

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Thursday and Friday, August 3 and 4, 1989, in Senate Committee Room 22. This meeting was held in lieu of the statutory date.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representative David Schrader. Absent due to illness, Representative Betty Jean Clark. Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Vivian Haag, Executive Secretary. Also present: Barbara Brooker Burnett, Governor's Administrative Rules Coordinator; Evelyn Hawthorne, Democratic Caucus.

Convened

Chairman Priebe convened the meeting at 10:10 a.m. and called up rules of the Agriculture and Land Stewardship Department as follows:

AGRICULTURE

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Pseudorabies disease, 64.147 to 64.160, Notice ARC 13A, also Filed Emergency ARC 12A 7/12/89

Pseudo-rabies

The Department was represented by Walter Felker, State Veterinarian, Lowell A. Anderson, Assistant, Lawrence Birchmier, and Ron Rowland. Also present: Larry Houser and Bernard C. Zecka, United States Department of Agriculture; Eric W. Ill, State Center Farmer; Jeff Schnell, Iowa Pork Producers Association. According to Felker, the revisions in rules pertaining to pseudorabies were intended to implement 1989 Iowa Acts, Senate File 474. Felker told Tieden that the system for transportation and sale of feeder pigs was relatively unchanged. The procedure for importation of pigs into Iowa from Wisconsin or Minnesota was not changed. Likewise, those states have not changed the requirements for Iowa pigs being sold there. Felker continued that the rules address handling of different classes of pigs in those markets, basically from noninfected herds, pigs from unknown herds, and pigs from quarantined herds. The noninfected pigs go unrestricted.

64.156(2)a

In response to Tieden's question in 64.156(2)a as to the derivation of the negative test of 14 breeding swine, Felker said that it was a statistically significant number. Chairman Priebe reminded that the rules were also submitted under Notice of Intended Action. Tieden was told that

64.160(3)

64.160(3) contained a provision to allow the Department to stagger the mailing of the Notice relative to quarantine of herds. This will resolve a logistics problem. Felker distributed copies of comments received at the public hearing.

The Committee was recessed for five minutes and best wishes were extended to Joe Royce upon the occasion of his birthday.

Meeting
Dates

Meeting dates were changed to September 11 and 12, 1989,
from September 12 and 13.

The October meeting dates were set for the 10th and 11th.

EDUCATION DEPARTMENT

Chairman Priebe called on representatives of the Education Department for the following agenda:

EDUCATION DEPARTMENT[281]

General accreditation standards, 12.1(6), 12.1(7), 12.2(1), 12.2(2), 12.2(3), 12.2(6), 12.4(2) to 12.4(6), 12.4(9),
12.4(10), 12.5(1), 12.5(2), 12.5(3), 12.5(3)"e," 12.5(4), 12.5(4)"a," 12.5(5), 12.5(5)"b," "c," "f," and "i," 12.5(18) to
12.5(19), 12.5(21), 12.5(22), Notice ARC 72A, also Filed Emergency ARC 71A 7/26/89

Open enrollment, ch 17, Notice ARC 73A, also Filed Emergency ARC 74A 7/26/89

Driver education, amendments to ch 28, Filed ARC 62A 7/26/89

Educating the homeless, ch 88, Notice ARC 60A 7/26/89

Extracurricular interscholastic competition, 38.17, Notice ARC 61A 7/26/89

Issuance of certificates and endorsements, renewal of certificates, requirements for special education
endorsements, occupational and postsecondary certification and endorsements, 78.11"6," 78.12"8," 78.15"8,"
"A," and "B," 78.17, 74.4, 74.11, 81.2, 81.4, 82.0(2)"a" and "b," 82.11, 82.13,
Notice ARC 0940 Terminated ARC 66A 7/26/89

Procedures for charging and investigating incidents of abuse of students by school employees, 102.2, 102.4(1),
102.4(2), 102.5(2), 102.8(6), 102.9(5), 102.10 to 102.13 Notice ARC 49A 7/26/89

SPECIAL REVIEW-Funding for Vocational Agriculture-Full-time
equivalent position.

Those in attendance included: Kathy Collins, Dave Bechtel,
Ray Morley, Dwight Carlson, Gail Sullivan, Margaret
Ellibee, Phyllis Herriage, Robert Roush, and Roger
Foelske.

Ch 12

Carlson presented amendments to Chapter 12 which were
intended to implement 1989 Acts H.F. 670 and S.F. 450
and 1988 Acts, Chapter 1018. Tieden was informed that
the waiver provision in 12.5(22) was limited to the
Guidance area. Requests for the waiver have been re-
ceived from 208 local schools and 70 nonpublic schools.

Ch 17

Bechtel explained that the emergency filing of Chapter
17 was necessary since application for open enrollment
options had to be made by August 1, 1989.

Tieden referenced the situation in his area of a child
who attended preschool in an adjoining school district
where the mother was employed. The parents want to
enroll the child in kindergarten under Open Enrollment
in the district next to her home district. Bechtel
advised that preK was not considered school and the child
would not qualify. Options for open enrollment would
allow a student who paid tuition prior to March 25, 1989,
for attendance at a public school in another district to
continue at that school. A child whose legal residence
changes may continue to attend the same school. If a
private school closes, the students may attend a public
school in the same area. Bechtel said the intent of the
General Assembly was to establish tuition as defined in
Iowa Code Chapter 282 relative to ability of parent to
pay tuition to another public school district, not neces-
sarily a fee to enroll in a program. Tieden pointed out
that the Act read "school" but the rule used "public
school." Bechtel reasoned that to define the preK fee
would make open enrollment available for any preK student
wishing to attend any public school district. The burden
would be placed on a district to pay for a student who
generates no state aid. Bechtel admitted that there was
nothing to preclude a student from paying tuition for the
first year, and then applying for open enrollment as it
was defined.

EDUCATION
DEPARTMENT
Cont'd

However, the Department takes the position that they cannot make an administrative decision on this issue of preK and set a precedent which would create other problems. There was further discussion of open enrollment legislation and inherent problems.

Pavich took the Chair.

Ch 33

Ray Morley, Coordinator for Homeless Education, explained that proposed Chapter 33 Notice was in compliance with federal legislation to provide for education of homeless youth. [Public Law 100-77, Title VII, Subtitle B]

Responding to Doyle's question as to whether or not a separate set of rules addressed migrant children, Collins said migrant children may or may not be counted as homeless, depending upon federal definition. She was not aware of federal legislation on the matter. She continued that under state law, these children have a right to attend school where they are physically present. The children can switch school districts as the parents move from job to job.

There was discussion of the ensuing complications of making these transitions, e.g. transferring of school records. It was noted that Iowa's definition of "homeless child" was broader than the federal definition. Collins reminded that with the advent of open enrollment, the residence of the student is no longer relevant. She did not envision problems.

33.8(2)

Doyle referred to 33.8(2) and raised question as to the legal burden on a school district, to find the parents and notify juvenile authorities of any student who is classified as a runaway. He envisioned problems with using "runaway" as a legal status to enroll in a particular school. Collins agreed to follow up on the question.

Collins pointed out that the law has never required a child to live with a parent or guardian in order to be educated.

Priebe resumed the Chair.

Ch 26

Bob Roush explained amendments to Chapter 26. No questions.

36.17
73.11

No questions regarding 36.17 or 73.11 et al.

Ch 102

Collins described amendments to Chapter 102 intended to implement 1989 Acts, S.F. 52. Schrader recalled his discussion with a legislative sponsor of the Act with respect to the importance of clarity as to how corporal punishment was defined. He requested that 102.4(1) "...no school employee is prohibited from using reasonable and necessary force, not designed or intended to cause pain" be amended by adding "or to serve as punishment". He reasoned that punishment is often intended to humiliate a child in front of other students to cause mental

EDUCATION
DEPARTMENT
Cont'd

reprimand, not necessarily to inflict pain. Collins agreed to consider the request but it was her initial thought that all of the examples in paragraphs a to g covered the issue--none of them were punishment. Schrader reiterated his concern for clarity. No formal action.

Chairman Priebe had requested Education officials to appear today to review their policy for improvement of vocational agriculture programs. He recalled legislative intent and a \$5 million appropriation for the express purpose of updating vocational agriculture courses and hiring two consultants to coordinate the program. Federal matching funds were also available.

Herriage, who had been employed in October 1987, explained that federal funds had been reduced thus state funds were also reduced. Foelske and Herriage discussed the appropriation which the Department interpreted as being intended for two full-time people. Foelske continued that in reality, the Department received \$17,000 additional dollars to hire two people. Joe Yedlik, representing Iowa Vocational Agriculture Teachers Association, stated it was their understanding that the two full-time agriculture consultants would be hired. General discussion. Priebe asked the Department to provide the total FTE as of July 1, 1987 and the total on July 1, 1989. He expressed his opposition to the way the Agriculture programs had been administered. Ellibee described her position with the Department and Foelske pointed out that the Vocational Education budget was reduced another \$46,728 in the fiscal year '89 Budget. FTE's are at 44 but federal funds are being reduced also. No Committee action.

PUBLIC
SAFETY

Roy Marshall, State Fire Marshal, Carroll Bidler, Director of Administration and Jen Worthington, appeared for the Department to review:

PUBLIC SAFETY DEPARTMENT[661]

Private investigation and private security business, 2.4(2)"b" and "j," 2.4(3)"f" to "h," 2.4(5)"b" to "e," 2.5(3), 2.6, 2.9, 2.11, 2.12, 2.17, <u>Notice ARC 43A</u>	7/26/89
Private investigation and private security business, 2.4(2)"b," 2.4(3)"f" to "h," 2.5, 2.11, 2.17, <u>Filed Emergency ARC 41A</u>	7/26/89
Fire marshal, 5.301(4), 5.301(5), 5.308 to 5.313, <u>Notice ARC 44A</u> also <u>Filed Emergency ARC 42A</u>	7/26/89
Devices and methods to test for alcohol or drug content, 7.6, <u>Filed Emergency ARC 48A</u>	7/26/89
Payment of small claims, 14.1, <u>Filed Emergency ARC 40A</u>	7/26/89

Ch 2

Bidler gave brief overview of amendments to Chapter 2. Doyle discussed the problem of an agent who fails to return the ID card when he is no longer employed by an agency. He asked about the possibility of issuing the card for only one year. Bidler responded that the cost of renewal would be a burden to many companies, however, he was willing to propose legislation to address the problem. Tieden thought it was unusual that a signature was not required on the card and Bidler explained the process.

5.306
5.307

Marshall explained that amendments to Chapter 5 were intended to permit dispensing of motor vehicle fuel into automobile tanks in service stations in towns of 1000 population, or less. Also, procedures were drafted for aboveground storage tanks with capacity of 1101 gallons

PUBLIC
SAFETY
Cont'd

or greater as directed by H.F. 447. Priebe questioned the 150 feet from a private residence restriction in 5.306(4). He did not recall that the statute provided this. It was his contention that the small town station would be eliminated. Marshall and Worthington cited 5.306(18)--it provides for a bunker or special enclosure for aboveground tanks. Marshall assured Priebe there were provisions for local approval of the enclosures. According to Marshall, 5.306(7) would comply with NFPA requirements for tanks or containers of 120 gallons or more.

There was discussion of 5.307, pertaining to reporting of existing and new tanks. Priebe pointed out that it was not legislative intent to require registration of anhydrous tanks. Marshall stated that definition of regulated substance was gleaned from the legislation [H.F.447] which implied that all larger tanks were to be included in the registration program. However, he was amenable to suggestions for legislative action during the next session.

Schrader referred to 5.306(9) which addressed kerosene tanks up to 660 gallons. He questioned the reference to 5.306(6) and expressed concern as to the impact of sub-rule 5.306(9) on the dealer who sells only small amounts of kerosene. Marshall commented that the dike size would be based on the size of the tank contained within the dike plus 10 percent. He agreed to research the questions posed by Schrader.

There was discussion of the definition of small communities and the fact that unincorporated areas would not be included without further legislation. The Department was hesitant to bypass the statutory definition of "city." Schrader cautioned against creating a situation where the truck stop out at a rural intersection could qualify for aboveground storage. Larry Petersen expressed opposition to broad language. He added that any registration beyond original intent would unnecessarily duplicate work being done in the Iowa Department of Agriculture and Land Stewardship and would be difficult to administer, particularly for trucks transporting regulated substances across state lines.

Committee discussion as to any possible action on their part with option being available to refer to the General Assembly. Royce advised of the claims process for reimbursement of registration fees through the State Appeals Board.

Motion

Doyle moved that the matter of aboveground storage tanks be referred to the President of the Senate and Speaker of the House for further study. Motion carried. Doyle, noted use of "explosion proof" in 5.306(16), and Worthington said the words were taken from the National Fire Protection Association rules on flammable liquids. Doyle was doubtful that anything was "explosion proof" and was concerned about liability.

PUBLIC SAFETY No questions re 7.6 or 14.1.

Nonresident Chairman Priebe called on Al Farris and Richard Bishop,
Hunting Natural Resources Department representatives who were
present to review their planned implementation of non-
Deer, Turkey resident hunting for deer and wild turkey legislation
and to seek ARRC concurrence.

Farris discussed three options: (1) Emergency rules that would be presented to the Commission next week, (2) a Notice followed by emergency adoption after public comment period--an effective date at the end of September would cause problems with licensing for turkey and bow deer season--or (3) the normal rule-making process making the rules effective December 6. The third option would render the licenses of no use. ARRC concurred that the rules should be adopted under emergency provisions of Code Chapter 17A. Schrader thought a simultaneous Notice would be advisable. Farris summarized zone divisions and exempted areas.

Farris concluded by noting that to abide by the statute, nonresident licenses would be available to Minnesota residents.

UTILITIES DIVISION

The following rules of the Utilities Division were before the Committee:

COMMERCE DEPARTMENT (181) "umbrella"
Interexchange carriers, 7.4(4), 22.1(3), 22.4(7)"b," 22.12(1), 22.13(1), Notice ARC 31A,
also Filed Without Notice ARC 30A
Alternative operator services, 22.1(4), 22.19 Notice ARC 28A, also Filed Without Notice ARC 27A
Alternative operator services, 22.1D Notice ARC 0594 Terminated ARC 32A

Allan Kniep and Vicki Place gave brief overview of 7.4(4). Kniep agreed to provide Doyle information on long distance access charge which is imposed on all telephones. Pavich mentioned the use of the 900 service advertised on television and the potential problem of children dialing the numbers. He wondered if there were rules on the subject and Kniep responded in the negative. It was noted that a family has the option of blocking out use of 900 numbers. Pavich requested the Utilities Division to consider adopting such rules. Doyle commented that a new state law on the subject had been declared unconstitutional by the Federal Supreme Court.

No questions on 22.1(4) et al. or 22.19.

Recess

Chairman Priebe recessed for lunch at 12:10 p.m. and reconvened the Committee at 1:45 p.m.

BOARD OF REGENTS

Charles Wright, Betty Volm and Cindy Eisenhower represented Regents for the following:

Personnel administration, 3.14, 8.102(3), 3.127, Notice ARC 61A 7/26/89
Policy on competition with private enterprise, 9.4, Filed ARC 8A 7/12/89

3.14

After brief explanation by Wright on 3.14 et al., there were no questions.

9.4

Eisenhower provided background on Rule 9.4 which addressed Regent's policy on activities in competition

BOARD OF
REGENTS
Cont'd

with private enterprise. No one attended the hearing for review of the regulatory flexibility analysis. Since that time, universities have discontinued selling certain items and services. Eisenhower emphasized that the Board was very serious in ensuring that its institutions curtail competition with private enterprise. An appeal process is in place but hearing aid dealers have not appealed. Schrader was told that the appeal process had been used to the extent that a letter was received--the first step of the procedure--and that resulted in Iowa State discontinuing rental of tents from the Athletic Department. Priebe was concerned about private enterprise and there was discussion of possible referral of the matter to the General Assembly.

Pavich took the Chair.

Motion

Priebe moved to delay rule 9.4 for 70 days to allow time for Royce to research the appeal process. Discussion followed. The delay could be lifted at the September meeting if Royce determines that the appeal process is workable. Schrader favored allowing the appeal process to work and he wondered if a delay would place a cloud on the rules--Royce assured him that it would not.

Priebe motion carried.

Priebe resumed the Chair.

ECONOMIC
DEVELOPMENT

The following agenda was before the ARRC:

Youth affairs--funding of special projects, 14.2(2). <u>Notice ARC 15A</u>	7/12/89
CDBG nonentitlement program, 23.1, 23.6(3), 23.7(3)"e" and "f," 23.7(5)"d," 23.8, 23.9(5)"a"(1), 23.9(6)"a"(6), 23.9(8). <u>Notice ARC 14A</u>	7/12/89
Rural community 2000 program, ch 28 title, 28.1, 28.2, 28.3(4), 28.3(5), 28.4(2), 28.4(3)"b"(1) and (6), 28.5(1), 28.5(2), 28.5(3)"a"(2) and (6). <u>Filed Emergency ARC 18A</u>	7/12/89
Satellite centers -- application review and grant award, 41.8, <u>Notice ARC 17A</u>	7/12/89
Use of marketing logo, ch 65. <u>Notice ARC 16A</u>	7/12/89

14.2

Department representatives in attendance included: Melanie Johnson, Diane Foss, Mark Dickey, Jude Conway, and Duane Leitch.

Leitch explained the new amendment for special projects in 14.2(2). No formal action.

Ch 23

In review of amendments to Chapter 23, Conway advised Tieden that total points for the Community Block Grant Program would be 700. Tieden expressed concern that small communities lose points when they lack matching funds. Department officials indicated that on the contrary, these communities receive more points. Conway spoke of the continual change in federal regulations for the CDBG. Tieden referred to threshold criteria in 23.8(4) and expressed his preference for a figure higher than 51 percent. No other comments.

Ch 28

With respect to the Rural Community 2000 Program, Department officials indicated that last year's general funds will go to drought-related projects. Tieden inquired as to definition of "local effort" and was told that it would be "dollars"--most are bonded and farmers home loans are permitted.

DED--Cont'd
41.8

Foss gave brief review of rule 41.8. No questions.

Ch 55

Johnson reported that a hearing on Proposed Chapter 55 was held August 1 and final rules will be before the Department of Economic Development Board this month. Schrader voiced support of 55.2(2)a which addressed eligibility criteria for a company to use the marketing logo--they must have been in operation one year. No action taken.

ELDER
AFFAIRS

Ron Beane and Lois Haecker were present for amendment to 16.2(1) and new rule 16.6 pertaining to long-term coordinating unit, Noticed as ARC 9997, 7/12/89.

16.6(4)

Schrader questioned 16.6(4) on funding priorities as to how the Department could provide for a competitive grant program when the money is spent proportionately among Area Agencies on Aging. He contended that such decision making should be done legislatively. Beane spoke of the current six projects and conceded that it was unclear as to how much money triggers the noncompetitive process to open it up to all thirteen agencies. Beane recalled that the appropriation language last year did provide that the two existing AAAs be funded before expansion. This was done and four new projects were funded at approximately \$30,000 per project. Schrader pointed out "enough money" was not defined. He maintained that the legislative process should be used on decisions as to whether a program will be supported for a grant program, or some private projects or individual projects or whether all of the "started projects" should be funded. Schrader concluded that the rules were vague. Beane responded that, for the current year, the Appropriations Subcommittee was aware that the same six projects were continued and not expanded. He admitted that the rules did not reflect current practice and he was willing to make necessary modifications.

The ARRC recommended that 16.2(1) be amended to include a quorum requirement, preferably two-thirds of the voting members. No formal action.

INSPECTIONS
AND APPEALS

Xenda Lindel-Prine presented the following and there were no questions:

Psychiatric medical institutions for children, ch 41, <u>Notice ARC 63A</u> , also <u>Filed Emergency ARC 64A</u>	7/26/89
Health care facilities--universal precautions--contact with body fluids, 57.11(11)"b," 58.10(8)"b," 59.12(11)"b," 62.19(4)"b," 63.9(10)"b," 64.12(14)"b," <u>Amended Notice ARC 6A</u>	7/12/89
Medications for residents on leave from health care facilities, 57.19(2)"m," 58.21(11), 59.26(11), 62.15(7)"a" to "c," 63.18(2)"m," 64.27(6)"c," <u>Filed ARC 7A</u>	7/12/89
Intermediate care facilities for the mentally retarded, amendments to ch 64, <u>Filed Emergency ARC 65A</u>	7/26/89

BOARD OF
NURSING

Deborah Fulton explained revised and adopted Chapter 7, "Advanced Registered Nurse Practitioners," published 7/26/89 as ARC62A.

BOARD OF
NURSING
Cont'd

The rules had been in process for 1 1/2 years. Brief discussion of educational and clinical requirements. Doyle was informed that there are 31 school nurse practitioners. No action.

Minutes

Pavich moved approval of the July minutes. Motion carried.

HEALTH
DEPARTMENT

Dennis H. Bach summarized the following amendments to the WIC program:

PUBLIC HEALTH DEPARTMENT[641]

Special supplemental food program for women, infants, and children (WIC), 73.5(9), 73.6(2)"c," 73.7(3)"a"(3)"2,"

73.7(3)"b"(6), 73.7(3)"c," Notice ARC 20A

7/12/89

Priebe was informed that convenience stores consider the amendments to be acceptable. No Committee action.

PROFESSIONAL
LICENSURE

Susan Osmann, Barbara Charls, Carolyn Adams, Libby Coyte represented the Department; also present, Bill Vanderpool, Board of Medical Examiners, Bill Crews, Physicians Assistant Board; Ann Jones, Greg Kolburgis, Ed Friedman, Iowa Physicians Assistants Society; Donald Soll, M.D., and James B. West, Iowa Medical Society. The following agenda was considered:

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board of dietetic examiners, 80.1, 80.100, 80.101, 80.102(1), 80.102(2), 80.106, 80.107, 80.108,

80.212, Notice ARC 68A

7/26/89

Board of optometry examiners, 180.12(6), Notice ARC 10A

7/12/89

Podiatry examiners, 220.1 to 220.6, 220.100, 220.101, 220.102(2), 220.102(3), 220.103, 220.105 to 220.107,

220.109(1), 220.109(2), 220.201, 220.203, 220.204, 220.206, 220.211, 220.212, 220.212(1)"e," 220.212(1)"f,"

Filed ARC 21A

7/12/89

Physician assistants, ch 325, Filed ARC 22A

7/12/89

Ch 80

Tieden questioned use of "postapproved hours" for continuing education in 80.100(3) and was assured that it was an acceptable practice. Charls advised Doyle that continuing education hours could not be banked--80.100(4). No exception is provided in case of illness since licenses may be placed on inactive status. Dietitians have two years in which to obtain 30 hours of continuing education. Doyle pointed out that extension is provided for continuing legal education. No Committee action.

180.12
and
Ch 220

Osmann presented amendments to 180.12(6) and Chapter 220. No questions. The Committee was in recess for five minutes.

Ch 325

Coyte advised the Committee that requested changes had been made in Chapter 325. The list of duties was modified to clarify that the physician assistant must act as an agent of the physician, not independently. Controversial wording on protocol was deleted. Responsibilities of physicians were clarified and one year of clinical experience will be required for physician assistants. Coyte spoke of the cooperation between Boards of Medical Examiners and Physician Assistants to resolve differences. With respect to the change in time frame from two weeks to six weeks for response from the Medical Examiners, Coyte said it would accommodate the Medical Board which meets every six weeks. It was noted that the Medical Board has filed the rules to reflect their consultation with Physician Assistants.

325.10(6)

PROFESSIONAL Vanderpool read a letter from the Physician Assistant
LICENSURE Board Chairman and commented that the "atmosphere had
Continued improved" and the two Boards were in agreement on most
issues. He asked that Chapter 325 be allowed to become
effective.

Priebe reasoned if the rules were to become effective, the subject should be referred to the standing committees in the Legislature. He then recognized Donald Soll, Board certified family physician from Dennison, who read a paper representing the views of the Iowa Medical Society and Iowa Family Physicians in opposing the physician assistants rules before the ARRC today.

Soll contended that it was the intent of the Legislature in 1971 to address the shortage of family physicians in rural areas but the proposed rules would discourage placement of PAs. According to Soll, there were over 165 communities actively recruiting family physicians and the conceptual need for PAs in rural Iowa was greater than ever. He also cited a need for PAs in branch offices which will become increasingly important as this trend continues. Soll took the position that the definition of "remote clinic" has no special bearing to rural Iowa but would benefit urban areas (325.6(4)). He suggested establishing a requirement that supervising physician and PA must demonstrate community needs for a PA to operate in a remote clinic. Decision as to need should be made by both Boards. An additional concern was quality of care. This would involve the ability of PAs to order medication and the amount of supervision necessary in remote clinics. Soll requested continued delay until further amendment.

Motion After brief discussion, Pavich moved to lift the Session
Delay Lifted delay which was imposed at the May meeting on rules 653--
Chapter 21, Board of Medical Examiners. Motion carried.

Motion Tieden moved that both sets of rules, 645--Chapter 325
Referral and 653--Chapter 21, be referred to the Legislature.
Motion carried.

Recess The Committee was recessed at 3:22 p.m.

Reconvened

Chairman Priebe reconvened the ARRC at 9:02 a.m., Friday, August 4, 1989, Committee Room 22. Members and Staff were present with the exception of Representative Betty J. Clark.

HUMAN SERVICES

Mary Ann Walker, Dan McKeever, Margaret Ward, Charlcie Parrish, Marg Corkery, and William McCracken were in attendance for Human Services. Also present: Senator Charles Bruner. The agenda follows:

HUMAN SERVICES DEPARTMENT(441)

Public records and fair information practices, application for aid, granting assistance, unemployed parent, alternative payers, aid to dependent children eligibility under the grant diversion program, aid to dependent children eligibility under the self-employment investment demonstration project, work and training programs, unemployed parent workfare program, work incentive demonstration project (WIN/CMS), grant diversion program, Promise Jobs program, 9.10(4)"e," 40.1, 41.4, 41.7(2)"d"(1) and "e," 41.7(7)"f" and "m," 41.7(11), 41.8(1), 41.8(3) "c" and "d," 42.1, 42.4(1)"a," 42.4(2)"a," 42.4(3) to 42.4(7), 42.6, 43.2(1)"b," 48.3(4), ch 93; rescind chs 47, 66, 69, 90, 91. Notice ARC 38A, also Filed Emergency After Notice ARC 38A 7/26/89

State community mental health and mental retardation services fund, 32.1, 32.2, 32.2(2), 32.3(1), 32.3(7), 32.4. Filed ARC 399B 7/12/89

Court-ordered care and treatment, children in need of assistance or children found to have committed a delinquent act, ch 163; rescind ch 209, Notice ARC 46A, also Filed Emergency ARC 47A 7/26/89

Subsidized adoptions, 201.5(9), Notice ARC 55A 7/26/89

Foster care services, 202.3, Notice ARC 56A 7/26/89

- 9.10 et al. Discussion focused on amendments to 9.10 et al. Walker reported on extensive revisions since the Notice because of comments received and changes in federal regulations. The rules were filed emergency after Notice to provide implementation of JOBS by July 1, 1989.

Chairman Priebe called on Bruner who indicated the issue of how to implement the JOBS Program, had generated considerable discussion in the legislature. Bruner was particularly concerned that the Individual Education and Training Plan (IETP) program had been rescinded (Ch 55) and a similar program adopted as part of the New Promise Jobs program. A number of standards were set out conditional upon the appropriation, which the governor later vetoed. Bruner continued that the WIN program was operating successfully in a number of counties and emphasized that legislative intent was that existing programs were not to be disbanded while a new administrative structure was being developed.

In S.F. 541, §8, money was appropriated for the Job Opportunities and Training Program. That section also required that the Individual Education and Training Plan Program be continued. Bruner expressed concern about the veto of certain conditions under the Work and Training Program and suspected that fewer people would move to self-sufficiency. The JOBS program did not constitute an entitlement. Bruner predicted that the veto would be subject to litigation as to the constitutionality of the action. He urged ARRC objection.

Burnett defended the Governor's action since it was his observation that the vetoed portion of S.F. 541 eliminated a duplication of services. The Department of Economic Development could provide some of the services in the job training area.

Discussion of committee options. Burnett inquired as to Committee policy when rules are in litigation. She stated that the Governor's office had been served with a lawsuit

HUMAN
SERVICES
Cont'd

challenging the constitutionality of the item vetoes in S.F. 541. Royce responded that the Committee had no set policy, but generally would not take action where litigation was involved. Bruner took the position that there was legal basis for an objection since the authority to implement rules was given pursuant to a specific law which required continuation of certain programs and then emergency rules were adopted to eliminate those programs.

He clarified that the portion of section 8 of the Act which preserved the IETP program was vetoed by the Governor. The Department then relied on emergency rulemaking authority granted in Section 30 of the Act to rescind a program the General Assembly intended to maintain. McKeever said that the Jobs Club component was viewed incorrectly as being an additional "hoop" that the client must jump through before vocational training. He discussed the exceptions whereby Jobs Club requirement could be waived but has been set up to meet the needs of the client. McKeever stressed that Job Club is not limited to minimum wage work. They have a fairly detailed assessment form and a very detailed employability plan. McKeever expressed his optimism after having worked with the program for the last six months. He was convinced that it would result in more clients finding long-term, self-sufficiency.

McKeever advised Priebe that self-initiated training was from the Family Support Act and would be reviewed by JTPA officials. In many instances, especially with the unemployed parent program, people come into the program who are already in school. They do not have the option once enrolled in the program to initiate on their own.

41.7(7)1

Priebe questioned provision in 41.7(7)1 whereby all Promise Jobs allowances were exempt as income. McKeever responded that the rule addressed allowances paid out of the program. There was no intent to count the payments which the Department makes for training or education. Priebe thought the rule was unclear. Tieden commented on the complexity of the issue.

Doyle favored filing an objection as suggested by Senator Bruner. Royce discussed procedural questions and pointed out that the rules were filed emergency after Notice--emergency filing was permitted by the Act. Burnett was informed by McKeever that the former WIN and IETP units were being maintained through the end of September and no one had been cut or lost service.

McKeever responded to question by Priebe that there was room for compromise but he was doubtful it would be to the extent sought by Bruner. Schrader voiced his opposition to the fact that the legislative process was completely cut out of this whole program. That, in itself, was objectionable to him. Royce thought that would be basic grounds. The substance of the rule which, in this case, was incredibly complicated, could be considered as to whether the

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legislative grant of emergency rulemaking power was still valid when key parts of the legislation were vetoed.

Motion

Doyle moved to object to the emergency adoption of the rescission of 441--Chapter 55. Motion carried. Tieden voted no.

The following objection was prepared by Royce:

Objection

At its August 4th, 1989, meeting the committee voted to object to the "emergency" adoption and implementation of ARC 39A, Item 12; specifically that portion of item 12 rescinding 441 IAC Chapter 55. It is the committee's opinion that this particular "emergency" filing is not authorized by Senate File 541, section 30 and is therefore beyond the authority of the department. The filing had been adopted in final form, appearing in XII IAB 02 (7-26-89).

At issue is the rescission of the Individual Education and Training Plan program (Chapter 55) and the substitution of a similar program as part of the new Promise Jobs program. In Senate File 541, section 8 the legislature appropriated monies for a Job Opportunities and Training Program. That section also contained a provision requiring that the Individual Education and Training Plan program continue in operation. Section 30 of the Act contained a special provision allowing the department to implement rules on an "emergency" basis pursuant to Iowa Code section 17A.5(2)"b".

The Governor vetoed that portion of section 8 which preserved the "IETP" program and the department then proceeded to "emergency" adopt, pursuant to section 30, a provision which terminated the "IETP" program, effective July 1st, 1989. The committee does not contest the Governor's action in vetoing that provision, but it does believe that it is unlawful for the department to rely on the "emergency" rule-making provisions of section 30 to rescind a program that the legislature specifically attempted to maintain.

The Governor's veto preserved the department's authority to terminate the "IETP" program, but that termination cannot be accomplished using the grant of "emergency" rule-making power set out in section 30. That delegation of power must be read in conjunction with section 8. Clearly the legislature contemplated the "emergency" adoption of a new jobs program. Just as clearly the legislature did not contemplate an "emergency" rescission of the "IETP" program, since it enacted legislation to preserve the program. It is the committee's opinion that the legislature would not have delegated the "emergency" rule-making power at all if it had known it would be used to terminate that program.

Pavich in the Chair.

No questions were posed with respect to amendments to Chapter 32.

Ch 151

Walker told the Committee that rescission of Chapter 209 and new Chapter 151 were Noticed and adopted as emergency simultaneously and would implement 89 Acts, S.F. 540, section 23 (4-6) and S.F. 541 sections 17 and 30. The Department of Human Services now pays the court-ordered services for children directly and these rules list the services which are eligible for payment, establish the rate of reimbursement, and set forth the reporting and reimbursement requirements to the provider.

Priebe in the Chair.

HUMAN
SERVICES
Cont'd

Discussion of amendment to 201.5 which will provide that children who are receiving adoption subsidy are also eligible for the special needs payment of \$100.00. This amount is currently available to foster children. Department officials estimated that 58 percent of current cases would qualify for the additional \$100 per month at an estimated annual cost of \$25,000 to \$30,000.

202.3

Walker reviewed proposed amendments to Chapter 202. The legislature provided oversight of voluntary foster care placements by the court. Court hearings will be required to extend voluntary placements in excess of six months for children under 18. Also, dispositional hearings must be held within 18 months after the initial hearing and every 18 months thereafter. Policies regarding out-of-state placements have been clarified. Forms were consolidated. No Committee recommendations.

NATURAL
RESOURCES

Al Farris and Mike Murphy represented the Natural Resource Commission and Environmental Protection Commission for the following:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

State parks and recreation areas, state park user fees, 61.3(3); rescind ch 66, <u>Filed Emergency ARC 60A</u>	7/26/89
Development and management of recreation trails on state lands - incidental use, 67.2, <u>Filed ARC 58A</u>	7/26/89
Fishing regulations, 81.1, 81.2(2) to 81.2(6), 81.2(9), <u>Notice ARC 67A</u>	7/26/89
Sporting dog field and retriever meets, ch 94, <u>Notice ARC 94A</u> Terminated <u>ARC 69A</u>	7/26/89

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Rules for determining cleanup actions and responsible parties, ch 133, <u>Filed ARC 9A</u>	7/12/89
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Brief review of amendments to 571--61.3 and 67.2. No action.

Ch 81

Farris spoke of the various proposed changes in fishing regulations, e.g. a 14-inch minimum length limit shall apply to black bass caught in the portion of the Mississippi River which borders Wisconsin. Similarly, a 15-inch minimum length limit shall apply to walleye. These limitations will be evaluated cooperatively by the two states to ensure that the goal is accomplished.

There was discussion of paddlefish snagging which will be precluded in the Missouri and Big Sioux Rivers and certain tributaries because of the scarcity and status of this fish. Paddlefish were also removed from the commercial fishing list in the Missouri.

Priebe asked about the possibility of a 15" minimum state-wide for walleye. Farris reminded of the two years' equalization and evaluation of 14" length by biologists at Okoboji. It would be costly to change the regulations in the middle of the evaluation.

Ch 94

Farris reported that proposed Chapter 94 was terminated because conflicting views could not be resolved.

Chairman Priebe reiterated his appreciation to Farris with respect to his effort on out-of-state hunters.

Ch 133

Murphy summarized changes in Chapter 133 following Notice. These rules were mandated by the groundwater protection Act of 1987 and had to be adopted by July 1, 1989. One significant issue was how to define

NATURAL
RESOURCES
Cont'd

"significant risk." Murphy indicated that the Commission still has some questions and has directed that another Notice be submitted to them to reopen those issues. There are a number of new members on the Commission and there has been much information presented to them over the two-year period.

Priebe recalled that the legislation was the result of a Conference Committee Report. He was hopeful that the Commission would not make extensive changes. Murphy anticipated that definitions of "action level" and "negligible risk level" would be revised.

INSURANCE
DIVISION

Susan Barnes, Craig Goettsch and David Britson presented the following:

INSURANCE DIVISION(191)

COMMERCE DEPARTMENT(181) "Umbrella"

Prearranged funeral contracts. 19.1, 19.2, 19.4(1), 19.13(3), 19.14(1), 19.16, 19.24, 19.33, 19.43 to 19.46,

19.60. Notice ARC 51A 7/26/89

Registration and operation of broker-dealers, ch 50.110n, 50.9, 50.16(1)"n," 50.16(2) to 50.16(6), 50.17, 50.22, 50.25,

50.25(4), 50.25(5), 50.43, 50.44, 50.46, 50.55, 50.58 to 50.67. Notice ARC 11A 7/12/89

Ch 19

Britson said that amendments to Chapter 19 were intended to clarify definitions and other rules on prearranged funeral contracts and possibly to close a loophole in regard to burial accounts. Priebe was aware of instances where customers had lost money because of not being allowed to transfer a contract to another state. Department officials thought a statutory change would be necessary to address this issue.

Prior to 1987 legislation drafted by the office of the Attorney General, there was more oversight at the county level--filings of reports to the county recorder and the administration enforcement by the county attorney. The Attorney General's office has always been somewhat involved in the enforcement process at certain steps.

There was discussion of the statutory provisions in Iowa Code Chapter 523A designed to ensure that performance occurs for those who have prepaid funeral arrangements. The four alternative methods to provide that type of protection: (1) trust account (most common), (2) insurance policy, (3) deposit surety bonds with the insurance protection, or (4) warehouse merchandise purchased.

Motion to
Refer

Doyle moved that the subject of Chapter 19 be referred to the Speaker of the House and President of the Senate and that they be apprised of problems with transferring of prearranged funeral contracts. Motion carried.

Ch 50

Barnes described amendments to Chapter 50 as intended to harmonize Iowa rules with those of other states who regulate sale of securities within their jurisdictions. Doyle referred to 50.43(2)h which listed as a fraudulent practice the failure to comply with any prospectus delivery requirement promulgated under federal law. He thought the provision was vague and Goettsch was willing to include a federal citation. Doyle also thought that it was unusual to combine into one category dishonest

INSURANCE
DIVISION
Cont'd

or unethical practices--50.9. Goettsch responded that the language was taken from the securities section of the Code. Doyle suggested further review by the agency.

Schrader and Goettsch discussed the fact that those who are licensed in the commodities industry are essentially not subject to any application of the securities laws. However, under that Act, the Division has the ability to take enforcement actions for unlicensed people which is fairly common. Goettsch added that the Division is staying within framework of their current statute. Rule 50.22 provides for registration for the small corporate offerings. No formal action.

PETROLEUM
UNDERGROUND
STORAGE
TANK FUND
BOARD

5.2

David Lyons appeared on behalf of the Underground Storage Tank Fund Board for the following:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Determination or adjustment of cost factor, 6.2. Filed Emergency ARC 76A 7/26/89

Priebe questioned the \$7 cost factor for each gallon of petroleum diminution. According to Lyons, the Legislature asked that the funding mechanism from the environmental protection charge equal about \$12 million. The formula used resulted in \$7 or 7-10ths for each gallon. Lyons admitted that the figure could create confusion and he assured ARRC that the amount would read seven-tenths on all the forms.

REVENUE
AND
FINANCE

Carl Castelda, Deputy Director, presented the following rules of the Revenue Department:

REVENUE AND FINANCE DEPARTMENT[701]
Taxable and exempt sales determined by method of transaction or usage, 18.29. Notice ARC 25A 7/12/89
Taxable and exempt sales determined by method of transaction or usage, 18.31(1). Notice ARC 24A 7/12/89
Determination of net income, 63.16(4)"c." 63.16(7). Notice ARC 23A 7/12/89
Allocations and apportionment, 64.6(6) to 64.6(7). Notice ARC 24A 7/12/89

Castelda indicated that their Department also had some rules in process relative to underground storage tanks. Existing rules will be expanded to provide a clearer definition of "depositer," "tank owner," etc.

Castelda gave brief overview of the Revenue amendments and there were no questions.

INDUSTRIAL
SERVICES

David Linquist and Clair Cramer appeared on behalf of the Industrial Services Division for:

INDUSTRIAL SERVICES DIVISION[343]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Contested cases, settlements and commutations, ch 6 title, 6.7. Notice ARC 9912 Terminated ARC 76A 7/26/89
Contested cases, settlements and commutations, 4.8(2)"c" and "g." 4.24, 6.2(9), 6.6. Filed ARC 46A 7/26/89

Following brief explanation of the amendments, there were no questions.

Pavich in the Chair.

JOB
SERVICE

Joseph Bervid and Paul Moran represented Job Service Division for the following rules on which the ARRC took no action:

JOB SERVICE DIVISION[345]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Employer records and reports, employer's contribution and charges, claims and benefits, 2.3(6)"c." 3.43(11), 4.1(18), 4.1(30), 4.1(76), 4.1(90), 4.2(2)"a." 4.7 to 4.10, 4.23(40), 4.24(16), 4.34(8)"b." 4.38(1)"c." 4.40, 4.63(3). Filed ARC 6A 7/12/89

PERSONNEL
DEPARTMENT

Clint Davis of the Department appeared for the following:

PERSONNEL DEPARTMENT[681]

Recruitment, application and examination; separations, disciplinary actions and reductions in force; relevance and appeals; leave; political activity; conduct of employees; equal employment opportunity and affirmative action, 6.4(2)"b" and "c," 11.1(1)"d," 12.2(6), 12.2(6), 14.6, 14.9, ch 16, 18.4, 20.1. Filed ARC 67A 7/26/89

Pavich was advised that no comments had been received from employee groups or organizations. Davis responded to question by Schrader that Hatch Act provisions appeared in previous rules and were merely carried forward in the revised rules.

Schrader wondered if 16.3 would apply to DOT employees because of federal highway dollars. Davis said it would depend upon the condition of the granting agency and whether or not it had, at the federal level, Hatch Act provisions. Typically, DOT funding does not have Hatch Act "strings attached."

Davis continued that they rely on departments individually to check the federal law under which grant money is received. Hatch Act implications would more likely be on specific grants for Health and Human Services.

General discussion. No action.

Priebe resumed the Chair.

ARCHITECTURAL
EXAMINING
BOARD

William Dikis, Board member, and William Schrader, Professional Licensing Division appeared for amendment to rules of Architectural Examining Board 2.1(3) on registration, published in IAB 7/12/89 as ARC 10A.

Priebe observed lack of penalty provisions in 2.1(3)e and Royce advised that a penalty could be established by rule. He suggested \$10 for a late renewal. The Committee asked Royce to work with the Board on the matter.

Pavich in the Chair.

CREDIT
UNION

Joan F. Bolin, Assistant Attorney General, represented the Credit Union Division for the following:

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181] "umbrella"

Insolvency, ch 11. Notice ARC 69A

Powers of superintendent in control of credit union, ch 13. Notice ARC 70A

7/26/89

7/26/89

General discussion of insolvency. Bolin spoke of a credit union which failed last year in its first year of operation. The Credit Union Division convinced them to voluntarily close.

Ch 13

Bolin described new Chapter 13 as providing explanation as to authority of the Superintendent to take over the management of business and property for a credit union under Iowa Code section 533.6(4). Options were discussed. It was noted that Bolin knew of no case law on the subject but she read from the section 533.4. No action.

Priebe resumed the Chair.

RACING
AND
GAMING

Mick Lura was present to review:

RACING AND GAMING DIVISION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Harness racing, thoroughbred racing, 9.4(13)"p," 10.4(13)"s," Notice ARC 3A, alsoFiled Emergency ARC 4A

7/12/89

Lura told the Committee that the rules were clarified with respect to hypodermics. Lura responded to question by Priebe that it was standard in every racing jurisdiction that possession of hypodermics by any one other than a licensed veterinarian was prohibited because of potential abuse.

Tieden thought a doctor's certification should be a requirement and included in the rules and Lura agreed to pursue the matter. Lura reviewed the policy of contracting with a clinic for dog track veterinarians. Discussion of public perception which will be addressed.

Lura indicated that proposed rules for riverboat gambling would be ready in September.

TRANSPOR-
TATION

Al Chrystal, Norris Davis and Neil Volmer appeared for the following:

Driver licenses: types of motor vehicle licenses; denials, cancellations, suspensions and revocations; nonoperator's identification, 600.6, 602.11(1)"b" and "c," 602.16(1)"c," 615.21, 615.28, 630.3(1), <u>Notice ARC 53A</u>	7/26/89
Types of motor vehicle licenses, 602.17(1)"a" and "h," 602.17(2)"c," 602.17(3), <u>Notice ARC 37A, also</u>	
<u>Filed Emergency ARC 36A</u>	7/26/89
Rail assistance program, 830.1 to 830.6, <u>Filed ARC 35A</u>	7/26/89
State transit assistance, 920.6 appendix, <u>Filed Emergency After Notice ARC 9993</u>	7/12/89

Ch 830

There were no questions regarding 830.1 to 830.6.

600.6
et al

With respect to revocation of a minor's license-- 615.28(2), Chrystal cited improper passing, reckless driving, and failing to stop as moving violations. Doyle and Priebe raised question as to revocation for two moving violations.

Chrystal pointed out that S.F.157 allows the Department to suspend an instruction permit for one violation. He reiterated that the Department may suspend a school license on one violation, revoke on two violations, and, if revocation occurs, the financial responsibility Act becomes effective. With an ordinary license, the driver with three violations is assigned to a driver improvement school and placed on probation for they are at a suspendible level.

Tieden was told that the statute permits student to drive from the home to and from schools of enrollment over direct and accessible route for the purpose of attending duly scheduled courses of academic instruction or extracurricular activities. It was noted that the fee for an ID card was reduced from \$5 to \$1 in the last session.

Ch 602

No questions on Chapter 602.

TRANSPOR-
TATION
Cont'd 920.5

Volmer commented on amendment to 920.5. No Committee action.

TREASURER
OF STATE

Mike Tramontina was present for review of:

TREASURER OF STATE[781]

Invest in Iowa agriculture diversification program, ch 4 title, 4.1 to 4.9; rescind ch 8. Notice ARC 33A 7/26/89

South Africa investment restrictions, ch 11, Notice ARC 33A 7/26/89

According to Tramontina the amendments to Chapter 4 would implement 1989 Acts, H.F. 140. The Treasurer can invest up to 10 percent of the average daily balance which is about \$500,000,000. This program was designed so that participation by bankers would be virtually assured. To date, approximately 70 banks have made a link investment in some fashion.

Ch 11

In reviewing Chapter 11, Tramontina stated that the Treasurer is required by Code section 12A.3 to promulgate a list of acceptable and unacceptable companies relative to investments and divestiture. Doyle suggested that rule 11.9 be changed to read "A person or company found guilty of knowingly filing false or misleading information...is subject to a civil penalty of \$5000 per violation." Tramontina was amenable.

The Committee was adjourned at 12:55 p.m.

The next meeting was scheduled for Monday and Tuesday, September 11 and 12, 1989.

APPROVED:

Respectfully submitted,

CHAIRMAN

Phyllis Barry

Phyllis Barry, Secretary
Vivian Haag, Executive Administrator
Alice Gossett, Administrative Asst.