

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, January 7 and 8, 1986.

Place of Meeting: Senate Committee Rooms 24 and 116, State Capitol, Des Moines, Iowa.

Members Present: Representative James D. O'Kane, Vice Chair; Senator Donald V. Doyle; Representatives Edward G. Parker and Betty Jean Clark; Excused: Senators Berl E. Priebe and Dale L. Tieden, who were on vacation. Also present: Joseph Royce, Committee Counsel; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Executive Administrator.

Convened Vice Chairman O'Kane called the meeting to order, Tuesday, January 7, 1986, 10:15 a.m., Room 24.

CONSERVATION
COMMISSION

The following Conservation Commission rules were reviewed by Rick McGeough; Marion Conover, Fisheries Supervisor; Roy Downing; Nancy Exline, Assistant Superintendent of Parks; Richard Bishop, Wild Life Section; Bob Fagerland; and Arnold Sohn, Planning Coordinator, of the Commission:

Docks and dock management areas, chs 33 and 34	ARC 6157	12/4/85
Park user fee, ch 51	ARC 6158	12/4/85
Public/private cost sharing to acquire natural areas with unique or unusual features, ch 78	ARC 6159	12/4/85
Wild turkey spring hunting regulations, ch 111	ARC 6160	12/4/85
Mussel regulations, 12.1(1), 12.1(3), 12.1(4)	ARC 6156	12/4/85
Water access program to provide recreational access through cost-sharing with public agencies, ch 79	ARC 6242	1/1/86

ch 33

McGeough discussed the fact that restrictions in chapter 33 are burdensome to individuals desiring to construct docks along rivers. The revised rules are intended to provide flexibility on rivers and more freedom in choice of docks without changing natural lake areas. Downing reviewed changes made since the Notice.

McGeough explained that, in some cases, waivers from neighbors would no longer be required. O'Kane was informed that language in 33.3(7) was a restatement of former standards. Downing said there were no changes in the commercial and dock management area. No recommendations.

ch 51

Exline pointed out two changes in chapter 51 since the Notice--one being that a heavily used portion of Black Hawk State Park would no longer be exempt from user fee.

CONSERVATION
COMMISSION
ch 78

Sohn briefed the Committee on changes made in chapter 78 following Notice. In O'Kane's opinion, the requirement that title remain with the state would simplify negotiations, but might limit access to some natural areas. Sohn advised that the Commission wanted to try their approach for at least a year in an attempt to learn the availability of private money. O'Kane saw that as a reasonable approach. No action.

ch 111

According to Bishop, chapter 111 was basically the same as last year except for minor zone changes. O'Kane wondered if there were a problem with applications being provided prior to the January 8 effective date of the rules. Bishop admitted that the process places the Commission at a distinct disadvantage and subject to criticism either way. He assured ARRC that the Commission would work to avoid the problem next winter.

ch 12

No recommendations for amendments to chapter 12 presented by Conover. Sohn explained proposed

ch 79

rules on the water access program, being chapter 79. Maintenance projects were dropped from the list of ineligible projects. Sufficient funds are available to meet existing needs and maintenance projects will be added to the eligible list.

AGING
COMMISSION

Fred Pothast and Ron Beane appeared on behalf of the Commission on the Aging for the following:

Timeframe for the use of funds, 9.1(4)	ARC 6219	.....	F	12/18/85
Grants to area agencies, 1.7(1) "ab," 4.9(1), 4.9(3), 4.9(6), 4.9(7), 9.11(2), 9.14(2)	ARC 6218	.....	N	12/18/85
Iowa elderlaw education program, ch 11, Notice ARC 5725A	terminated	ARC 6243	.....	NT 1/1/86

9.1(4)

Pothast noted that a public hearing had been held re 9.1(4), no written or oral comments had been received, and rules were adopted to limit carryover funds. Pothast explained the process in detail. O'Kane viewed 25 per cent in paragraph "f" as reasonable.

1.7(1) et al

In re amendments to 1.7(1), et al, Beane said that a public hearing and informational meetings had been scheduled around the state. Comments are being received and a Funding Formula Committee will weigh them. Beane admitted the complexity of the process, but he was unsure of refinements at this time. There may be changes in weighting of factors, e.g., poverty in rural areas and the "old-old" (75 years of age and older).

O'Kane complimented the Agency for their comprehensive preamble to the rules. In response to Clark, Beane discussed the rural and low-income factors which were built into one formula, but "kicked in" if funds to the state increased by a certain amount. The formula was developed in 1976 when funds were increasing each year.

AGING
COMMISSION
Continued

There was brief discussion of the Title III funds in 4.9(1)--language will aid in transition to the new formula.

9.11(2)

Clark took the position that 9.11(2) was unclear. Beane thought it questionable that the subrule was included in this submission. It discusses Title V employment funds and most of the Notice addresses Title III funds. However, since the first part of the subrule references general administration which is Title III, the followup to that addresses how much of Title V could be used for administration. The amendment was intended for clarification. No recommendations re termination of Noticed chapter 11.

BEER &
LIQUOR
CONTROL
DEPT

William Armstrong, Licensing Manager, presented the following agenda:

Volume discount on wine purchases, 14.8 and notice ARC 6128 ~~terminated~~ ARC 6172, also filed emergency
ARC 6171.....FF..... 12/4/85

In reviewing rule 14.8, Armstrong stated that it was intended to comply with an opinion of the Attorney General dated 11/8/85 relative to wholesale distribution of wine. The AG recognized that SF 395 [1985 Acts] permitted the Department to offer price discounts on wine but that the discount must be extended uniformly to all purchasers. Armstrong pointed out that "two cases" would be increased to "five cases" in a subsequent amendment.[1/15/86 IAB]

Motion to
Refer to GA

Clark reasoned that it was unfair for retail customers to enjoy the same discount as the licensee. She then moved that Royce notify the respective State Government legislative committees of the ARRC concern as to the unfairness of retail discount to consumers when permit holders must pay annual fees of \$800--\$1300 to purchase wine for resale.

Discussion that legislation should address discount based on volume to "retailers" only, not "retail customers." Doyle suggested use of "licensees" rather than "retailers." Armstrong advised Royce that AG concerns were based on statutory construction.

Vote

The Clark motion was adopted.

Armstrong agreed to provide copies of the AG opinion.

PUBLIC
INSTRUCTION
DEPARTMENT

Kathy L. Collins and Orrin Nearhoof represented the Department for the following:

Extracurricular interscholastic competition, 9.20(2), 9.20(6), 9.20(7), 9.20(8) ARC 6163.....F..... 12/4/85
Area vocational schools and community colleges, due process and appeal, 5.39 ARC 6258.....F..... 1/1/86
High school equivalency diploma, application fee, 8.6 ARC 6259.....F..... 1/1/86
Equivalent instruction standards, ch 63 ARC 6260.....F..... 1/1/86
Issuance of certificates and endorsements, renewals of certificates, conversion information, advisory committees, standards for teacher education programs, standards for graduate teacher education programs, chs 70 to 72, 75 to 77
ARC 6122 (carried over from December meeting).....N..... 11/6/85
Requirements for special education endorsements, occupational and postsecondary certification, chs 73 and 74
ARC 6147 (carried over from December meeting).....N..... 11/20/85

Also present: Merle Fleming, Assistant Attorney General.

1-7-86

PUBLIC According to Collins, amendments to chapter 9 will
INSTRUCTION enable students to participate in extracurricular
DEPARTMENT activities which are not offered at their school.

Royce recalled a complaint he had received involving a Des Moines student who moved to Red Oak and wanted to swim. Red Oak has no pool and one was not available through the academic-sharing program. Responding to Royce, Collins said that the Board was aware of the Red Oak situation. Collins continued that the Board is adamant as to the prerequisite for academic sharing--a student should not be allowed to choose a district for participation in sports. Collins noted that strict interpretation of Code §280.15 might allow the Red Oak student to accomplish his goal. No questions re 5.39 or 8.6.

5.39

8.6

ch 70 et al Nearhoof offered update on proposed chapters 70 et al which were carried over from the December ARRC meeting. The Department is reviewing input received from written comments and the public hearings. O'Kane had heard criticism of the Department for not rescheduling the northwest Iowa public hearing, which was canceled because of a blizzard. Nearhoof responded that DPI extended the date for written comment and received input from some people who had planned to attend the hearing. In addition, there were four regional meetings and one in Des Moines. Nearhoof contended that the Department received a broad spectrum of response from the affected public with interest centering on four or five items. One issue raised deals with proposed rules to increase renewal requirements and to reduce the term of the certificate. He stated that DPI has attempted to provide broader alternatives for completion of renewal requirements through expanded opportunities at Community Colleges and AEAs.

70.7

70.20

70.19

Clark questioned need for rule 70.7(257). Nearhoof stated that the rule set out departmental policy on correcting certificates. Brief discussion of 70.20(257). Nearhoof pointed out that areas and grade levels of teaching endorsements will be revised--70.19. O'Kane found the rulemaking somewhat unsettling in that all issues have not been resolved legislatively. Nearhoof had anticipated legislative scrutiny and had made a concerted effort to present the framework to this Committee while the Legislature is in session.

ch 63

In reviewing chapter 63, Collins said clarifications were made with respect to original intent in 63.3(3)--teachers duties not delegable. She continued that a 3-member Task Force--Robert Benton, Earl Hill, and Robert Van Voorhen--was appointed to develop a compromise with those who advocated home school study and to resolve the conflict with Reverend Johnson [Charles City]. The Task Force studied the home school concept,

PUBLIC
INSTRUCTION
DEPARTMENT
Continued

reviewed legislation from 50 states, and submitted a lengthy report which, in essence, proposed legislative changes to Code chapter 299. Code change would allow those with a Bachelor of Arts or equivalent degree to teach in a private school, and those with high school or equivalent could teach their children at home. This would result in additional reporting requirements and more local district involvement for home programs. The DPI Board has not yet considered the recommendation.

Responding to Doyle, Collins advised that the Des Moines Schools "home study" program would be governed by these rules, although the Department takes the position that equivalent instruction standards do not pertain to public schools. In the discussion of alternative schools and home school educational matters, Collins said that several districts favor the Des Moines concept but lack necessary funds--cost per pupil on state aid still exceeds the amount the district receives from the state. Doyle referenced the Billie Sunday Schools in his District and noted that they have some certified teachers. Collins stressed that noncertified teachers are permitted to function as aides but not as instructors in a class.

Fleming interjected that noncertified personnel could teach religion. Collins was doubtful that the Billie Sunday Schools would be considered as approved schools. General discussion. Fleming pointed out that Iowa has the duty and power to ensure that all children are educated. She was concerned about future tort claims. Collins viewed the Prospect Heights, Illinois Christian Liberty Academy correspondence course as one of the Department's main concerns. Because they have certificated individuals on their staff, the Academy contends that the child taking the course is receiving "equivalent instruction by certified teacher elsewhere" as referenced in Code section 299.1.

chs 73, 74 Nearhoof asked and received permission to defer further discussion of chapters 73 and 74 until a time when other knowledgeable staff could be present. He pointed out that it would be approximately three months before further special education endorsements would be developed.

Recessed Vice Chairman O'Kane recessed the Committee for lunch
Reconvened at 11:53 a.m. and reconvened them at 1:30 p.m.

HUMAN
SERVICES
DEPARTMENT

Human Services Department rules were before the ARRC as follows:

Volunteer services, ch 12	ARC 6254	.....	F	1/1/86
Medicaid provider audits, ch 87	ARC 6263	.....	F	1/1/86
Child foster care facilities, 112.5(1)"f," 112.6	ARC 6265	.....	F	1/1/86
Payments for foster care and foster parent training, 156.1 to 156.5, 156.14	ARC 6266	.....	F	1/1/86
ADC, application, recoupment, 40.1, 40.7(4), 41.5(2), 41.7(9)"a"(5) and "k," 46.7(5)	ARC 6190	.....	F	12/4/85
Assistance programs -- reductions, 52.1(3), 54.3(15), 78.2(2)"a," 79.1(2), 79.1(3)"g," 81.6(16)"b," "c," and "e," 150.3(5)"p" and "r," 156.6(1), 156.7(1), 177.4(3), 177.9(3)	ARC 6223	.....	F	12/18/85
Federal surplus food program, institutional food program, food losses, 73.13, 74.19(2), 74.22	ARC 6192	.....	F	12/4/85

HUMAN
SERVICES
DEPARTMENT
Continued

Medical care, payment for transportation, 78.13(10) ARC 6193 F.E. 12/4/85
 Medical assistance advisory council, procedures, 79.7(5)"a" and "b" ARC 6224 F.E. 12/18/85
 Child care centers, records, 109.2(1)"h" ARC 6194 F.E. 12/4/85
 Child day care, fees, 130.4(3) ARC 6195 F.E. 12/4/85
 Social services block grant, 153.1, 153.2(1), 153.2(4), 153.3(3), 153.5(6), 153.6, 153.7 ARC 6196 F.E. 12/4/85
 Community mental health and mental retardation services fund, 32.2(1), 32.2(2)"a"(1), 32.2(3), 32.2(4), 32.3, 32.4 ARC 6185 12/4/85
 ADC, income, 41.7(1), 41.7(9)"f," filed emergency after notice ARC 6191 F.E. 12/4/85
 ADC, need standards, 41.8(2), filed emergency after notice ARC 6225 F.E. 12/18/85
 Supplementary assistance, eligibility, 51.4(1), 51.4(2), 51.7, 52.1(1), 52.1(2), filed emergency ARC 6226 F.E. 12/18/85
 Food stamp program, 65.27 ARC 6186 N. 12/4/85
 Medical and health services, method and level of disbursements, 77.26, 78.29, 79.1(2), 80.2(2)"y" and "z" ARC 6187 N. 12/4/85
 Medical and health services, skilled nursing facilities - reimbursement, 78.12(11), 79.1(2) ARC 6221, also filed emergency
 ARC 6220 N.Y. F.E. 12/18/85
 Title XIX waiver services, 83.5(2) ARC 6188 F.E. 12/4/85
 Medically needy, 86.10(1), 86.10(2), 86.12(1), 86.17, filed emergency after notice ARC 6227 F.E. 12/4/85
 Juvenile detention and shelter care homes, standards, 105.3(3)"f," 105.10(3)"h," 105.15(1), 105.15(3)"b" word, 105.15(4)
 ARC 6189 N. 12/4/85
 Family and adult service program, eligibility, 130.3(1)"d"(2), filed emergency ARC 6228 F.E. 12/18/85
 ADC, granting assistance, alternate payees, amendments to chs 41 and 43, Notice ARC 5563 terminated ARC 6251 NT. 1/1/86
 Medical assistance, overuse of services, 76.9 ARC 6252 N. 1/1/86
 Medical assistance, dentists, 78.4(1)"f"(3) ARC 6253 N. 1/1/86
 Residential facilities for mentally retarded children, 116.1, 116.2 ARC 6237 N. 1/1/86

The Department representatives present were Mary Ann Walker, Suzanne Boyde, Vivian Thompson, Linda Foster, Will Miller, Nancy Haigen, Xenda Lindel-Prine, Sherry Hopkins, David Segerstrom, Vernon Woodard, Dan Gilbert, C. S. Ballinger, Jim Krogman, Harold Poore, Mary Nelson, Barb Momberg, Mary McGee, Ka i Kellen. Also present: Gordon Allen, Attorney General's office and Judy Dierenfeld, Community Mental Health Associations of Iowa.

ch 12
ch 87

No questions re chapter 12. Walker distributed summaries of comments on chapter 87 expressed by five mental health centers and an attorney representing Community Mental Health Centers Association of Iowa.

Motion to
delay 70
days 3/1/86

Discussion of impact of possible legislation and possible delay of the rules for 70 days from March 6. O'Kane was informed that the application form would not change. Clark moved that a 70-day delay be placed on chapter 87--medicaid provider audits--for further study. Discussion followed. Department officials questioned the necessity of delaying all the rules since complaints were basically for reasons of confidentiality of records for private pay clients. A second issue was on consent and Dierenfeld said that the Attorney General saw the provision as being consistent with current law. A third area re transfer of burden of proof on random sampling was also consistent with current law.

Vote

Question was called on the Clark motion to delay chapter 87 for 70 days. Motion carried. O'Kane pointed out that the Committee could lift the 70-day delay at any time.

chs 112,
40, 156
52.1(3)
et al

No recommendations for amendments to chapters 40, 112, or 156. Discussion of amendments to 52.1(3) et al, which, according to Walker, were intended to comply with budget reductions. She presented comments from the public hearing. Walker said that 79.1(2) was modified to reflect a change in skilled nursing facility reimbursement which was emergency adopted January 1. Subrule 78.2(2)a was revised at the request of Iowa Pharmacist Association. No Committee recommendations.

HUMAN
SERVICES
DEPARTMENT
Continued
MAAC
Quorum

Brief discussion of 73.13, 74.19(2), 74.22, and 78.13(10). No Committee recommendations. Discussion of amendments to 79.7(5) with respect to the quorum requirements for the Medical Assistance Advisory Council (MAAC) changed from 2/3rds to 50 per cent of the voting members. Doyle was aware of attendance problems for the Council but preferred that quorum follow ARRC guidelines. Royce advised that the statutory requirement for government agencies was 2/3rds but recognized a legitimate question was whether or not an advisory group would be subject to that requirement. O'Kane took the position that a quorum would have to be more than 50 per cent of the members. The matter was deferred temporarily.

Defer

109.2 No questions re 109.2(1)h or 130.4(3).
153.1 et al Review of 153.1 et al. Boyde explained 153.6(3) which clarified that counties can claim state and federal funds within their allocation by submitting vouchers for payment. O'Kane saw no need for the provision and asked that the subrule be deleted when chapter 153 is revised. No other questions and Walker agreed to comply with the request.

ch 32

Clark asked for example of impact of 32.2(4). Walker said that an applicant who was granted a waiver would have to contract with someone other than the mental health center. Walker added that there were few requests for waivers.

chs 41,
51, 52
65.27

No recommendations for amendments to chapter 41, 51, or 52. Re monitoring of the food stamp program--65.27, Foster stated that households are required to notify the Department of a change in composition. This information is required on a monthly report.

77.26

Walker informed the Committee that rules 77.26 et al add midwife services to the Medicaid program as required by federal regulation. Currently, Iowa has one nurse-midwife in clinical practice.

78.12
79.1

Amendments to 78.12(11) and 79.1(2) were filed emergency to implement new reimbursement methods for skilled nursing facilities effective January 1. Department officials agreed to provide O'Kane with information as to the number of nursing facilities limited to skilled care. In review of 83.5(2), Clark was advised that medically needy was included with Title XIX appropriation: a separate appropriation for the expanded program to cover aged, blind, and disabled is expected to begin April 1. If the Legislature were to remove it from the appropriation, it would be effective July 1. O'Kane was of the opinion there was sentiment in the Legislature to continue the program.

83.5(2)

HUMAN
SERVICES
DEPARTMENT
Continued

No questions re 86.10(1) et al where income levels would be raised in the medically needy program to correspond with the increase of ADC schedule of basic needs.

ch 105

Walker stated that amendments to chapter 105 were recommended by the Human Services licensing staff and the Shelter Detention Association. Clark was interested in knowing how child safety could be monitored in volatile situations. Krogman said the rule addressed temporary care and the family would visit the child in that situation.

Doyle asked the Department to ensure that definitions for "child" or "minor" did not conflict with Code Chapter 232--Juvenile Justice. Krogman indicated the definition was taken from chapter 232, where it sometimes extends beyond age 18 [232.2 and 234.1]. No Committee action taken.

130.3(1)

No recommendations for 130.3(1)d(2) which, according to Walker, increases current income guidelines used to determine financial eligibility for services funded by social services block grants.

chs 41, 43

Walker informed the Committee that chapters 41 and 43 would be renoticed when federal regulations are final. Amendment to 76.9 was for clarification.

76.9

78.4

No questions were posed for amendment to 78.4(1)f(3) which will allow medicaid payment for composite resin fillings on posterior teeth for occlusal surfaces. The Dental Advisory Committee asked for the change.

116.1

No questions re 116.1 or 116.2.

79.7(5)
resumed

Discussion returned to 79.7(5), paragraphs a and b, relative to quorum requirements for the Medical Assistance Advisory Council. Doyle preferred that a specific quorum number be set out in the rule and he suggested 15. Since the MAAC is strictly advisory, O'Kane did not envision the problem as one of magnitude to justify a delay. Fifty per cent quorum requirements extend to other advisory committees, according to Walker. The ARRC recommended that Human Services set a standard quorum requirement of more than 50 per cent for all advisory committees.

In a matter not before the Committee, Doyle and Walker discussed appointment process for the Advisory Council for the Commission on Gambling.

IOWA
LOTTERY

Nichola Schissel, Assistant Commissioner, and R. D. Markham, Director of Administration, appeared for the following:

IOWA
LOTTERY

There was brief discussion of the experimental rule. Clark noted the rule was filed emergency as it "confers a benefit on the public" and she contended that was debatable. Schissel responded that increased revenues from lottery sales could be significant.

COMMERCE
COMMISSION

Commerce Commission officials present were Cynthia Dilley, Allan Kniep, David Lynch, Ray Vawter, Dan Hanson, and Dean Stonner. Also present: Don Williams, Northwestern Bell Telephone. The agenda follows:

Energy conservation improvement pilot programs, 30.4(6), 30.5, 30.7, 30.8	ARC 6262	.....F.....	1/1/86
Practice and procedure, written appearances, 7.2(1)	ARC 6177	.....N.....	12/4/85
Electric energy automatic adjustment, 7.4(1)d(5), 20.9, notice	ARC 5790 terminated ARC 6178	.....NT.....	12/4/85
Form of briefs, 7.7(13)e	ARC 6178	.....N.....	12/4/85
Telephone utility cable within or between two or more buildings on the same premises, 16.5(5), 16.5(31), 16.5(33), 22.1(3), 22.3(2)g(3), 22.11(4), 22.11(5)	ARC 6182	.....N.....	12/4/85
Peak alert annual notice, 20.11(1)	ARC 6181	.....N.....	12/4/85
Resale of local communications services, 22.17	ARC 6183	.....N.....	12/4/85
I-SAVE program, cost recovery and auditor qualification, 27.3(1), 27.6(2)	ARC 6184	.....N.....	12/4/85

ch 30

Stonner presented amendments to chapter 30 on energy conservation improvement pilot programs. He reported that numerous written statements of position were received wherein there was disagreement with the statute--SF 450, 1985 Iowa Acts. The Commission did not consider comments that essentially faulted the Act. Stonner continued that rule 30.5 was amended in response to Iowa Electric Light and Power Company to include the enacting legislation on bills which identify to customers the costs they will pay. New language in rule 30.7 was in response to suggestion made by Interstate Power and Iowa-Illinois Gas and Electric companies. Clark had received calls from constituents who did not understand the explanation on their utility bills. She suspected that Commerce had done little to clarify the issue, but had increased workload for legislators. Parker recalled that the Commission had not been supportive of the bill. Vawter indicated that an explanatory note was included with each customer's bill. Doyle observed that "Senate File 450 Surcharge" was not identified "to the year." Barry advised that the year was added in the Iowa Administrative Code.

7.2(1) No questions re 7.2(1).

7.4 Parker was interested in the reason for termination of
20.9 7.4(1)d(5) and 20.9(476). According to Kniep, the Commission recognized, after comments were made, that fewer rate cases would be necessary. The Commission favored retention of flexibility.

7.7 In re 7.7(13)e, Hanson said the standards for readability of briefs was modeled after rules of the Iowa Supreme Court and other courts--favorable comment had been received.

Doyle questioned whether 11-point (small pica) type could create burden for some and was told that it was the size used by the Supreme Court. Size of forms was discussed.

COMMERCE
COMMISSION
Continued
16.5
22.17

In re 16.5(5) et al, Hanson said that telephone cable between or within buildings will be treated similar to inside wiring which has been regulated. He pointed out proposed rule 22.17(476) on resale of local communications services was closely related; proposals address the situation where the provider of telephone service might be the landlord. In response to Parker, Lynch said the Board of Regents would be exempt. In discussing demarcation point, Vawter said that, in a residential situation, it would be at the point where the wire enters the house. The rule would not affect residential customers. He admitted it could create problems for high rise buildings.

Williams made brief comment on deregulation of inside wiring for small businesses and residences where point of entry to building is demarcation. For more complex issues, there are differing opinions and the rules are intended to address that difference. Once the company pipe enters the premises, it is the responsibility of the customer.

20.11(1) Dilley indicated that favorable comments had been received re peak alert annual notice--20.11(1). Dilley said some RECs experience peaks in winter months--as in grain drying. As they stand, existing rules encompass only utilities that experience peaks during summer months. With the revision, waivers to those with winter peaks will not be necessary. Parker voiced support of the rule. Doyle wondered if the shutoffs would extend beyond RECs and whether RECs would be able to handle the peaks with radio-controlled shutoffs. It was Vawter's opinion that load management and control in investor-owned utilities had not picked up as much as RECs. The City of Osage uses automatic control very effectively.

22.17 Lynch discussed the flexible proposal to allow resale of local communications service--22.17. For example, a landlord could install a switch and resell service to tenants. Many variations are possible but the tenant would have option to use regulated service. In response to Parker, Lynch said that Regents Institutions would be exempt from any regulation. Parker wondered about possible conflict with rules on utility cable. According to Lynch, the Commission would peruse this area before final rules are adopted.

27.3
27.6 Dunn presented proposed amendments to the I-SAVE Program which directs utility companies to utilize energy audit services provided by contractors when they are more cost-effective. Clark was curious as to how these rules would coordinate with rules of Energy Policy Council on energy audits. Vawter explained that Commerce rules pertained to those administered by public utilities. Utilities are not involved with

1-7-86, 1-8-86

COMMERCE
COMMISSION
Continued

audit of governmental buildings. Vawter added that the I-SAVE program had been challenged by Dennis Hogan and this proposal resulted from his petition. No action taken.

NO AGENCY
REPRESENTATIVES

No agency representatives were requested to appear for the following:

AGRICULTURE DEPARTMENT[30]		
Livestock importation, 17.2(3), 17.3(1), 17.4(2), 17.6(2) ARC 6269	F	1/1/86
Moisture measuring devices, 55.54 ARC 6165	N	12/4/85
COLLEGE AID COMMISSION[245]		
Iowa guaranteed student loan program, Chapter II, Section B, amendments to ch 10 ARC 6169	F	12/4/85
Iowa guaranteed student loan program, Chapter VI, Section J, amendments to ch 10 ARC 6168	F	12/4/85
Iowa guaranteed student loan program, Chapter XIV, Section B, amendments to ch 10 ARC 6167	F	12/4/85
DENTAL EXAMINERS, BOARD OF[320]		
Dental assistants engaging in dental radiograph, 22.7(2) ARC 6248	F	1/1/86
Continuing education, ch 25 ARC 6249	F	1/1/86
Advertising, ch 28 ARC 6250	F	1/1/86
FAIR BOARD[430]		
Records, 1.6 ARC 6202	N	12/18/85
HEALTH DATA COMMISSION[465]		
Administrative hearings, 2.1, 2.7, 2.8(1) ARC 6203	F	12/18/85
INSURANCE DEPARTMENT[510]		
Life and health self-funded plans, 35.20 ARC 6198	F	12/4/85
LIBRARY, STATE OF IOWA[560]		
Organization and operations, ch 1, Notice ARC 6023 terminated ARC 6274	N.T.	1/1/86
MERIT EMPLOYMENT DEPARTMENT[570]		
Pay plan, certification and selection, probationary period, temporary, assignments, disciplinary actions, appeal hearings, administrative decisions, holidays, 4.5(6), 4.7, 7.9, 9.1, 9.2(2), 10.3, 11.2(4), 12.3(5) to 12.3(7), 12.4, 14.10(6) ARC 6234	F	12/18/85
Pay plan — overtime and compensatory leave, 1.1, 4.6, 14.9 ARC 6264	F	1/1/86
PHARMACY EXAMINERS, BOARD OF[620]		
Licensure, foreign pharmacy graduates, 1.15 ARC 6161	F	12/4/85
Patient med paks, 6.15 ARC 6216	F	12/18/85
Temporary designation as a controlled substance, 8.20, filed emergency ARC 6236	F.E.	1/1/86
REAL ESTATE COMMISSION[700]		
Continuing education requirements, 3.3(2) ARC 6201	N	12/18/85
TRANSPORTATION, DEPARTMENT OF[820]		
Allocation of farm-to-market road funds, (06.Q) 16.1 ARC 6240	F	1/1/86
Special permits for operation and movement of vehicles and loads of excess size and weight (07.F) ch 2 ARC 6241	F	1/1/86
Gender and related editorial corrections, (04.C)1.4(2), (04.C)2.4, (06.C)1.4(2), (06.C)1.4(5), (06.F)7.3(2), (07.E)1.2, 1.2(1) and 1.2(2), (07.E)2.2(3), (07.F)3.1(4)"a.", (07.F)3.7(1)"h.", (07.F)7.6(2)"b.", (08.E)2.2 ARC 6208	N	12/18/85
VOTER REGISTRATION COMMISSION[845]		
Forms and instructions, 2.1(8) ARC 6197		12/4/85

In the matter of continuing education for real estate licensees, Doyle requested Royce to contact the Commission for clarification on length of terms.

Recess

The Committee was recessed at 3:30 p.m. to be reconvened Wednesday, January 8, 1986.

Reconvened

Vice Chairman O'Kane convened the Committee, Wednesday, January 8, 1986, 9:00 a.m., Room 24, State Capitol. All members present except Senators Priebe and Tieden. All staff present.

LABOR
BUREAU

Labor Bureau was represented by Walter Johnson and James R. Axt for review of:

Hazardous chemical risk right to know, worker right to know, community right to know, public safety/emergency response right to know, chs 110, 120, 130, 140 ARC 6215

HAZARDOUS CHEMICALS INFORMATION INTERAGENCY COORDINATING COUNCIL[462]
Operations, ch 1 ARC 6214

LABOR
BUREAU
Continued

Johnson said the "right-to-know" rules were intended to implement Iowa Code chapters 88 and 455D. Many of the rules were gleaned from federal regulations and public hearing was scheduled for January 20. He pointed out that two options were proposed to define "information in sufficient specificity"--only one will be adopted. Also, dates certain will be provided when the rules are adopted.

- 120.8(3) Clark called attention to 120.8(3), line 7, where a preposition was needed between "engagement" and "protected." She viewed the language in 140.2(2) as somewhat confusing. Axt replied that a strict interpretation of chapter 455D would require an employer to post a sign for each hazardous chemical substance. Many employers have expressed concern that additional walls will be needed to accommodate the signs. Axt discussed a variance procedure and Clark questioned the authority for such action. Doyle quoted from the Code and suggested that language from section 455D.14 be included in 140.2(2). After further discussion, the Committee concurred that subrule 140.2(2) should be amended by inserting "provided in" before "Iowa" and striking "were strictly applied".
- 140.2(2)
- 130.5 Discussion on use of "formal ruling" in 130.5(455D) with Johnson clarifying that it would not be a declaratory ruling but a ruling after hearing. He cited a situation when a ruling would be issued by the Bureau and Johnson indicated a willingness to substitute "adjudicatory" for "formal". Doyle suggested reference to Code section 455B.13.
- 130.20(4) In re 130.10(4), Johnson and Axt assumed an action could be commenced in any district court. Current practice of the Bureau was to bring action in county most convenient to the petitioner. Royce quoted from Code section 17A.19(2).
- 140.4(2) As a result of question raised by Doyle re 140.4(2), Johnson was willing to strike the provision.
- 1.7(3) In reviewing chapter 1, Clark asked for clarification of 1.7(3), and Johnson agreed to change "shall" to "may".

Recess O'Kane recessed the meeting for ten minutes.

PLANNING & JoAnn Callison and Melanie Johnson presented the
PROGRAMMING following:

Iowa job training partnership Act, amendments to ch 19 ARC 6235.....F... 12/18 85
Child care grants program, ch 27 ARC 6233.....N... 12/18 85

ch 19 Callison reported on changes to chapter 19 amendments since the Notice: Grammatical corrections, clarification of "average wage at placement," and restructuring of 19.8(1) as to composition of the Private Industry Council (PIC).

PLANNING & PROGRAMMING
Continued Doyle inquired as to the urgency of implementing the amendments. Callison provided history on the rule making which was commenced in August. They waited for information from the Attorney General before adopting the rules, and guidelines for the next program which is in process are included in these rules. It was pointed out that Senator Tieden had an interest in the composition of PIC. Committee consensus was that a delay should be imposed on 19.8 until Tieden could review it.

19.8

70-Day Delay Doyle moved that rule 630--19.8 be delayed for 70 days for further study. Motion carried.

19.3 O'Kane referred to rule 19.3, paragraph 1, definition of "Labor force status", and recalled that "seven consecutive days" had been "three months" in the previous rule. Callison agreed to check this. She explained that use of "youth employment competencies" in the definition "positive termination rate" dealt with a provision in JPTA law providing for in-school use, e.g., if a student needs remedial reading, standards are set for the level in which a student must read. The process of developing youth competency is the responsibility of the local elected officials and Private Industry Council. Needs vary from area to area.

ch 27 OPP officials stated that proposed chapter 27 was designed to implement a program to fund before and after school child care at school facilities, infant care programs, information referral centers, and on-site employer day care centers. Lottery funds will be used. O'Kane asked if the program would dovetail with existing programs, and Callison indicated it was quite new.

Clark called attention to discrepancy between definition of "on-site employer day care", and 27.6(3)b. Callison agreed the subrule should read "...employers and employees' children". No other questions.

NURSING BOARD Ann Mowery represented Board of Nursing for review of subrule 6.4(2) which delineates requirements for a registered nurse to be on the staff of an ambulance or rescue squad. The adopted subrule was published as ARC 6207, IAB 12/18/85. The subrule was written in conjunction with the Board of Medical Examiners and the Advanced Care Council. Responding to Royce, Mowery did not believe this would warrant a special nursing license.

Mowery noted that EMTs had input in the provision and she was comfortable with the fact that it had been presented to all interested sources. There was discussion of an emergency driving program for EMTs, and Doyle wondered about participation by nurses. Mowery mentioned Community Colleges as possible providers of necessary programs.

BANKING
DEPARTMENT

1-8-86

Larry Kingery, Supervisor of Regulated Loans; Howard K. Hall, Deputy Superintendent; and Donald G. Senneff, Assistant Attorney General, appeared for review of the following Banking agenda:

Regulated loans, 21.2(2), 21.4(2)c and "d," 21.6(2), 21.7(1), 21.8 ARC 6261 F.....1/1/86

Hall told the Committee that the rules had not been revised since the Notice. He read the following for the record:

Pursuant to Section 536.13 as amended during the 1985 Regular Session of the General Assembly, the State Banking Board was given the task of determining and fixing by regulation the maximum rates of interest to be charged by Regulated Loan Companies for various classes of loans up to \$10,000. In establishing these rates, one of the requirements of the law was that the rates be sufficient to "induce efficiently managed commercial capital to enter the regulated loan business in sufficient amounts to make available adequate credit facilities." The new law was to go into effect July 1, 1985. On June 12, 1985, the State Banking Board met to establish by Emergency Rule the following rates to be effective July 15, 1985:

16 per cent per annum on unpaid balances
not exceeding \$1,000 and

24 per cent per annum on unpaid balances
in excess of \$1,000 but not exceeding \$2,800 and

18 per cent per annum on unpaid balances in
excess of \$2,800 but not exceeding \$10,000

When these rates were announced, it was also announced that regular rule making procedures would be followed in order to provide an opportunity for public comment and a hearing was set for October 1, 1985. That hearing was held and the State Banking Board subsequently adopted the rule now before you which establishes regulated loan rates identical to those contained in the earlier emergency rule.

In support of this new rule the State Banking Board has issued the following written statement:

The state banking board is of the opinion the legislature, by amending the current small loan law (now referred to as regulated loan law), wanted to keep loan companies in existence. It is the opinion of the state banking board in order to keep regulated loan companies in existence it is necessary for the companies to be able to operate at a profit. Testimony before the state banking board indicated small loan companies as a whole, have not made a profit, but in fact have shown a loss in earnings for six out of the last seven years. During the period, mergers, closings and liquidations have substantially reduced the number of small loan companies. This has resulted in approximately 45 Iowa cities, which previously had a small loan company, being deprived of the services of a loan company. Based on the testimony presented, it is the

BANKING
DEPT
Continued

opinion of the state banking board an increase in the maximum interest rate is necessary to allow the regulated loan companies to return to profitability so as to insure that adequate credit facilities will be available in Iowa. Testimony indicated the maximum interest rate as established by the adopted rule is in line with other states for loans of \$10,000 or less. Twenty-five states have equal or higher rates than the rate promulgated in this rule.

No action taken.

DEPT OF
TRANSPOR-
TATION

Nancy J. Richardson, Jan Hardy, Al Chrystal, and Norris Davis were present on behalf of DOT for the following agenda:

Denials, cancellations, suspensions and revocations, (07,C)6.22, 6.37, 6.38 ARC 6209 F.. 12/18/85
OWI and implied consent, driver licenses, financial responsibility, (07,C)11.3(2)"b," 11.4(2)"b," 13.3(2)"a"(1) to
(3), 13.9(2), 13.13(10)"a" to "c," "e" and "g," 13.13(12)"a," 13.20, 13.21, 14.2, 14.4(1), 14.4(2), 14.5(1),
14.5(2)"a"(2), 14.6(4), 14.6(6) ARC 6210 F.. 12/18/85
Registration of motor vehicle weighing 65,000 pounds or more, (07,D)11.20 ARC 6164 F.. 12/4/85
Public transit, financial assistance, (09,B)1.1 to 1.3, 1.4(2)"c," 1.5(1), 1.5(2)"d," 1.5(4), 1.5(5), 2.1, 2.2, 2.3(3), 2.3(4), 2.5(1) to
2.5(3), 2.6, 2.9(1), ch 3 ARC 6239 N... 1/1/86
Public transit, financial assistance, (09,B)1.3, 1.5(1)"d," 1.5(2)"d," 1.5(4), 1.5(5), filed emergency ARC 6238 F.. 1/1/86

[09,B]

Amendments to [09,B]1.1 to 1.3 et al re public transit financial assistance were taken out of order. According to Richardson, the basic revision addressed method of computing the dollar amount for each transit system in Iowa. The rules will allow the Department to compute a per cent of the formula and contracts will be based on percentage since funding was unknown factor.

ch 3

Richardson said that new chapter 3 was intended to implement the federal transit assistance program. Richardson anticipated no problem with transfer of funds. In terms of dollars, \$187,000, \$197,000, and \$200,000, respectively, were received during the first quarter.

11.20

Discussion of [07,D] 11.20 which also had been adopted under emergency provisions in 8/27/85 IAB. Doyle inquired as to what would be considered "proof of compliance" and Department officials responded that it was an Internal Revenue form with a number. The form must be presented to the County Treasurer or operating authority when the vehicle is registered. The form provides proof that federal use tax has been paid. Another form is submitted for farming or lumbering exemption. The Treasurer does not retain the form but notation is made on the registration. Although Department officials had no indication that the rule would create delays in registration, Doyle could envision problems.

07,C

Chrystal summarized amendments to [07,C]11.3 et al which were essentially editorial simplifications, clarification, gender, etc. A substantive change in 13.3(2)a restricts persons with 20/70 visual acuity to a maximum speed of 35 m.p.h. as recommended by the State Transportation Committee.

1/8/86

DEPT. OF
TRANSPOR-
TATION
Cont.

Chrystal recapped amendments to [07,C] Chapter 6 intended to implement Iowa Code Chapter 321 as amended by SF 570 [85 Acts, ch 197]--the "scofflaw bill." Traffic offenders with fines unpaid after 60 days will be subject to loss of driving privileges after notification by the Clerk of the District Court.

6.37(1)

Under revised 6.37(1), certified mail, as opposed to registered certified mail, will be utilized for notice of denial, cancellation, suspension or revocation. Also, DOT may contract with someone other than the sheriff for these services. Chrystal indicated the Department's goal was to consolidate rules relevant to driver licenses into Chapter 6. In response to question by O'Kane, Chrystal said counties had been most cooperative. Approximately 250 suspensions are being processed and the psychological effect is reaping some benefit. O'Kane commented that, in his county, clerks were interested in confidentiality of the information and how it was being circulated to county treasurer's office. General discussion.

REVENUE
DEPARTMENT

Carl Castelda, Deputy, Jim Hamilton and Mike Cox appeared on behalf of Revenue Department to review:

REVENUE DEPARTMENT[730]	
Taxable and exempt sales, sale or rental of farm machinery, 18.44 ARC 6271	F. 1/1/86
Interest, calendar year 1986, 10.2(6) ARC 6230	F. 12/18/85
Exempt sales, nonprofit corporations, 17.19 ARC 6231	F. 12/18/85
Penalty and interest, 52.5(1), 58.5(1) ARC 6232	F. 12/18/85
Computation of tax, local sales and service tax, 14.2, ch 107 ARC 6273, also filed emergency ARC 6272	N. F.E. 1/1/86
Local earnings tax, ch 113 ARC 6270	N. 1/1/86
Sales and use tax -- filing returns, payment of tax, penalty and interest, 12.1, 12.3, 12.13, 30.3, 30.4, 30.4(3), 30.4(4) ARC 6174	N. 12/4/85
Adjustments to computed tax, assessments and refunds, 42.1, 43.3(3), 43.3(4), 43.3(5) ARC 6229	N. 12/18/85
Property, omitted assessments, 71.25 ARC 6175	N. 12/4/85

18.44

Castelda indicated that the rule on sales tax exemption on farm machinery was identical to the Noticed version except that the number had been changed from 18.43 to 18.44.

Parker had been contacted by a constituent who contended that some items used in the agricultural process were no longer exempt. Castelda concurred that this was partially true, but not addressed in rule 18.44. He recalled the statutory change where the fuel exemption deals only with implements of husbandry. Also, there was language on livestock confinement buildings. Fuel used in small stationery engines, is no longer tax exempt. The Department had expressed a willingness to work with the Farm Bureau to clear up inconsistencies in the statute. To date, Farm Bureau had not contacted the Department.

10.2(5)

Castelda reported that subrule 10.2(5) establishes an interest rate of 9 per cent for unpaid taxes due January 1, 1986.

No questions were raised re 10.2, 17.19, 52.5(1), or 58.5(1).

REVENUE
DEPARTMENT

Castelda advised that amendments to rule 14.2 and new Chapter 7 reflect the adoption of local option sales and services tax and set out procedures for collection and administration. General discussion of controversy surrounding local option taxes. Castelda noted the problem of disposition of tax already collected in the event that proposed retro-active legislation negates local option. Castelda had no information as to the impact on Polk County. He indicated that local option would have no effect on out-of-state catalog sales.

ch 113

No recommendations were offered for Chapter 113, 12.1 et al and 42.1.

In re 71.25, Cox gave overview of procedures to be followed by local property tax officials in assessment of omitted property. Doyle brought up the issue of error, not omission, on an assessment. Cox said that an error found later, other than clerical, could not be corrected. The Board of Supervisors has certain powers of compromise by statute. In a normal situation, the assessment will stand if taxpayer does not appeal.

WATER, AIR
AND WASTE
MANAGEMENT

Appearing for the Department of Water, Air and Waste Management were: Randy Clark, Mark Landa, Bob Drustrup, and Jerry Tonneson. The rules were:

WATER, AIR AND WASTE MANAGEMENT[900]
Emission standards for contaminants, 23.1(2), 23.1(3) ARC 6212 F. 12/18/85
Fees for the transportation, treatment and disposal of hazardous wastes, 140.1, 140.6, 141.1 to 141.3, 141.5, 141.6, ch 149
ARC 6213 F. 12/18/85
Operation of commission, quorum and voting requirements, 2.6, filed emergency ARC 6211 FE. 12/18/85
Nonpublic water wells, well interference, 49.1, 49.3, 49.6(10), 49.6(11), 50.1, 50.2, 50.3(2), 50.6, 50.6(1)a, 50.6(1)a(13),
50.7(2), 50.8(1), 52.2, 52.6(4), 52.7(2), ch 54 ARC 6267 N. 1/1/86

23.1

Landa explained that amendments to rule 23.1 adopt by reference recent federal regulations for source performance standards and emission standards for hazardous air pollutants. He stressed that there was no indication of these sources in Iowa but rules will be in place if needed. Review of amendments to Chapters 140 and 141 and new Chapter 149 intended to implement the statutory program on collection of hazardous waste fees from the transportation, treatment and disposal of hazardous waste in Iowa. Landa mentioned difficulty in keeping pace with EPA changes. No questions re 2.6.

49.1
et al

It was noted that amendments to rules pertaining to nonpublic water wells were the third in a series made necessary by the 1985 Water Plant legislation. It was pointed out that Technical bulletin No. 23 referenced in the rules would be available for public inspection. In response to question by Royce re complaints by an affected landowner, DWAWM officials said it would be a contested case proceeding. If well interference were shown, the Department would make an initial decision and

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WATER, AIR
AND WASTE
MANAGEMENT
Cont.

if compensation were included as one of the conditions in the initial permit, then that could be appealed by the permittee, by other interested parties. If a complaint were lodged against a permitted user already pumping water, the Department would follow this process and determine if well interference existed. If not resolved informally, the Department would have to utilize permit revocation modification procedures in the rules. The permittee would then have opportunity for contested case hearing. No formal action.

Recess

The Committee was in recess for 10 minutes in order to move to Room 116.

HEALTH
DEPARTMENT

Ronald D. Eckoff, Pat Howell, Bob Minkler, Carson E. Whitlow, Mark Wheeler, Ted Scurlettis, William Maurer, Roger Chapman, Mike Guely, Irene Howard and Susan Osman appeared on behalf of the Health Department for the following agenda:

HEALTH DEPARTMENT[470]
Birth defects institute, MSAFP testing program, 4.1.4.6 ARC 6170 F 12/4/85
Homemaker-home health aide services, 80.1, 80.2(2), 80.2(4), 80.3 ARC 6217 F 12/18/85
Birth certificates — when filing fee required, 95.1 ARC 6200 F 12/18/85
Magnetic resonance imaging services standards, 203.12 ARC 6166 F 12/4/85
Hospitals, medical staff, 51.4(2)"c" ARC 6244 N 1/1/86
Hospitals, health care facilities — policies, 51.4(3)"l," 57.11(10), 58.10(10), 59.12(10), 63.9(10), 64.12(13) ARC 6245 N 1/1/86
Public health nursing, 79.7(4)"c"(6) and (7), filed emergency ARC 6257 N 1/1/86
Physical therapy examiner's, licensure of interstate endorsement, 137.4(3), 137.4(7), filed emergency after Notice ARC 6268 FEAN 1/1/86
Advanced emergency medical care, 132.14, 132.8(1)"f," 132.8(8)"n," notice ARC 6012 terminated ARC 6199 NT 12/18/85
Funeral directors, transportation of dead, 146.5(1), 146.5(10) ARC 6204 N 12/18/85

There was brief discussion but no recommendations were offered.

IOWA
DEVELOPMENT
COMMISSION

The following agenda was before the ARRC with Forbes Olber, Mark Kapfer, Fran Fleck and John Schaffner in attendance.

IOWA DEVELOPMENT COMMISSION[520]
Community economic betterment program, ch 8; Iowa Main Street program, ch 9; Business incubator center program, ch 10; Regional economic development co-ordinating plan, ch 11; Economic and research and development grants, ch 12 ARC 6266, also filed emergency ARC 6265 FE 1/1/86

Kapfer told the Committee that the rules were adopted under emergency provisions in order to take advantage of lottery funds when they were available for new economic development programs. Kapfer continued that since June, various public meetings had been held regionally and with special interest groups. O'Kane was assured there had been sufficient involvement by the general public--response was affirmative. O'Kane observed that the statute was passed in May and became effective July 1. Parker expressed preference for more staff involvement in the application process. Kapfer cited an Opinion of the Attorney General, which advised delegation to the Staff was not permissible. Parker contended that Staff recommendations would enhance the program.

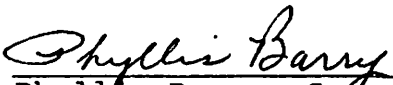
1/8/86

DEVELOPMENT COMMISSION Cont. Doyle questioned the expenditure category in 12.8(6)d-- "Animals for experimentation, if required." Fleck said the plans were similar to those followed by the High Tech Grant Program and she suspected this was an error which she would pursue. O'Kane suggested possible reference to Code Chapter 28F when the rules are amended. No formal action.

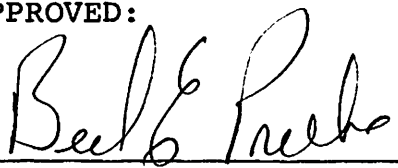
Minutes Doyle moved approval of minutes of the December ARRC meeting. Motion carried.

Adjourned Vice Chairman O'Kane adjourned the meeting at 1:15 p.m. Next regular meeting was scheduled for Tuesday, February 11, 1986, 8:00 a.m.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:


CHAIR