certain kinds of information.

Dierenfeld reasoned that agencies would ultimately establish policies after they have established questions to ask and the applicability to the position.

Doyle concurred with Schrader that an emergency rule making could not be justified.

It was noted that subrule 5.3(3) would become effective September 25.

Session
Delay

Doyle moved and Schrader seconded that subrule 5.3(3) be delayed until the expiration of the 1992 General Assembly. [The Department rescinded subrule 5.3(3), effective 9/13/91. IAB 10/2/91, ARC 2378A]

ENGINEERING
& LAND
SURVEYING

The following amendments were presented by Patricia Peters, Executive Secretary:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Administration, discipline and professional conduct of registrants, 1.4(1), 1.10 to 1.30, 4.2 to 4.27,

Notice ARC 2261A

8/21/91

1.4 et al.

Peters gave a brief overview of the rule and noted some changes made in examination requirements. No comments.

HISTORICAL
DIVISION

Mark Peitzman, Executive Assistant, Cultural Affairs and Barbara Filer, Administrator of Terrace Hill, presented the following rule:

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Organization and operation of Terrace Hill, ch 55, Filed Emergency ARC 2213A

8/7/91

Ch 55

Tieden inquired about the fee structure in 55.7(3). Filer replied that admission to Terrace Hill was \$2.00 for adults and 50 cents for children. There will be no charge for school groups or children under aged five. Tieden questioned why this information was not included in rules and Peitzman said they wanted flexibility. He added that the fee structure is posted at the facility and 30 days' notice will be given on any change. Royce interjected that the amounts in question were not fees as commonly used in the rules but would be considered "prices." Prices are exempt from rule making.

In response to Schrader, Peitzman defended the emergency rule making as providing a way to keep Terrace Hill open to the public. Their appropriation had been reduced significantly. A survey on other governors' mansions throughout the country revealed that Iowa's fee was one of the lowest. Some mansions are not even open to the public. No Committee action.

INSPECTIONS
AND APPEALS

Rebecca Walsh, Administrative Rules Coordinator for the Department, and Mary Oliver, Executive Assistant, Health Facilities, presented the following agenda:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Transient food service establishment license, inspection frequency, licensure requirements, 30.2, 30.3(4), 30.4, 30.6, 30.8,

31.1"4," 32.1"3," 32.1"9," 32.3(7), 37.8, Notice ARC 2199A

8/7/91

Nurses employed by intermediate care facility--restriction on outside work activities removed, 58.11(2)"a,"

Filed Emergency ARC 2198A

8/7/91

Intermediate care facilities for persons with mental illness (ICF/PMI), ch 65, Notice ARC 2200A

8/7/91

30.2 et al.,
58.11(2)

There were no Committee recommendations on ARC 2199A or ARC 2198A.

Ch 65

Discussion focused on new Chapter 65 pertaining to Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI).

Priebe asked for clarification of the definition of "Age appropriate" in 65.1. Oliver explained that activities as well as clothing must be appropriate for

INSPECTIONS
AND APPEALS
Cont'd.

each age. Decision would be a matter of judgment after the needs of the clients have been considered. Oliver assured Priebe that existing staff would observe the environment and the residents during routine inspections of the facilities.

Doyle referred to 65.21(11) with respect to hazardous conditions and liability involved. He suggested "...snow and ice shall be removed within a reasonable time."

In 65.19, Metcalf wondered if there were adequate safeguards with employees handling financial affairs for patients. Oliver had been informed by an Assistant Attorney General that the Department lacked authority to require bonding of employees. She explained that a particular person is designated to protect patients' accounts and routine audits are performed. In some cases, legal representatives from outside the Department manage the financial affairs. The Department would respond to any complaints from residents.

Oliver clarified definitions of "Psychiatric nurse," "Psychiatrist" and "Psychologist."

In response to Schrader, Oliver said that the level of care for chronic mental illness and mental illness includes many patients. This level of care is designed to make a place for those who are hospitalized and cannot find placement or who are inappropriately placed in nursing homes. Oliver stated that the majority of the people served would be a younger age group but there could be some elderly who had been mentally ill for many years. She pointed out that no one would be forced into one of these facilities.

With respect to Teaford's concerns regarding the handling of patients' funds, Oliver said that small amounts may be in petty cash for personal items but large sums would be in a separate bank account.

As recommended by Pavich, Oliver agreed to draft a specific definition of first-aid kits in 65.21(3).

Doyle referred to 65.21(8) regarding locked exit doors. Oliver indicated that the fire marshal must determine the safety of a facility and rule on locked doors before a license can be issued.

Priebe suggested clarification of 65.21(7) by substituting "facility" for "personnel" to provide necessary transportation. No formal action.

PHARMACY
EXAMINERS

Theresa Witkowski, Administrative Assistant, presented the following rules:

PHARMACY
EXAMINERS
Cont'd.

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Purpose and organization—precursor substances, 1.1(1), 1.1(3)"d" and "f," 1.2(1), 1.2(3), Filed ARC 2241A 8/21/91
Limited use pharmacy license applications, log of licensed pharmacists temporarily employed by a pharmacy,
3.4, 3.4(7), Filed ARC 2242A 8/21/91
General pharmacy reference library, 6.3"5," Filed ARC 2243A 8/21/91
Hospital pharmacy reference library, 7.3"5," Filed ARC 2244A 8/21/91
Patient medication record system, 8.16(1), Filed ARC 2245A 8/21/91
Who can administer controlled substances, 10.16, Filed ARC 2246A 8/21/91
Correctional facility pharmacy reference library, 15.3"5," Filed ARC 2247A 8/21/91
Nuclear pharmacy reference library, 16.5, Filed ARC 2248A 8/21/91

1.1, 1.2;
3.4 There were no questions or recommendations on ARC 2241A or ARC 2242A.

6.3 In amendments to 6.3, Priebe pointed out the lack of a date certain on the required publication. Witkowski replied that these editions were annual publications with monthly supplements. Similar references were used throughout their rules. Witkowski described the five required volumes for the practice of pharmacy.

Doyle wondered if provision could be added to the effect that one of the requirements of the pharmacy would be to subscribe to the specific manuals. Royce agreed to confer with the agency on the appropriate language. Witkowski explained that the "USP DI" was published by a private company and "Approved Drug Products With Therapeutic Equivalence Evaluations" was a U. S. Government publication. Witkowski emphasized that the Board has never taken disciplinary action against a pharmacist if they acted on notification that the subscriptions were mandatory. No Committee action.

7.3, 8.16 No questions or recommendations on ARC 2244A or ARC 2245A.

10.16 In review of amendment to 10.16, Priebe was informed that veterinarians could delegate administration of controlled substances to an assistant under Iowa Code Chapter 155A. It was noted that eye drops were considered as controlled substances.

Metcalf reasoned that rule 10.16 could be construed to authorize a physician, dentist, veterinarian or podiatrist to delegate authority to persons listed in paragraphs 1 through 6.

Motion to
Delay Metcalf moved to impose a 70-day delay on amendment to 10.16 (ARC 2246A). Motion carried.

15.3 There was discussion as to what constitutes a pharmacy in correctional facilities. Doyle asked if the issue had been reviewed by the Department of Corrections and the Board. Witkowski was not aware of any interaction. She was unsure of the number of these pharmacies but knew there were very few. Doyle suggested that Royce and Dierenfeld review the rule.

PHARMACY
EXAMINERS
Cont'd.

16.5

With respect to amendment to 16.5, Priebe asked why nuclear pharmacies were expected to "have access to" the publications when the other rules require the pharmacies to have in their possession these reference manuals. Witkowski could not answer. No other questions.

NURSING
BOARD

Lorinda Inman, Executive Director and Chris Newell, Associate Director, presented the following rules that were carried over from the July agenda:

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Continuing education, 5.1, 5.2(2) to 5.2(4), 5.3(2) to 5.3(6), Notice ARC 2187A 7/24/91
Nursing practice for RN/LPN--camp nursing, 6.3(3)"1," 6.6(3), Notice ARC 2186A 7/24/91

Ch 5

Inman briefed the Committee on amendments to Chapter 5. Schrader referred to Royce's memorandum of August 20 wherein he commented on 5.2(2)f as to the constitutionality of delegating decision making to an out-of-state authority. Schrader was of the opinion that concerns should be addressed before adoption of the rule. Inman reported that the only comment received was supportive. A hearing was not scheduled. No action.

6.3, 6.6

According to Inman, amendments to 6.3 and 6.6 would upgrade the rules by allowing LPNs to provide supportive and restorative care in camp settings. Previously, in the absence of a registered nurse, anyone with first aid education was permitted to treat the children.

PUBLIC
SAFETY

Michael Coveyou, Rules Coordinator; Roy Marshall, State Fire Marshal; Chris Odell, Assistant Attorney General; and Sandra Stolleman were in attendance for the following agenda:

PUBLIC SAFETY DEPARTMENT[661]

Fire marshal--installation of aboveground petroleum storage tanks, 5.304(5), 5.305, 5.306, Filed ARC 2216A 8/7/91
Vehicle impoundment, 6.4, Notice ARC 2217A 8/7/91
Devices and methods to test body fluids for alcohol or drug content, 7.3, Filed ARC 2218A 8/7/91

Doyle inquired about locked doors in care facilities and Marshall replied that existing rules address this issue. He spoke of problems of balancing safety and patient needs in these facilities. Committee members requested that Marshall contact Mary Oliver, Inspections and Appeals Department, regarding intermediate care facilities for mentally ill persons.

5.304 to
5.306

In review of amendments to Chapter 5, Maulsby was informed that there were no inspection fees for above-ground storage tanks.

6.4

Revision of 6.4 relating to vehicle impoundment was presented by Coveyou. He told the Committee that intent of the rule making was to clarify the time frame involved with impoundment prior to the towing and the following 24 hours. The word "locksmith" was added to make it explicit that the officer attempt to obtain the services of a locksmith in preference to breaking into a vehicle.

In response to Metcalf, Odell explained the U. S. Supreme Court case (Florida V. Wells) which requires

PUBLIC
SAFETY
Cont'd.

a policy for a warrantless search to gain access to locked compartments in the vehicle.

Doyle reiterated his position that the "policy" in this issue should have been a legislative decision.

Motion

Doyle moved to refer rule 661--6.4(17A,321) to the Speaker of the House and President of the Senate for review by the appropriate committees. Schrader spoke in support of the motion.

Metcalf was interested in law enforcement's ability to check for controlled substances. Coveyou replied that infrequent inventory searches reveal contraband--that is not the intent of an inventory. The inventory accomplishes: Protection of the officer and the Department against false claims of missing items from the vehicle and provides safety for the officer and others in the vicinity of the vehicle. There was discussion of procedure for obtaining a search warrant.

Doyle's motion carried unanimously.

7.3

There were no questions on amendments to 7.3.

Committee
Business -
Model Rules

Barry asked permission to publish in the Iowa Administrative Bulletin proposed rules of Governor's Task Force on Contested Cases.

Dierenfeld commented briefly on the role of the Task Force, chaired by Professor Arthur Bonfield, University of Iowa, which has developed a series of uniform rules over the years. These rules are recommended for use by agencies. There were no objections to publishing the Contested Case rules under authority in Iowa Code section 17A.6(1)c.

Human
Services
79.1(13)

There was discussion of Human Services subrule 441--79.1(13) relating to copayment by recipients. On July 15, 1991, the ARRC filed an objection to the emergency version and it will cease to be effective on January 11, 1992 [17A.4(2)]. Royce had conferred with Professor Bonfield as to the status of the rule when the statutory 180 days expires in January. There was consensus by Bonfield and Committee members that subrule 79.1(13) should be republished to reflect the version in place prior to the emergency amendments. Barry agreed to publish the revised subrule in the 1/8/92 IAC Supplement.

Recessed
Reconvened

Chairman Priebe recessed the meeting at 11:50 a.m. and reconvened it at 1:30 p.m. He called up the following:

PROFESSIONAL LICENSURE

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners--reinstatement of inactive and lapsed licenses, 20.109, 20.110(2)"b," 20.110(2)"d"(4), 20.110(2)"d"(5), 20.214(1), Filed ARC 2262A 8/21/91
 Dietetic examiners, uniform rules, 80.1, 80.4(1)"a" and "b," 80.4(5), 80.100(3), 80.100(6), 80.101(2)"c," 80.101(4), 80.101(6), 80.101(7), 80.203(2) to 80.203(5), 80.211 to 80.220, chs 86 to 88, Notice ARC 2266A 8/21/91
 Ophthalmic dispensers--inactive practitioners, reinstatement of inactive practitioners and lapsed certifications, 160.4 to 160.9, Filed ARC 2203A 8/7/91
 Optometry examiners, uniform rules, 180.1, 180.4, 180.5(5)"c," 180.10(7), 180.11, 180.12(1)"c," 180.104, chs 186 to 188, Notice ARC 2222A 8/7/91
 Podiatry examiners--settlement procedures, uniform rules, 220.204, chs 227, 228, Notice ARC 2212A 8/7/91
 Respiratory care practitioners, 260.5(4), 260.7(4), 260.10(8), 260.13(2), 260.15(3) to 260.15(6), Notice ARC 2204A 8/7/91
 Speech pathology and audiology examiners--continuing education subjects, retention of applications, fee for temporary clinical permit, reinstatement of lapsed license, 300.3(6), 300.7(1), 301.3(2)"b," 301.9(2)"d," 301.9(3), 301.10, Notice ARC 2265A 8/21/91
 Speech pathology and audiology examiners--per diem, method of discipline, 300.8(5), 301.112, Filed ARC 2263A 8/21/91

Harriett Miller, Board Administrator; Susan Osmann, Bureau Chief; and Marilyn Ubaldo, Board Administrator of the Division were in attendance.

Ch 20 No questions on amendments to Chapter 20 in ARC 2262A.

Chs 80,86-88; There were no recommendations for ARCs 2266A, 2203A, or 160;180,186-2222A.
 188

Chs 220, 227, Ubaldo presented amendments regarding uniform rules and
 228 settlement procedures for Podiatry examiners and Priebe
 inquired about the involvement of the board to negotiate
 in 220.204(2). Ubaldo said that a board member is
 designated to review cases before the entire board takes
 any action but she was willing to clarify the provision.

Ch 260 Miller presented amendments to Chapter 260 pertaining
 to Respiratory Care Practitioners. There was discussion
 of the meaning of "accreditation" as used in 260.15.
 Doyle reasoned that "accreditation" would be more
 comprehensive than "approve." Miller described an
 accredited sponsor as one that has to go through an
 extensive process--more than would be required for
 program approval. Miller agreed to review the rule.

Metcalf inquired if there were uniformity for rein-
 statement of licenses and Miller responded in the nega-
 tive.

Chs 300,301 Pavich in the Chair. There were no questions or
 comments on amendments in ARC 2265A or ARC 2263A.

HEALTH DEPARTMENT

The Public Health Department was represented by
 Carolyn Adams, Mary Weaver, Cheryl Christie and
 Barbara Nervig for the following agenda:

PUBLIC HEALTH DEPARTMENT[641]

Birth defects institute, 4.1, 4.5(2), 4.5(4), 4.6, 4.7, 4.9, 4.10, Notice ARC 2221A 8/7/91
 Public health nursing, 79.4(2)"a," 79.4(5)"b," 79.6, 79.8, Notice ARC 2208A 8/7/91
 Financial assistance to eligible end-stage renal disease patients, 111.6(2), Appendix 1 and Appendix 2,
Filed Emergency ARC 2205A 8/7/91
 Agency procedure for rule making, ch 174, Notice ARC 2207A 8/7/91
 Consent for the sale of goods and services, ch 190, Filed ARC 2206A 8/7/91
 Certificate of need program, ch 202, Notice ARC 2220A 8/7/91

Ch 4 Weaver presented amendments to Chapter 4 and agreed to
 ask a geneticist to respond to Doyle's question on DNA
 genetic weaknesses.

PUBLIC HEALTH
Cont'd.
Ch 79

No questions on amendments to Chapter 79.

Ch 111

Priebe took the Chair. Adams offered detailed explanation of subrule 111.6(2) pertaining to financial assistance for renal disease patients. The schedule which was in place prior to April will be followed for medical assistance. Payment by the state will begin after insurance, Title XIX, or Medicare has paid.

Ch 174

There were no questions on Chapter 174.

Ch 190

Adams indicated that their Department was coordinated with the Personnel Department on procedures in Chapter 190.

Ch 202

Nervig gave a brief description of the Certificate of Need Program. No comments were received and no one attended the public hearing.

Priebe spoke of the oversupply of beds in care facilities in his area which precludes building any new facilities.

Nervig stated that the Council follows criteria in the Code. They consider geographic access, community need and financial feasibility. Decisions are based on evidence presented at a public hearing. Priebe suspected control by those not fully aware of problems faced by smaller cities or rural areas.

Tieden referred to 202.1(3)b, and asked how the "number" was determined. Nervig said that hospitals submit their number of useable beds in an annual report to the Department.

Responding to Doyle's inquiry about retention of tapes of minutes, Nervig said they are usually kept for two or three months. Doyle also wondered about veto power over certificate of need and Nervig mentioned the appeals process.

There was Committee consensus that the certificate of need issue should be forwarded to the Speaker of the House and President of the Senate for review by the appropriate committees. See p. 5025 herein.

RACING AND
GAMING

Chuck Patton represented the Commission for the following rules:

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Excursion gambling boats--reserved area for patrons under 18 years of age, 20.12(1)"s," Notice ARC 2276A, also

Filed Emergency ARC 2277A 8/21/91

Age restriction for working on an excursion gambling boat, 21.12, Notice ARC 2271A, also

Filed Emergency ARC 2272A 8/21/91

20.12

In review of amendment to 20.12, Patton indicated that areas designed for activities and staffing were very adequate on the excursion gambling boats.

RACING AND
GAMING
Cont'd.

21.12

There was discussion of amendment to 21.12. Patton explained that a stamp is used to designate who can be on the casino floor and who may drink. He spoke of the difficulty in administering the rule since three categories of people are involved. With respect to enforcement, Patton advised Priebe there were fewer DCI agents on board now. Their assignments are to enforce the law on the riverboats. The law provides for the state to be reimbursed for the regulatory costs of riverboat gambling.

REAL
ESTATE
APPRAISER

Ch 1-10

William Schroeder, Executive Secretary for the Board, appeared for the following and there were no recommendations:

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Definitions; organization and administration; examinations--certified licensed and associate real property appraisers; registration--certificates, licenses and associates; reciprocity; continuing education; disciplinary actions against certificates, licenses and associates; investigations and disciplinary procedures; public records and fair information practices; fees, chs 1 to 10, Filed ARC 2264A 8/21/91

REVENUE AND
FINANCE

The following rules were explained by Carl Castelda and Mel Hickman:

REVENUE AND FINANCE DEPARTMENT[701]

Consent to sell, 6.7, Notice ARC 2270A 8/21/91

Sales of mobile homes and related property and services, 33.9, Notice ARC 2234A 8/7/91

Taxpayer notification of department to receive refund upon the finalization of a federal matter after the normal statute of limitations; due date for reporting tax on unrelated business income of nonprofit corporation; interest from bonds issued by the governments of Guam, Puerto Rico and the Virgin Islands, 52.1(5)"e," 55.3(5)"c" and "d," 59.5,

60.3(5)"c" and "d," Notice ARC 2236A 8/7/91

Ethanol blended gasoline, 63.3(5), 64.1(3), 64.4, 64.5, 64.8, Notice ARC 2235A 8/7/91

Insurance deductions, 206.2, 206.6, 206.8, 206.11 to 206.15, Filed ARC 2269A 8/21/91

6.7

There were no questions on amendment to 6.7.

33.9

Responding to Tieden, Castelda said that most mobile homes were subject to vehicle registration, which automatically places them under a use tax. This rule reflects the tax structure. The money is collected by the county treasurer at the time of initial registration.

At the suggestion of Priebe, Castelda was willing to revise the fourth paragraph in 33.9(1) by substituting "may provide" for "usually willing to."

52.1 et al.

There were no recommendations for amendments to 52.1(5) et al., 63.3 et al. or Chapter 206.

Dual rule
making -
Revenue and
UST Board

Castelda then brought up the matter of the collection and administration of the environmental protection tax by the Revenue Department and UST Board. Both agencies have rules which are identical in substance--UST Board, 591--Chapter 6 and Revenue, 701--Chapter 37. Castelda reviewed the process which involves Revenue, DNR, EPC, Insurance, Treasurer's Office and the Attorney General. Recently, the UST Board amended their rules but Revenue has not yet submitted the changes. Castelda wondered if it would be acceptable for Revenue to adopt the UST rules by reference and avoid the duplication of printing. From an internal prospective, they would continue to draft rules for review and approval by the Attorney General's office and the UST Board as provided by law.

REVENUE
Cont'd.

Priebe opined that the law would need revision.

Deferred
until Oct.

Dierenfeld commented that it was not unusual for an agency to adopt by reference. Pavich suggested that the matter be researched by the Staff and that their findings be shared at the October ARRC meeting. Schrader reasoned that adoption by reference would be following intent of the law. The Committee agreed to defer the matter until October.

ELDER
AFFAIRS

The following agenda was presented by Lois R. Haecker:

ELDER AFFAIRS DEPARTMENT[321]

Retired senior volunteer program (RSVP), 14.1, 14.2, 14.4, 14.5, Notice ARC 2249A 8/21/91

Also present was Joel Weinstein, Director of ACTION office. It was noted that the word "ACTION" was not an acronym for the federal volunteer program. Haecker was willing to incorporate a suggestion made by Metcalf to restructure 14.1(249D).

Committee
Business

Priebe asked that a DOT official be requested to appear at the October ARRC meeting to discuss inspection of farm trucks, test sites and CDL legislation in general. There were no objections.

Motion
641--Ch 202

Pavich moved that the certificate of need issue be referred to both Houses of the Legislature to be studied in more depth. Motion carried.

ARRC names
in IAB

Barry distributed a listing of the ARRC members for inclusion in the IAB. Doyle questioned whether cost for a full page could be justified. After further discussion, it was suggested that the type size be reduced so that the names could be published at the end of each monthly Committee agenda.

Barry suggested name plates to identify ARRC members at their statutory meetings and she agreed to pursue the matter.

Minutes

Pavich moved the approval of the minutes of the August meeting as submitted. Motion carried.

Recess

The meeting was recessed at 3:20 p.m. until 8:30 a.m., Wednesday, September 11, 1991.

Convened

Chairman Priebe convened the meeting at 8:30 a.m. All members present with the exception of Representative Ruhl Maulsby, who had been excused.

ENVIRONMENTAL
PROTECTION

Michael Murphy, Lavoy Haage, Victor Kennedy and Wayne Reed represented the Commission for the following agenda:

ENVIRONMENTAL
PROTECTION
Cont'd.

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Water quality standards--use designations, 61.2(5), 61.3(5)"e," Filed ARC 2233A 8/7/91
Criteria for award of grants, 91.2(1) to 91.2(3), 91.5(2)"a," 91.5(3)"a," 91.5(4), 91.5(4)"a," 91.6(1), 91.6(2), 91.10,
Filed ARC 2227A 8/7/91
State revolving fund loans for wastewater treatment, 92.3, 92.5(2), 92.5(3), 92.8(2), 92.9(2), Filed ARC 2226A 8/7/91

61.2(5)

Murphy gave a brief explanation of 61.2(5) and 61.3(5)e relating to protected flows for designated streams.

Scott Neal, City Administrator, and Ronald Barron, Wastewater Treatment Plant Operator, Mt. Pleasant, addressed the Committee with their concerns regarding the reclassification of Big Creek of the Skunk River Basin in Henry County. They contend that the stream now has a split classification--partially downgraded and partially upgraded to a Class A stream. Neal stated that the city of Mt. Pleasant has two wastewater treatment facilities and Big Creek was used as an effluent stream. The Class A designation will result in large expenditures for the city to disinfect their "wastewater treatment plant effluent." He urged the Committee to delay the rules for further study. Neal contended that the city had not received adequate notice of the hearing on the rules.

567-

Motion

Delay 70 days

(Not ruled since rules were in effect on 9/11)

Pavich moved to delay amendments to 61.3(5)e, Skunk River Basin, Big Creek, "2" and "2a" for 70 days. Schrader expressed surprise to the opposition at the "11th hour." Neal complained about lack of communication with respect to the date and time of the hearing. Priebe had heard complaints on the poor job of publicizing the hearings. Schrader spoke of possible solutions--delay the issue or the city of Mt. Pleasant could petition for amendment to the rule making. He favored the latter and said that he would vote against the motion. Motion carried. There were two "no" votes.

Ch 91,92

Kennedy briefed the Committee on amendments to Chapters 91 and 92 and there were no recommendations.

NATURAL
RESOURCE
COMMISSION

Representing the Commission for the following agenda were Michael Carrier; Richard Young, National Resource Commission Chair; Barbara Nelson, NRC Vice Chair; Arnie Sohn; Richard Bishop; Jim Zohn; Lowell G. Joslin and Martin Conrad, Fisheries Specialist. Other interested persons present were officials from the city of Dubuque, county supervisors and representatives of the Iowa Wildlife Federation.

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Wildlife habitat promotion with local entities program, 23.1, Notice ARC 2253A 8/21/91
Water recreation access cost-share program, 30.1 to 30.3, 30.5, 30.7, 30.9, 30.12(2), 30.12(3), 30.13,
Filed ARC 2232A 8/7/91
Resource enhancement and protection program: county, city and private open spaces grant programs, 33.50(2),
Filed ARC 2230A 8/7/91
Boat registration and numbering, 38.1, Notice ARC 2229A 8/7/91
Boat motor regulations, Hawthorn Lake and Lake Miami, 45.4(2)"b"(3) and (4), Notice ARC 2228A 8/7/91
Lake Darling state recreation area, deer population management areas, 51.3(1)"e," 52.1(1), 61.2, 61.6(3), ch 105,
Notice ARC 2225A 8/7/91
Fireworks displays--state parks and recreation areas, ch 65, Notice ARC 2231A 8/7/91
Salvage tags nontransferable, 80.1(3), Filed ARC 2254A 8/21/91
Trout fishing, 81.2(5), Notice ARC 2252A 8/21/91
Mines of Spain, amendments to Chs. 52 and 61, ARC 2079A
70-day delay 6/26/91

NATURAL
RESOURCE
COMMISSION

There were no questions on ARC 2253A.

23.1

Zohn gave a brief description of amendments to Chapter 30. Priebe questioned deletion of "when incorporated as part of an initial development project" throughout the rules and Zohn said the grant program would be liberalized to allow for cost-share when improvements were needed.

Ch 30

Metcalf and Zohn discussed allotment of docking areas for commercial or public operation. Percentages will be determined on a 12-month basis--percent of time gambling riverboats actually use the area versus time by recreational boaters. Zohn indicated that riverboats would be paying the entire bill when recreational boaters could not operate. Priebe noted the rule did not specify this. Tieden quoted from 30.9(3) with respect to cost sharing. Zohn stressed that the Department wanted to address a potential problem. No formal action.

33.50

Carrier explained amendment to 33.50(2) regarding the REAP program. Carrier clarified for Kibbie that this particular program was intended to develop projects with private organizations. No Committee action.

38.1 and
45.4

Joslin presented ARC 2229A and 2228A with no questions or comments.

Ch 65

In review of new Chapter 65, Carrier advised Tieden that wildlife would not be harmed by fireworks in the parks. The displays for special events would occur in a parking lot or large developed area within the state park.

80.1(3)

No questions on ARC 2254A.

81.2

Conrad offered amendment to 81.2(5) intended to add diversity to the trout program--10- to 12-inch brown trout would be stocked.

51.3 et al.

Carrier presented amendments to 51.3(1) et al. regarding Lake Darling deer population management areas. Priebe and Carrier noted that Gladys Black was not present but wanted to express concerns for safety of bald eagles and turkey vultures in the hunting area. Carrier distributed a map of the 800-acre area and cited overpopulation of deer as the impetus for the rule making. Priebe voiced support for allowing harvest of antlerless deer. Special antlerless deer licenses for the area will be limited to one per Iowa resident hunter at a cost of \$25.

Carrier informed Kibbie that the Attorney General advised there was no conflict between these rules and 1991 Iowa Acts, H. F. 577.

NATURAL
RESOURCE
COMMISSION
Cont'd

Carrier indicated that it was necessary to eliminate the state park status to allow hunting. As a matter of practicality, the area was renamed from Lake Darling State Park to Lake Darling State Recreation Area. The Department will retain all relevant administrative rules and prohibited activities will remain the same. Carrier emphasized that there was no downgrading but merely an expansion of use.

Schrader favored identification of different areas within the park. He suspected others would concur during the notice period.

Thomas Monroe, Iowa Trappers Association, Sigourney, voiced support of the proposal as being a very responsible approach to control deer.

Ken Kness, President of Iowa Wildlife Federation, stated that their organization supported the intended action and he echoed the remarks of Monroe.

Hedge suspected that dissent stemmed from the name change more than anything else.

Metcalf wanted more information on Black's concern and Roger Tucker, Iowa Wildlife Federation, responded that turkey vultures would have migrated out of the area before the hunting season. He admitted that the eagles would be disturbed during this two-week period but with suitable habitat and food, they would return. Carrier reiterated that turkey vultures are a migratory bird and eagles have been documented at Lake Darling. However, there were few in December when hunting will occur. The largest number of eagles were documented in January through March as they migrated north. Night roosting was not observed. No Committee action.

Mines of
Spain

The 70-day delay on amendments to Chapters 52 and 61 regarding the Mines of Spain area near Dubuque was before the Committee. See also minutes of July 12, 1991, meeting.

Carrier distributed maps and an aerial photograph of the area which showed where deer hunting would occur and also the site distances around the perimeter of the property.

Bob Woodward, Dubuque citizen, distributed a notebook of material to each Committee member. He represented many hunters who oppose firearms hunting in the MOS. Woodward explained each exhibit in the notebook which is on file in the office of the Administrative Code Editor. He pointed out that the City of Dubuque, by Resolution of August 19, 1991, opposed firearms hunting in MOS. Of the 18 property owners with land abutting the area, all but two signed a petition opposing firearms hunting. To his knowledge, there was no group on record as favoring the rules even though the DNR maintains the state will benefit. Woodward

NATURAL
RESOURCE
COMMISSION
Cont'd.

Mines of
Spain

continued that 12 percent of the 3386 residents who signed the petition presented at the July meeting were contacted again and 94 percent were not opposed to all forms of hunting, just in the MOS area. He pointed out that a one-ounce slug could travel up to 4000 feet and he cited safety issues in MOS.

Kibbie commented that if the 4000-foot argument were applied to all deer hunting areas, there would be no deer hunting.

Hedge asked if all landowners who signed the petition close their farms to hunting and Woodward could not answer.

Priebe asked Carrier if deer population in the MOS area to be opened were as heavy as the Lake Darling area. Carrier said it was not but the rule was not intended to reduce deer population. Nelson interjected that small game hunting was allowed during deer hunting season.

Woodward offered background on the acquisition of the Mines of Spain area by the state. A portion of the area was deeded to the state by the Lott family pursuant to a covenant to prohibit hunting for 10 years.

State Representative Rick Dickinson spoke for the five legislators representing the MOS who were unanimous in their opposition to the rule for a variety of reasons. Doyle asked if they would agree to small game hunting as opposed to deer and Dickinson indicated compromise on this issue was possible.

With respect to "controlled hunting," Carrier stated that the Department could see no basis for it.

Schrader recognized two important issues--hunters' safety and biological balance of the area (wildlife management). For these reasons he concurred with DNR action since they are professional biologists, wildlife managers and administer the hunter safety programs.

In reference to Dickinson's remarks, Nelson readily admitted that hunting is a risk and accidents are possible in any hunting areas. She declared that public hearings were for input, not a "yes" or "no" vote but the Department has compromised.

It was the opinion of Michael W. Pratt, at-large representative of Dubuque City Council, that the position taken by Barbara Nelson was ludicrous. He stressed that all the options should be weighed carefully. In the case of MOS, there was virtually unanimous opposition to gun hunting. Responding to Pavich, Pratt could not recall during his years on the council, when a previous owner's intentions or desires for zoning influenced the ultimate zoning.

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RESOURCE
COMMISSION
Cont'd.

Mines of
Spain

Carrier quoted statistics on deer hunting safety--one accident for every 102,000 hunter days; small game--one accident for every 54,000 hunter days; turkey hunters--one accident for every 36,000 hunter days. Carrier emphasized that DNR had received public comment in support of this rule.

Thomas Monroe, Iowa Trappers Association, voiced support of hunting in the MOS. He reasoned that if one area is allowed to be micromanaged by people around it, the state would have to allow it in other areas. The Association recommended implementation of the rules and when the season ends, DNR should meet with Dubuque residents to assess the results.

Priebe reiterated his preference for a controlled hunt, initially.

Dick Voetberg, Dubuque Mayor Pro Tem, wanted to relay that the idea for the rules did not originate in the Dubuque area. The DNR count of 63 deer would not attract outside hunters to the MOS area.

According to Young, a great deal of study had gone into developing the rules. The area had been walked several times and travel distance for slugs from a shotgun was studied. Some areas were eliminated for safety reasons. He stressed that DNR constituency was not limited to the city of Dubuque. Regarding the Lott family and their gift to the state, they received \$2 1/2 million and paid \$750,000 to the IRS which was a tax break of about \$375,000. The Lotts had requested no hunting on their property while they were alive and 10 years was agreed upon. It was Young's understanding that more time was spent in negotiations about motorcycles and snowmobiles. After public hearings, the Department compromised by limiting hunting to 18 days in December and 4 days during turkey season in early April. The park will be closed during these days for safety reasons.

Young informed Priebe that the 63 deer were scattered throughout the park and Priebe stated that he would oppose the rules because the Department should have allowed a controlled hunt. He also saw a need for better public relations by the DNR.

Jerry Enslyer, Dubuque County Historical Society, who was a member of the Task Force for Historic and Scientific Analysis for the MOS master plan voiced opposition to hunting in the MOS area because of its historic and cultural significance. He equated it to allowing gun hunting at Living History Farms.

James Brady, Mayor of Dubuque, was hopeful that this historic nature area could be enjoyed by future generations.

NATURAL
RESOURCE
COMMISSION
Cont'd.

Donna Smith, Dubuque County Supervisor, spoke of the economic ramifications at the county level if the rules are implemented. She cited law enforcement, liability and access to the area for ambulance service as examples.

Mines of
Spain

Dierenfeld asked if there were opportunity for further compromise and Brady indicated that a controlled hunt would be preferable.

Hedge referred to the letter from the Sheriff's Department which stated, "Guns, hikers and sightseers are not a good mix." He pointed out that the park would be closed to visitors during the hunting period. Smith contended that it was unrealistic to believe that 1400 acres without fences could be controlled.

Pavich in the Chair.

Motion

Priebe moved to delay amendments to 570--Chapters 52 and 61 until adjournment of the 1992 General Assembly and support an emergency rule to allow a controlled hunt.

Schrader observed that a motion to delay was the Committee's most powerful tool and he saw no reason to oppose the rules. He urged defeat of the motion.

Metcalf reasoned that the 1992 General Assembly could review the impact of a 1991 hunting season.

The Priebe motion failed on a 7 to 2 vote. Maulsby absent and not voting.

Royce advised Smith that requests for Economic Impact Statements apply only to Notices of Intended Action and Emergency Filed rules--Iowa Code section 17A.4(1)"c."

Recess

The Committee was in recess for 10 minutes.

UTILITIES

Pavich called on the Utilities Division and the following agenda was reviewed by Allan Kniep and Vicki Place:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
 Deregulation, reregulation, and service regulation of communications services and facilities, 5.1, 5.2, 5.6(1) to 5.6(3), 5.7,
Notice ARC 2267A 8/21/91
 Payment agreements, 19.2(4)"c" (21), 19.4(10), 19.4(16)"h," 20.2(4)"z," 20.4(11), 20.4(16)"h," Notice ARC 2197A 8/7/91
 Zero balancing of automatic adjustments, 19.10(4), Filed Emergency After Notice ARC 2194A 8/7/91
 Deletion of reference to rate case expense, 35.6(1), Notice ARC 2268A 8/21/91

Ch 5

Kniep gave a brief summary of amendments to Chapter 5, regarding deregulation, reregulation, and service regulation of communications services and facilities and responded to Committee questions. Kniep stated local service was still regulated. Inside wiring and customer premise equipment has been deregulated and prices are substantially less than when they were monopolies under controlled telephone companies.

19.2 et al.

Place presented amendments to 19.2 et al. regarding payment agreements. The rules will provide that once the customer defaults on the payment agreement, the utility has no obligation to continue offering it.

19.10,
35.6

There were no questions on the remaining amendments in ARCs 2194A and ARC 2268A.

UTILITIES
Cont'd.
19.10, 35.6

There were no questions on the remaining amendments in ARC 2194A and ARC 2268A.

ACCOUNTANCY
Chs 1 to 11,
13 to 15

The Board was represented by Glenda Loving, Executive Assistant, and William Schroeder, Executive Secretary, who reviewed amendments to Chapters 1 to 11 and 13 to 15. The Filed rules were published in 8/21/91 IAB as ARC 2259A. No questions.

ALCOHOLIC
BEVERAGES

Dick Morrell, Administrator, and Janet Galloway, Chief, Regulatory Bureau, submitted the following:

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]"umbrella"

Dispensing of alcohol in vending machines prohibited, 4.41, Notice ARC 2210A 8/7/91

4.41

Morrell described the rule making as an attempt to ensure that alcoholic beverages will not be dispensed by vending machines. He was not aware of a vending machine for this purpose on the market at this time. However, Galloway commented that pop machines have been altered to provide for dispensing of beer and the Division has asked that they be removed. The rule would also preclude a vending type of machine operated by an attendant. Doyle inquired about prohibition of keys to get into the bars of motel rooms and Morrell responded that under the hotel/motel law, all rooms on the premises are licensed and there is nothing to prevent anyone from calling room service for alcoholic beverages. Galloway added that the facility would have an obligation, under its liquor control license, to ensure that the persons who have access to liquor are of legal age. No Committee action.

DENTAL
EXAMINERS

Priebe took the Chair and called up the Dental Examiners Board for the following:

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Retaking examinations, 12.3, Filed ARC 2257A 8/21/91

Late fees, reinstatement of lapsed license, 14.4, 14.5, Filed ARC 2256A 8/21/91

Fees, 15.1(7) to 15.1(10), 15.3, Filed ARC 2255A 8/21/91

Chs 12, 14, 15

Constance Price, Executive Director, presented the amendments and there were no questions or comments.

HUMAN
SERVICES

The following rules were before the Committee:

HUMAN SERVICES DEPARTMENT[441]

Grievance and appeal procedure for PROMISE JOBS program, 7.1, 7.5(4)"e," 7.16(9), 93.21(3), 93.26(2)"c,"

93.40, 93.40(3), 93.44, 93.44(1) to 93.44(4), Notice ARC 2238A 8/21/91

Referral of ADC cases to department of inspections and appeals for investigation, 40.7(2)"c," 40.7(4)"d," 40.8, Filed ARC 2190A 8/7/91

Income and resource exemptions for major disaster and emergency assistance payments and certain restitution

payments for purposes of ADC and ADC-related Medicaid, 41.7(6)"y" and "z," Filed ARC 2189A 8/7/91

Statement of citizenship status, SSI and ADC resource exemption for food stamps, 65.2, 65.30(3), Notice ARC 2273A ... 8/21/91

Increase in standard utility and telephone allowance, 65.8(1), 65.8(3), 65.8(5), 65.22(1)"e,"

Filed Emergency After Notice ARC 2192A 8/7/91

Corrections in terminology due to nursing home reform, 75.1(3), 75.1(5), 75.1(6), 75.25, 76.12(5), 81.13(13)"c"(3),

85.1(1), 85.1(2)"a," 86.15(1), 86.15(3), implementation clauses in chs 75, 77 to 79, 81, 82, 86, 88,

Filed ARC 2191A 8/7/91

Selection of primary provider for Medicaid services, 76.9(4), Notice ARC 2274A 8/21/91

Payment for reserve bed days for patients requiring skilled nursing care, 81.3(2)"d" and "e," Notice ARC 2240A 8/21/91

Certification of adoption investigators, 107.1, 107.2, 107.3(1), 107.3(2), 107.3(2)"e," 107.4(1), 107.4(2), 107.4(3)"a,"

107.4(5), 107.5(2)"a" to "c," 107.6(1), 107.6(2), 107.6(3)"b," 107.7(2), 107.7(3), 107.8(1) to 107.8(5), 107.9, 107.10,

Filed ARC 2193A 8/7/91

Restructuring of central, regional and county offices, 1.3, 1.4, Notice ARC 2237A 8/7/91

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Cont'd.

Chairman Priebe announced that the last rule on their agenda--1.3 and 1.4, pertaining to restructuring of central, regional and county offices of the Department of Human Services would be taken up first.

1.3, 1.4

Representing the Department were Sally Titus Cunningham, Deputy Director for Services; Mary Ann Walker, Bureau of Policy Analysis; John Parmeter, DHS Counsel; Martin Ozga, Deputy Director of Legal Services of Iowa; Ruth Schlesinger; Rita Vodraska; Cynthia Tracy; Vivian Thompson; Cynthia Homan; Norma Hohlfeld and Maya Krogman. Also present were Arthur Gratias (former senator), supervisors and employees of several Iowa counties.

Chairman Priebe recognized Cunningham for opening remarks. She spoke of her responsibilities for all field operations and supervision of those who administer programs in central offices. The Department is in process of restructuring its field operations as mandated by the 1991 General Assembly in House File 479, section 129. Cunningham provided details on the legislative action which included a \$2.4 million reduction of the field operations budget. Express language in the appropriations Act directs the Department to eliminate seven of the eight district offices, leaving the Des Moines district intact. Cunningham continued that the Act also gives direction to streamline and more effectively move ahead in providing consultation and staff support. It was assumed that the Department would implement the changes effective September 1 and that the reduction of \$2.4 million was based on this assumption.

Cunningham said that the Council approved the new structure in July. Subsequent to that time, Department officials have offered to work with Iowa State Association of Counties (ISAC) in development of a transition plan to equitably distribute costs. However, controversy surrounds the proposed restructuring. From her perspective, the primary issue was based on the cost shift to counties. There was concern about creating "less than a full-time presence," or what they refer to as satellite offices. Other issues include whether or not ISAC should have been involved in the proposal or structure and ISAC has filed an injunction to discontinue reorganization activities with a court date of September 16.

Cunningham spoke of the dilemma faced by the Department. They firmly believe that in order to stay within their appropriation, the transition must begin now. Cunningham was aware of the interest in an Economic Impact Statement. When the Notice was published, they had not had an opportunity for individual negotiations with respective counties and they were preparing for reductions in staff. Individual situations in counties will have to be revealed before the impact is known. General estimates have been made and the worst case scenario for restructuring would be \$1.3 million assuming that the

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Cont'd.

1.3, 1.4
Cont'd.

federal pass-through to counties would continue at the existing level. Cunningham was aware that some counties will have additional costs by virtue of creation of area clusters and some counties will realize savings. She reiterated that until counties are willing to cooperate, accurate information could not be obtained.

According to Cunningham, field staff had to be reduced by 203 positions which increased caseloads and has impact on issuing benefits and serving clients--the number of staff is based on the appropriation level. She estimated a one-month delay in the rule making if they are required to publish an Economic Impact Statement. She emphasized that any delay in the implementation would increase their budget dilemma. Cunningham stressed that without the restructuring, five counties would have a half-time social worker and 21 counties would have only one.

Priebe quoted from 1991 Iowa Acts, House File 479, Section 129, numbered paragraphs 5 and 6, which directs DHS to restructure.

Doyle, for point of information regarding the pending court case, asked if any areas should not be addressed. Parmeter responded that for defense in the district court in Polk County, they should promulgate the rules. He saw no reason to withhold any information or "play games with the counties." They have been upfront with the counties and counties know the Department's position.

Schrader recalled that, in previous years, DHS has been granted broad authority to carry out legislative directives. However, in the two paragraphs quoted by Priebe, this broad authority was somewhat constrained. He wanted to segregate changes made due to the Governor's across-the-board budget cuts which are not a part of this directive in question. Schrader wondered if paragraph 5 of section 129 were the basis for the three levels of county offices--area, local and satellite--does the Department believe it to be consistent with the last sentence, "Emphasis shall be placed upon increasing the program support, training, and supervision of staff who work directly with clients."

Cunningham indicated that both paragraphs of the section were followed in considering how best to configure staff in the field and carry out necessary duties. She contended that the establishment of regional offices plus the creation of the area office concept addresses the idea of streamlining and creating more effective support to line staff.

Schrader referred to paragraph 6 of section 129 and stated that legislators had expressed concerns that the Act called for elimination of district offices with exception of the Des Moines office. However,

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Cont'd.

1.3, 1.4

regional offices seemed to reinstate that same layer of administration. Cunningham replied that, early on, legislative intent had created some interesting discussions in their agency. It was their understanding that the legislature was interested in transferring direct service staff--child protective investigators, adoption service specialists, use service specialists--from district offices to local offices. Cunningham enumerated a number of administrative functions involved regardless of location. The issue for the Department with paragraph 6 was that it created one district office. That district office under current structure serves a select number of counties. Cunningham noted the Act was silent on the remaining counties and did not negate required functions. She continued that leaving the Des Moines district intact had several dimensions and it became an issue of equity and semantics. The Department decided to stay within their resources to accomplish goals set forth in paragraph 5 by creating regional offices and centralizing functions in Des Moines.

Cunningham responded to further question by Schrader that the Department believes the "transition plan" in paragraph 6 refers to transferring staff from district offices to local offices and subsequently determining how to equitably distribute that cost shift. They interpret transition as working with counties to implement the structure approved by the Council on Human Services.

Priebe, in defense of the legislature, pointed out daily fluctuation in the amount of available dollars. He asked if the Department had consulted leadership as to legislative intent of the two paragraphs in question and Cunningham replied in the affirmative.

Paul Coates, Executive Director of Iowa State Association of Counties (ISAC), introduced Wendy Burgess, ISAC staff, and then summarized opposition to the plan proposed by DHS. ISAC took the position that DHS had failed to comply with House File 479. Coates questioned efficiency of the plan. It appeared to him that 62 positions were being eliminated and 63 positions created. Lack of access to service in some areas could be very critical to some clients and would put pressure on the general relief system. Coates declared that the proposed structure does not streamline service. Existing structure remains basically unchanged with creation of regional offices. Coates spoke at length on potential financial impact on counties. He contended that the counties and ISAC were not consulted on the transition plan even though they were willing to participate last June and July. ISAC had only one meeting with DHS prior to announcement of this plan, at which point they understood there were a number of alternatives and that the Department was still attempting to interpret the law. Coates declared that DHS had ignored

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Cont'd.

1.3,1.4

the legislature, clients and taxpayers. He urged the Committee to delay and reexamine the entire plan and request an economic impact study.

Arlyn Danker, Pottawattamie County Supervisor and former state representative, spoke of his frustration with lack of county home rule which was intended to give counties more flexibility. However, he was pleased to note that House File 479 was providing for input from counties on the restructuring. He concluded that government closest to the people governs easiest and best but he could not see that happening in this restructuring.

Robyn Wilson, Osceola County Supervisor, read from a prepared statement wherein she opined that DHS restructuring should not be allowed to continue. She cited increased costs and mass confusion and stress for clients and workers. She suggested special hearings and an Economic Impact Statement on the important issue.

Pavich took the Chair and recognized Joe Warrick, Mahaska County Supervisor. His criticism was directed to the "hierarchy of DHS," not DHS at the local level. He complained about lack of communication to the Supervisors as to what they might expect. Warrick was concerned that their budget, which was set on March 15, 1991, would be insufficient. He urged the Committee to seek a fiscal note on cost to counties and delay the rules into the General Assembly.

Priebe in the Chair. Doyle and Priebe clarified for the audience that the rules were only proposed and could not be delayed until they were before the Committee in adopted form.

Gary Kuehnast, Humboldt County Supervisor, reported that Humboldt County was named as plaintiff in the lawsuit against DHS for injunction. He spoke from written copy and shared concerns echoed by previous opponents of the rules. Kuehnast was concerned about loss of services to clients. He declared that the budgetary problem, created over the last 10 to 12 years by the legislature, could not be resolved in one year--especially by trying to reorganize the DHS.

Bill McClymond, Warren County Supervisor, concurred with previous remarks.

Wendy L. Burgess, Policy Analyst, ISAC, submitted written testimony and highlighted portions of it. She concluded that the impact of the restructuring plan would result in reduction in services without a reduction in taxes. She predicted an increase in property taxes.

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Cont'd.

1.3, 1.4

Motion

Cunningham responded to Teaforde that DHS had rough projections on the fiscal impact of restructuring but stressed the importance of working with individual counties.

Teaforde moved to request the DHS to prepare an Economic Impact Statement on proposed rules 1.3 and 1.4 [ARC 2237A, 8/7/91 IAB]. Priebe pointed out that any two Committee members may make such a request. Schrader and Pavich seconded the motion.

Schrader quoted from House File 479, section 129, paragraph 6, "...and to equitably spread the associated costs." He maintained that these words made it imperative for this Committee to know the impact of the plan.

Dierenfeld raised question on procedure--as to whether the Committee would vote on the request. Priebe and Royce clarified that a vote would be taken on the motion and it would carry with only 2 affirmative votes. Discussion followed.

Doyle was interested in the starting point for the Department. Cunningham said the staff would seek information from individual counties. Success of the statement would depend upon cooperation from counties and their ability to generate information. Cunningham was concerned with the delay created by the preparation of the statement.

Dierenfeld asked Cunningham to summarize her concerns. Cunningham replied that the rules could become final around November 18. However, an Economic Impact Statement must be published in the IAB at least 15 days prior to adoption of the rules so this would delay implementation.

Tieden inquired of Royce as to the possible effect of the pending lawsuit. Royce saw the key legal issue as being whether or not rule making is essential prior to implementation of reorganization. He added that it could be argued that reorganization is inherent within any government agency. He pointed out that reorganization would be halted until the rules were effective in the event DHS loses in court. Royce concluded that the consequences of an Economic Impact Statement request would be much greater if the injunction were granted.

Schrader explained to Cunningham that his support of the Statement was not meant to delay. He called attention to the fact that the Administrative Procedure Act (17A) makes provision for publishing reasons an Economic Impact Statement cannot be formulated. Cunningham reiterated that until the Department could negotiate with counties, some information would not be available.

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1.3, 1.4

Kuehnast was willing to cooperate with DHS to determine cost for each county. He stressed the need for written instructions to the counties and opined that the Economic Impact Statement would reflect how each county would be affected.

Royce advised that the Statement must be requested prior to the rules being adopted. He did not see the injunction process as having a real impact on the Economic Impact Statement.

Motion
Withdrawn

Teaford wondered if information could be obtained without a formal Statement and she asked to withdraw her motion. Priebe then asked if there were objections. There were none. Pavich noted that seven votes would be needed to delay the rules at a later time. Priebe could see both views but reasoned that two members could request an Economic Impact Statement. Schrader favored the motion but concurred with Teaford's logic. Kibbie wanted assurance that the Impact Statement was the only option for the ARRC today but they could delay the adopted rules into the General Assembly. He wondered what would happen in the meantime. It was Priebe's understanding that if the rules go into effect, the state would save dollars because costs will shift to counties. After listening to the arguments today, he took the position that counties should know what their costs will be.

Motion

Pavich moved to request an Economic Impact Statement on 441--1.3 and 1.4. Seconded by Kibbie. Priebe was supportive of the motion. The motion carried 5 to 4 by a show of hands.

Recess

The Committee was in recess at 1:40 p.m. until 2:10 p.m.

7.1 et al.;
40.7, 40.8;
41.7(6);
65.2, 65.30

Priebe recognized Walker for the remaining DHS agenda. There were no questions or comments on ARCs 2238A, 2190A, 2189A, or 2273A.

65.8, 65.22

In review of amendments to 65.8 and 65.22 regarding increase in standard utility and telephone allowance, Tieden felt the increase to \$202 was excessive. Walker explained that some of the homes were not well insulated and the figures were projected from a standard at Iowa State University. No Committee questions.

75.1 et al.

No questions on amendments to 75.1(3) et al. (ARC 2191A).

76.9

In response to Priebe, Walker said that the Iowa Foundation for Medical Care was an independently owned organization. The group includes licensed physicians, nurses and other health care professionals with primary headquarters in Des Moines. The Department has contracted with them--for example, to determine

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the level of care for Medicaid recipients. This service costs \$60,000 per year (federal and state money) which includes all the counseling, reviews, etc. Walker pointed out that House File 479 required DHS to expand the role of the Foundation and increase the number of recipients utilizing the service.

Ch 107

In review of amendments to Chapter 107 pertaining to Certification of Adoption Investigators, Walker told Teaford that these investigators were allowed to set their own fees.

Kibbie asked about requirements for the investigators and Walker cited: a 4-year degree in social work, family therapy, psychology, counseling, or other family-oriented degree plus three years' experience or above degree plus graduate education--30 hours education equals one year experience, or an MA degree in fields mentioned. Doyle and Walker discussed record checks for founded child abuse or criminal conviction in 107.4(5).

JOB SERVICE

William Yost and Joseph Bervid presented the following agenda for the Division:

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Employer's contribution and charges, claims and benefits, benefit payment control, 3.40(3)"a," 3.60(2), 4.58, 4.60(3)"b"(4),

5.7(6)"f," **Notice ARC 2195A**

8/7/91

Claims and benefits, benefit payment control, placement--temporary unemployment, mass separation, uncollectible

overpayments, change of form name and number in chs 4 and 7, 4.2(1)"c"(3), 4.5(1), 5.8(3), **Filed ARC 2239A**

8/21/91

Chs 3, 4, 5

Yost reviewed amendments to Chapters 3, 4 and 5 which will provide the formula to compute unemployment insurance administrative contribution surcharge rate at a percentage rounded to the next highest one-hundredth of one percent--.06. Previously, the .0547 was rounded to .05. The Division anticipated a dramatic reduction in the legislative appropriation. If there is an excess above \$5,916,050 it goes back to the general fund--1991 Acts, Senate File 529, \$405. Yost clarified that employers will pay no more than they have paid since 1988. The Division is proposing to ensure that they have the appropriation. Yost emphasized that the Division has had enthusiastic support of this surtax from employers over the years. Because of the average wage increases in Iowa--almost \$17,000 last year--there was imbalance with the formula. There was further discussion but no formal action.

Chs 4, 5, 7

No questions or comments on amendments to Chapter 4 et al. in ARC 2239A.

INSURANCE

Deb West and Fred Haskins represented the Division for rule 191--5.43(510) regarding managing general agents. The rule was published as Adopted and Filed in the 8/21/91 IAB as ARC 2258A. There were no questions.

LABOR

Walter Johnson, Deputy Commissioner, gave Committee brief overview of the following agenda:

LABOR
Cont'd.LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Operations of advisory board, grant applications and awards, chs 94 and 95, Notice ARC 2211A 8/7/91
 Community right to know, public safety/emergency response right to know, 130.12, 130.13, 140.10,
Notice ARC 2201A 8/7/91

Chs 94, 95

Teaford referred to 95.3(4) which proposed processing of a grant award within 60 days. She thought 30 days would be more reasonable. Johnson was willing to clarify the subrule.

Chs 130, 140

In review of amendments to Chapters 130 and 140 (ARC 2201A), there was discussion of availability of reports on facilities reporting the top 25 extremely hazardous chemicals. No recommendations.

DISASTER
SERVICES

Walter Johnson, State Emergency Response Commission Chairman, presented amendments to Chapters 103 and 104 as follows:

DISASTER SERVICES DIVISION[607]
PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Local emergency planning committees, required reports and records, 103.3(2), 103.4, ch 104, Notice ARC 2202A 8/7/91

Chs 103, 104

There were no questions.

SECRETARY OF
STATE

There were no questions on the following rule of the Secretary of State presented by Sandy Steinbeck, Elections:

4.3

SECRETARY OF STATE[721]

Nomination documents and forms—campaign finance disclosure threshold for candidates for school and city elections, 4.3, Filed Emergency ARC 2188A 8/7/91

TRANSPORTATION

The Department was represented by John Hocker, Specifications Engineer; Jan Hardy, Office of Vehicle Registration; Peter Hallock, Office of Public Transportation, and Bob Humphreys, Director of Highways and Chief Engineer; for the following agenda:

TRANSPORTATION DEPARTMENT[761]

General requirements and covenants for highway and bridge construction, 125.1, Notice ARC 2251A 8/21/91
 Vehicle registration and certificate of title, 400.1(8)"c," 400.14(3) to 400.14(5), 400.61(2), Filed ARC 2209A 8/7/91
 State transit assistance, locally determined income, 920.5, Appendix, Notice ARC 2250A 8/21/91

125.1

Hocker presented amendment to rule 125.1 which was a result of earlier concerns of the ARRC that bidding was not codified. He informed Schrader that the lengthy Disadvantaged Business Enterprises specifications for the bidding process were included by reference (Article 1102.18). The full text is on file at the DOT office and specifications are submitted with each bidding proposal to all contractors. Schrader recalled that the legislature had required these specifications to be a part of the administrative rules. He thought that references should contain a date certain. Hocker quoted from the Article that was approved entitled, "Disadvantaged Business Enterprises." He said that the policy to be followed by contractors when bidding was included in the Supplemental Specification. A document has been agreed upon for DBE with the contractors. The Department meets quarterly with the DBE organization and the Associated General Contractors. Schrader stressed the need for the ARRC to see any changes.

TRANSPORTATION
Cont'd.

Humphreys commented on the issue. It was his understanding that only Sections 1101 through 1105 of the Standard Specifications need to be referenced and addressed as part of the administrative rules process. The remainder of this lengthy book, which does include the DBE specification, is the part of the DOT specifications that have ongoing changes and do not affect the public directly. Humphreys continued that quarterly meetings with DBE and AGC and monthly meetings with DOT Staff and industries in Iowa produce a continuous evolution of changes to the specifications which are beneficial to the Department and the industry. No formal action by the Committee.

Ch 400

Hardy briefed the Committee on amendments to Chapter 400, Vehicle Registration and Certificate of Title. Doyle referred to 400.14(5) and suggested inclusion of the words "or a letter of appointment" by use of emergency rule. He noted that these words were used in 400.14(4). Hardy agreed to confer with their legal counsel and report to Doyle.

920.5

There were no questions on proposed amendment to 920.5.

ECONOMIC
DEVELOPMENT

Michael Doyle, Melanie Johnson and Kathleen Beery represented the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa export trade assistance program, 61.3*1, 61.4, Notice ARC 2214A, also Filed Emergency ARC 2215A 8/7/91
Rural community leadership development program, ch 68, Notice ARC 2223A, also Filed Emergency ARC 2219A 8/7/91

61.3, 61.4

M. Doyle explained amendments to 61.3 and 61.4. Responding to question by D. Doyle, M. Doyle said that the only way any company with offices located outside of Iowa could access this program would be if 75 percent of their employees were based in Iowa. He described the program as one for job creation and retention through the increase of new market sales and exporting. No comments were received on the rules. M. Doyle said that 64 contracts had been written and they anticipate approximately 90 this year.

Schrader voiced opposition to the program. He mentioned Miracle Recreation with corporate offices located in Missouri. Ninety percent of their employment is in Iowa but the holding company that controls them is in Missouri. Schrader wondered what assurance there was that the Iowa dollars would be used to promote products made in Iowa. M. Doyle pointed out the application states that products must be manufactured in Iowa. The only change is the location of corporate offices. Schrader reasoned there was nothing to gain by the amendment. He declared that a company with 75 percent of its employees in Iowa has already demonstrated some degree of lack of loyalty to Iowa by moving corporate offices outside Iowa. M. Doyle contended that it was a two-sided situation. The Department wants to promote Iowa products internationally and they feel products manufactured in Grinnell, for example, are Iowa products whether or not the corporate holding is in Iowa.

ECONOMIC
DEVELOPMENT
Cont'd.

Kibbie was advised that a maximum of \$8,000 could be used for foreign trade shows. M. Doyle stated that they had no applications from companies with out-of-state corporate offices.

Motion to
Object

Doyle moved to object to 261--61.3"1" as being unreasonable. Schrader asked to amend the motion by including that the rule also be referred to the Speaker of the House and President of the Senate for review by the appropriate committees. Motion carried as amended.

Royce prepared the following:

At its meeting held September 11, 1991, the Administrative Rules Review Committee voted to object to the amendments to rule 261 IAC 61.3"1" on the grounds those amendments are unreasonable. This rule appears as Item 1 of ARC 2215A, published in IAB Vol. XIV No. 3 (08-07-91). The previous rule provided export trade assistance to Iowa residents on entities with corporate offices in Iowa. The amendment will provide the assistance to out-of-state entities, as long as they employ fewer than 500 people and 75 percent of those people are employed in Iowa.

The Committee believes this amendment is unreasonable because it believes there are ample numbers of Iowa-based corporations that desire to participate in this program and that it is unnecessary to use Iowa-generated revenue to benefit out-of-state corporations. The Committee also believes that it was unreasonable to adopt this rule on an emergency basis. Such a significant change in policy, involving a re-direction of state resources, should have been preceded by a Notice of Intended Action, to assure public awareness and discussion on this proposal. Pursuant to the provisions of Iowa Code section 17A.4(2) this emergency adopted provision shall cease to be effective 180 days following the filing of this objection.

Ch 68

Beery briefed Committee on proposed Chapter 68 which provides guidelines for the Rural Community Leadership Development Program. Hedge inquired about the success of the pilot program and Berry gave a positive response. She said that the Kellogg Foundation had invested about \$450,000 for rural leadership programs called "Tomorrow's Leaders Today" with 75 communities participating. Earlier, through the ERDA program, Iowa invested in leadership through independent colleges. Through these two programs the Department has refined the model and cooperative agreement. Their goal was a common program with reduced competition among service providers to allow communities a choice of working with extension, community or independent colleges.

Metcalf and Beery discussed the function of decision-making institute. No Committee action.

Banking

Royce brought up the issue of petitioning the Banking Division for a comprehensive rule to clarify exemption for credit debt management companies. Following discussion at the August meeting, Royce prepared a formal petition for consideration by the Committee.

Motion

Teaford moved that the Committee request this petition. Motion carried.

9-11-91

No Reps

No agency representation was requested for the following rules and there were no questions.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]*umbrella*

Fee increase for administration of the uniform national examination, 2.10, Filed ARC 2260A 8/21/91

LAW ENFORCEMENT ACADEMY[501]

Curriculum for short course, 3.3*2," 3.6, Notice ARC 2224A 8/7/91

PUBLIC DEFENSE DEPARTMENT[601]

Transfer 650--chs 1 and 2 to Military Division, 611--chs 1 and 2, Filed Emergency ARC 2279A 8/21/91

VETERANS AFFAIRS DIVISION[613]

PUBLIC DEFENSE DEPARTMENT[601]*umbrella*

Transfer 841--chs 1 to 5 to 613--chs 1 to 5, Filed Emergency ARC 2280A 8/21/91

Adjourn

Meeting adjourned at 3:40 p.m.

Next meeting was scheduled for Tuesday and Wednesday, October 8 and 9, 1991.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Mary Ann Scott, Admin. Asst.

Bel E. Priebe

Chairman