

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, Wednesday and Thursday, September 7, 8 and 9, 1982, in lieu of statutory dates of September 14 and 15, 1982.

Place of Meeting: Senate Committee Room 22 and Legislative Dining Room, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; Representatives Ned Chiodo and Betty J. Clark.  
Also present: Joseph Royce, Legal Counsel; Brice Oakley, Rules Coordinator; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Administrative Assistant.

**LABOR BUREAU**

Walter Johnson, Deputy Commissioner and Harold Holmgaard, Supervisor, appeared on behalf of Bureau of Labor for review of:

Variances, procedures for application, 5.7, 5.8 ARC 2272 terminated ARC 3123... 8/18/82  
Elevator division, administration, 71.1, 71.1(2), 71.1(30), 71.1(31), 71.1(34), 71.1(41), 71.1(42), 71.1(51),  
71.2 to 71.5 ARC 3114... 8/18/82  
Elevators, new installations, 72.1 to 72.18 ARC 3115... 8/18/82  
Existing elevators, 73.1, 73.2(5), 73.2(13), 73.2(15), 73.2(16), 73.2(17), 73.3(9), 73.3(11), 73.4(4), 73.7(1), 73.9(2), 73.9(10), 73.10(2),  
73.10(3), 73.11(2), 73.12(5), 73.12(6), 73.13(9), 73.13(10), 73.13(12), 73.14(2), 73.14(3), 73.14(5), 73.14(6), 73.14(8), 73.15(1), 73.17(10),  
73.18(6), 73.19 ARC 3116... 8/18/82  
Escalators, 74.1(7), 74.1(12) ARC 3117... 8/18/82  
Elevators, permits, 76.2, 76.2(9), 76.3 to 76.5, 76.6(1), 76.6(4), 76.7 ARC 3118... 8/18/82  
Variances, 77.1 to 77.6 ARC 3119... 8/18/82  
Hearings and appeals, 78.1, 78.2(3), 78.2(4), 78.3(1), 78.3(2), 78.4, 78.5(1), 78.5(2), 78.7(1), 78.7(3), 78.7(4), 78.9  
to 78.11 ARC 3120... 8/18/82

No comments with respect to ARC 3123. Johnson reviewed the background of the elevator rules. The public hearing was attended by elevator industry, building owners and managers association, associated contractors of Iowa as well as public representatives. According to Johnson, a major change was made in subrule 71.2(1) re determining when inspections will be made. The Bureau intends to perform inspections as time and personnel permit.

**71.2(1)d**

Schroeder cited 71.2(1)d as needing clarification. Johnson explained the Code sets out penalties for failing to register. Oakley interjected that resulted from a case where injuries occurred in a nonregistered elevator. He indicated the Iowa Manufacturers Association had requested inclusion of a date certain for ANSI citations. Oakley referred to chapter 72 amendments and thought it would be well to indicate to the public how copies of referenced material could be obtained. Johnson was willing to work with Oakley on the suggestion.

Johnson was asked to provide Schroeder and Priebe with a copy of proposed revisions. There was discussion of departmental mailing expenses to comply with the statute.

LABOR  
BUREAU  
Cont'd

J. E. Murray, Sasco Company, was granted time to present brief comments on the rules. He recommended deletion of "registered" in 71.2. He referred to the requirement of scavenger pumps in 72.5 as being a liability. In addition, he addressed several rules which were not before the Committee. Schroeder clarified for Murray that there has been inadequate funding and staff for inspections. Murray contended the rules were written in a manner to indicate that an elevator which operates for only one stop need not be inspected annually. Oakley explained the frequency of inspection would be delegated to the Bureau. Schroeder could envision problems with use of a scavenger pump.

Johnson indicated percentages were determined according to the importance of the category. The Bureau preferred inspection of all elevators and were hopeful of voluntary compliance.

Tieden wondered if percentages allowed flexibility. Johnson replied in the affirmative as long as present manpower is maintained.

Murray was concerned that if he were not one of the 40 percent picked for inspection, he would be unable to obtain an operating permit. He also favored a 5-year permit with a \$50 fee rather than an annual fee. Schroeder asked the Bureau to include multi-year permits in proposed legislation. Murray interpreted SF 2210 to allow them now. Holden supported some private inspection of elevators. Johnson concurred and commented that some insurance companies are interested.

76.4(1) In re 76.4(1), placement of operating permits, Oakley opined display in the elevator did not provide public awareness. He referenced a letter from IMA addressing national standards for physically handicapped. Johnson had not seen the IMA letter but would respond and send a copy to Oakley.

Tieden questioned reason for change in 74.1(7). Johnson responded that the 1/8-inch clearance on either side of steps between step tread and adjacent skirt panel was difficult to maintain.

Schroeder advised Murray any change in annual inspection rules would be made after January 1983. Johnson reported the Bureau had sent 3000 mailings and he would be unfavorable to major changes for quite some time. No other comments.

IOWA  
FAMILY  
FARM  
DEVELOP-  
MENT  
AUTHOR-  
ITY

William Griener, Director, represented the Authority for review of:

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]	
Soil conservation loan program, ch 4. filed without notice	ARC 3141 ..... 8/18/82
Beginning farmers, assignment of loans by participating lenders, 2.17	ARC 3094 ..N..... 8/4/82
Soil conservation loan program, ch 4	ARC 3142 ..N..... 8/18/82

Responding to Schroeder, Griener said a program summary had been written, applications were ready for presentation to the Board and several inquiries had been received. He emphasized the Authority wants to avoid misuse of funds for recreation purposes. The program is to help eradicate soil erosion and encourage soil conservation. Discussion of the definition of "farm" in 4.2(5). In re 4.6, Griener explained that loan fees would dictate loan amounts.

IOWA FAMILY  
FARM DEVELOPMENT  
AUTHORITY  
Continued

Schroeder was advised that after applications for loans are approved, they will be handled as those of "beginning farmers". In response to those who favored a process similar to one followed by SCS, Griener commented that was not the Authority's intent. They want to ensure that all projects meet specifications. He pointed out that the SCS is the technical branch of the Soil Conservation Division. Tieden concurred there must be overall basic criteria.

In response to Tieden, Griener presented administrative cost information on the beginning farm program. He recalled that office expense was about \$90,000 to \$100,000--in addition, loan fees were being paid out of the program. Griener claimed that once in the program, banks seem to be accepting.

No questions re assignment of loans.

4.2(1)

Yanacek called attention to definition of "landowner"--4.2(1). He questioned whether legislative intent was that loans could be offered to county, state or federal agencies. Griener responded the definition was from the Iowa Code--467A.2(11).

Recess

Committee in recess for 10 minutes at 11:05 a.m. Reconvened at 11:15 a.m.

NURSING  
BOARD

Board of Nursing was represented by Ruth Turnis, Chairperson, Pam Triolo, Board Member, Jeanne Wilson, Helen Lobas and Wilda D. Wagner. Also present: Richard D. Early and John P. McDonough, Iowa Association of Nursing Anesthetist; Larry Breeding, Iowa Health Care Association; Rita Weinberg, Sandra Kcuhosh and Paul A. Haber, RN's; Kay Myers, Executive Director, Iowa Nurses' Association; June Dierenfeld, Executive Director, CMHCAI; and Jim West, Iowa Medical Society.

The following rules were before the Committee:

NURSING, BOARD OF[590]

Nursing practice for registered nurses/licensed practical nurses, 6.4, 6.5 ARC 3169 ..F.....9/1/82  
Advances registered nurse practitioners, ch 7 ARC 3170 ..N.....9/1/82

Turnis admitted the Board was cognizant that chapter 7 of their rules could be controversial. However, intent was to work with various interest groups to resolve most controversial issues. Committee members were apprised that a task force comprised of certified registered nurse anesthetists, nurse midwives, pediatric nurse practitioners and family nurse practitioners had worked on the rules for several years. The Board accepted the suggestion of the Iowa Nurses Association and the Iowa Medical Society to refer to the standards of the advanced registered nurse practitioner as guidelines.

West discussed the statutory authority briefly and added that the medical profession supports the concept of advanced nursing specialization. He spoke of inconsistency and ambiguity of the definitions.

7.1(1)

Chiodo referred to 7.1(1)--advanced registered nursing practitioner--and suggested it should be more specific.

NURSING  
BOARD  
Cont'd

Schroeder questioned the need for two continuing education courses. Priebe and Clark interpreted 7.2(8)a as allowing candidates two temporary certificates. Priebe was reluctant to permit a second temporary registration card. There was general discussion. Triolo agreed the point was well taken.

Holden spoke of the problems he has with all licensing boards conducting examinations after students have graduated from approved courses. He viewed it as, "Well, we who are in the profession will look at these and see if they are going to be satisfactory to work along with us."

Holden questioned, "When termination would take place in 7.2(6)a, does the board follow up after a license is terminated to ensure that renewal is made on time?" He voiced opposition to the technicalities of licensing renewal. Board officials replied that the hospital has the responsibility of hiring legally qualified personnel. Clark opined that a "slip-up" on licensing renewal would not be as serious as failing the test. Turnis pointed out ample notification is provided. Holden was advised that CE courses for advanced practitioners were available in Iowa--7.3(2). McDonough commented that the Iowa Association of Nursing Anesthetists CE course is approved nationally and statewide.

Tieden inquired if the Board anticipated increased costs as a result of upgrading the exams. McDonough predicted expenses would actually decrease.

Holden was bothered by the seemingly inconsistent use of terminology with respect to certified, certified registered, registered, etc. Triolo responded the titles were used nationally. It was the Board's position that use of "registered" would be redundant except for nationally recognized titles.

7.2(6) In re 7.2(6), renewal of registration, Priebe preferred inclusion of a date certain.

Tieden wanted assurance small hospitals concurred with the proposal. Schroeder had received some calls in support. Breeding interjected nursing home costs would probably not be increased.

Holden questioned Board members about the fact they seemed to be moving in the direction of more specialization in schools, etc. It was Turnis' belief that was not the intent. With respect to CE courses, Holden thought a certificate of attendance should be submitted. Triolo pointed out the vast paperwork which would be involved for 25,000 nurses.

Holden pointed out the system was "loosely run". Further, he resents deductible expenses for courses offered in far away places such as Jamaica. Oakley observed that the IRS has tightened the deductible items, but he added, "Until we take our licensure certification out of the horse and buggy approach and computerize it, problems will exist." He requested the Board to provide a list of those who make presentations at the public hearing.

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NURSING  
BOARD

In his opinion, "boards are not given adequate legal representation or investigation capabilities--if agencies were aware of the liabilities faced with the rules alone, it would be frightening." He concluded, "the time has come for legislative and executive branches of government to address this problem."

No questions or recommendations were posed with respect to the filed rules.

Lunch

The Committee was in recess for lunch until 1:30 p.m.

VOTER  
REGISTRATION  
COMMISSION

Mary Jane Odell, Secretary of State, Dorothy Elliott, Commission Director, Mike Tramontina, Commissioner, Louise Whitcome, Board Member, and Burlene Baker, Administrative Assistant, were present for review of:

VOTER REGISTRATION COMMISSION[845]

Newsprint voter registration by mail form, 2.4, filed emergency after notice ARC 3112 ... *FEAN* ..... 8/18/82

2.4

Elliott explained the emergency implementation would allow use of the form to register for school elections. Schroeder envisioned problems. He cited poor quality newsprint and the cost to transfer information to more durable paper as examples. A change requested by Holden had been made concerning possible confusion--which could result with the model ad. Holden raised question about the policing of the practice. There was general discussion of auditors' practice of ensuring honest registration.

Responding to Tieden, Elliott said the master file is checked every two to three months--social security number (although not required), name, date of birth, and sex are used for verification. A check will be run the first of October. She concluded that auditors update every two weeks and sixty counties update daily. The ARRC urged the Commission to initiate as much scrutiny as possible.

COMMERCE  
COMMISSION

Commerce Commission rules before the Committee were:

COMMERCE COMMISSION[250]

I-SAVE America's vital energy, amendments to ch 27 ARC 3143 ... *F* ..... 8/18/82  
Accounting, compiling advertisements and expenses, 16.8 ARC 3178 ... *F* ..... 9/1/82  
Assessments, 17.2, 17.4(4) ARC 3179 ... *F* ..... 9/1/82  
Utilities, interest on customer deposits, 19.4(3), 20.4(4), 21.4(2)"b", 22.4(2)"b" ARC 3126 ... *N* ..... 8/18/82  
Practice and procedure, 7.4(3)"b", 7.4(6)"e" ARC 3180 ... *N* ..... 9/1/82  
Peak demand notification, 20.11 ARC 3181 ... *N* ..... 9/1/82  
Electrical safety code, 25.2(1), 25.2(2)"a" to "d", 24.11"e"(2)(b) ARC 3182 ... *N* ..... 9/1/82

Christine Hansen, Commissioner, Alexis Wodtke, Assistant Counsel, Vincent Mauer, law clerk, Twila Morris, Public Information, and Alice Hyde, Counsel, appeared on behalf of the Commission. Also present: John M. Lewis, Iowa Utility Association, and Susan M. Steward, attorney, Iowa Public Service.

Hansen, responding to Holden, explained the chapter 27 amendments modify the residential procedures that were proving to be a little onerous. Commerce Commission will provide on-going scrutiny. Also, consumer comments have been received.

COMMERCE  
COMMISSION  
Continued

27.14(1) Hansen advised Schroeder that tax savings for energy conservation measures applied to individuals--she doubted that companies had that same option. Responding to question by Tieden, Hansen envisioned 27.14(1) as providing information to the public. Tieden wanted assurance public would not go to utilities' offices to seek records.

27.2(4) In re stricken language in 27.2(4), Priebe was told the matter was now covered in 27.2(4)c and placed no restriction on the sale or manufacture of furnaces.

Hansen assured Schroeder that it was her understanding that separately built units such as condominiums were now included in the energy program. Hansen told Priebe that questions concerning use of diesel fuel in furnaces should probably be referred to the Fire Marshal's office or the Energy Policy Council.

27.2(6) Holden called attention to 27.2(6) as needing a date certain for the CFR. Department concurred.

16.8 Priebe in the chair. In re 16.8, concerning advertising expenditures by electric and gas public utility companies, Hyde explained the results of an 8- or 9-month investigation conducted by the Commission and the events leading up to the adopted rule. Since the Notice, the Commission deleted a requirement that a portion of advertising costs be shifted from utility customers to the utility shareholders. However, the final rule requires a statement noting whether they are paid by ratepayers or shareholders or allocated between the two. During the rulemaking, question was raised as to the authority of the Commission to require the utilities to label shareholder ads which were paid by the utility.

In Chiodo's opinion, even an ad slanted for the consumer would have some company stockholder benefit. He thought the statement, "Costs of this ad will be charged to the ratepayers of (company name)" indicated total costs. According to Hyde, the company initially compiles and classifies ads. Then, in a rate case proceeding, the Commission determines whether to approve it as reasonable expense.

Chiodo recalled the strong stand taken by the Commission initially and he viewed the present rulemaking as a 100 percent reversal. He preferred the "90-10" split. Hansen pointed out that, in a rate case, the Commission can change that split and notify the company of their intent to do so. She contended the Commission was not abandoning the thought that there is some benefit to the stockholder but they contend that benefit differs from ad to ad. Chiodo insisted that the statement of sharing should reflect present practice by percentage.

16.8 Holden thought that "will" should be changed to "may" in 16.8(476), line 4 to be permissive and less misleading to the ratepayer. He saw the rule as an effort to "intimidate the utility."

Schroeder resumed the chair.

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COMMERCE  
COMMISSION  
Continued

Hansen and Hyde agreed advertising costs vary but the rule would have minimal impact. No questions on amendments to chapter 7.

20.11

According to Hansen, the purpose of ARC 3181 [rule 20.11] was to reduce the peak demand for electric utilities in the state. Modifications will address questions raised since the rule was under Notice. Commission's intent is to educate the public with respect to rising utility rates prior to implementation of the program. Schroeder reasoned that information could be included in monthly bills. He could foresee a crash program implemented in July and August where, in present economic times, the industry would contend it was not a public service and charge the going rate. This could not be part of a rate base case.

Hansen stated that notification has had a significant impact on reduction of the load. There was discussion of demand meters. Tieden pondered whether the responsibility of notification was the utilities' or the state's. It was noted that "demand meters" cost \$350 each.

Oakley saw two reasons for peak demand notification: To avoid "brownout"; and to deny additional generation capacity. He questioned whether the savings would be to customers. Hansen indicated there was no threat of brownout in the state but their concern was to prevent electric costs from soaring. Hansen took exception to an observation by Oakley that the public, basically, would have difficulty assimilating more than the simplest utility regulation concepts. Holden was doubtful that a utility would intentionally operate inefficiently. Schroeder was informed the "Osage system" had worked quite well.

Holden took the position more savings could be realized if utilities placed leverage on big consumers -- commercial users--during peak hours. Chiodo emphasized that the rule being advocated would have tremendous impact on rates in Iowa if there were not excess generating capacity. No formal action.

Discussion of amendments pertaining to the electrical safety code. Hyde agreed to provide Schroeder with information re amendment to 25.2(2)b(4).

BOARD OF  
PHARMACY

Norman Johnson, Executive Secretary, appeared before the Committee and indicated he had requested an attorney general's opinion, which had not been released. He had reason to believe the opinion would shed new light on the rules and he thought it would be appropriate to withdraw the following:

PHARMACY EXAMINERS, BOARD OF[620]  
Medical assistance Act participation, discipline, 6.10, 10.1(2), 10.1(4)"a" ARC 3113 ...F..... 8/18/82

Oakley cautioned Johnson against emergency adopting of a new draft since there may have been interest in the existing version.

Recess The Committee was recessed at 3:15 p.m. to be reconvened in the Legislative Dining Room. Reconvened, 3:30 p.m.

HEALTH The following rules were considered:  
DEPT.

HEALTH DEPARTMENT[470]

Chiropractic examiners, education standards, license, 141.11(1), 141.11(2), 141.11(3)"a", 141.13(6), 141.12(7), 141.12(8),  
141.64(1), 141.68 ARC 3109 .N..... 8/18/82  
Speech pathology and audiology, license, continuing education, 155.3(1), 155.3(3)"e", 155.3(4), 155.6, 155.7(1), 155.7(2), 156.2(4),  
156.4(1)"b", 156.6, 156.9(2)"b" ARC 3125 ....N..... 8/18/82  
Health facilities review program, 201.9, filed emergency ARC 3090 ..FE..... 8/4/82  
Advanced emergency medical care, 132.3, 132.3(3)"c", 132.3(5)"a", 132.3(8)"a", 132.3(9) ARC 3177 .N..... 9/1/82  
Cosmetologists, license, continuing education, 149.3(10), 151.12, 151.7, 160.7 ARC 3164 .N..... 9/1/82  
Podiatry examiners, 139.2(5), 139.3(6), 139.4 ARC 3124 .F..... 8/18/82  
Radiation emitting equipment, ch 42 carried over from August meeting .....IAC

Health Department representatives present were: Peter Fox and Mark Wheeler, Hearing Officers; Harriett Miller, Chiropractic Examiners; Nancy Welter and Grace M. West, Cosmetology; Donald A. Flater and James Krusor, Board of Medical Examiners. Also present: Cindy Windsor, Mary Lou Boal, Margaret Page, Carolyn Dale, Coe Dole and Marilyn Holland, ISRT; Norene D. Jacobs and Richard W. Berglund, Iowa Hospital Association; Rebecca Bertiam-sen, Marengo; Kathryn J. Reuter, Finley Hospital, Dubuque; Kathie Gunnace and Lois Rauen, Mercy Hospital, Dubuque.

- ch 141 Miller explained proposed amendments to chapter 141. Holden favored an attendance record from the provider certifying continuing education had been completed. Miller indicated hearing would be held before an individual could be prevented from practicing.
- 141.12 Holden questioned what would be "reasonable time" in 141.12(8) and suggested licensees be notified 30 days in advance of license expiration. Discussion of the function of an "acropath" as a "drugless" healer. Miller noted they were not licensed in Iowa. Tieden was informed that a masseuse would not be licensed in Iowa. Wheeler said, depending upon your location, this would be dealt with by local ordinances in counties and cities.
- chs 155, Schroeder questioned the fairness of 155.3(3) which would require  
156 an individual "who has not taken and received a passing grade in the national teacher examination within five years prior to the making of an application," to retake the exam. Fox responded that it was the Board's thinking that over a longer period of time there would be some loss of information. The provision would basically affect people outside of Iowa who have taken long periods of time to pass the test.
- 155.3 In re 155.3(4), Schroeder preferred the statement, "No prior credit can be obtained until applicant notifies Board of their intention." In his opinion, the person who legitimately desires to enter that field would be left out "in the cold." Fox concurred but the Board has to be notified. Fox informed Clark that the temporary license may be renewed once and Fox cited Iowa Code §147.155. Holden was informed those persons would not be subject to Continuing Education.



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HEALTH DEPT. Continuing Responding to Tieden's question of 156.9(2)b, Fox said the Board has decreased the number of CE hours required from 20 to 15 for individuals who had been licensed, but had not worked for 2 or 3 years and wished to be relicensed.

No recommendations for 201.9. Discussion of examination fees for EMT's. Schroeder opined there should be no charge to EMT volunteers. He feared the EMT program would be discontinued. Krusor stressed that EMT's had been supportive of the fees.

Holden suggested that 132.3(5)a be corrected grammatically.

149.3(10) Fox called attention to 149.3(10) and the fact that the Board would change the date to January 1, 1984 before the rules are adopted. Fox informed Priebe that most cosmetology schools require applicants to be high school graduates or GED. Welter added that courses are much too difficult for an applicant who cannot pass a GED test. There had been no opposition to the rule so far. Clark wanted to avoid discouraging anyone from attending high school. Holden doubted that was a licensing board function.

139.4(3) Fox explained that 139.4(3) had been added following the Notice. Tieden called attention to the fact that the rule was following the law passed this year by HF 2348.

ch 42 Radiology Flater reminded ARRC members that the Department had sent them a packet of information on September 2. He recalled a meeting held August 16 which included representatives of the Medical Society, Osteopathic Society and Hospital Association, and on September 2, as requested by the Medical Society. Flater thought proposals had been agreed upon. Discussion of the fact that some factions were not included in the last meeting.

Tieden referred to proposed amendment to 42.1(4)g and asked if the last line would generate malpractice. Wheeler admitted that was a possibility.

Windsor, who was accompanied by concerned technologists from around the state, spoke of confusion and discouragement on the part of the Iowa Society of Radiologic Technology in taking "a back seat on the issue." She added, "What was once an integral part of a health care team has been turned into a job that just anybody can do with little or no education"--an ethical issue had changed into an economical one. Windsor continued, "We are a proud group and will continue to think of ourselves as valuable assets to the health care team." She urged consideration of patients' rights and pressed for a reason why their "profession had been debased."

Bertiensen had worked with registered and nonregistered radiologic technologists whose abilities definitely differed. She emphasized that cross-training was essential in a small hospital. It allows more flexibility and enables the hospital to afford that registered person.

Page declared patients in rural and urban areas were entitled to the same health care.

9-7-82

HEALTH DEPT. Continued Radiology Priebe had been under the impression that all interested parties had been notified of the additional meetings conducted by the Department. Flater admitted that Windsor's group was not.

Oakley had tried to remain neutral on the matter. However, he observed it was time for decisions--right or wrong. He, personally, felt a degree of impatience and recognized that "We are dealing with a statute that is brief with little direction." He viewed the proposals as being so "watered down" they were ineffective.

Motion to delay Ch 42

General discussion of alternatives for final disposition of the rules. Priebe was not sure how the matter should be resolved. He expressed concern that all factions had not been included in the meetings. Priebe moved to delay chapter 42 of Health Department 45 days into the next General Assembly and to send notice of the problem to chairmen of the appropriate committees of the House and Senate. Clark reasoned it could be a statutory problem. Oakley was unsure that quick legislative action would be a likelihood. He commended the Department for its efforts. Holden was skeptical that the profession might have some "self-serving interest."

Wheeler reviewed the status of the filed rules which would go into effect September 9 following the 70-day delay. Reference was made to the recent proposed amendments as well. Wheeler explained to Chiodo there would be no operating rules after September 9 if chapter 42 were delayed again.

West recalled the original rules as filed had received little response until it was realized the Department's interpretation differed from other groups, particularly, in terms of definition of "limited diagnostic radiographer." Merits of the original version were discussed. West voiced support of proposed draft two [42.1(2)b].

Schroeder reiterated his dissatisfaction with the fact that not all interested parties had been involved in all meetings. Wheeler admitted there was some misunderstanding.

Vote - Delay Ch 42

The vote on Priebe's motion to delay chapter 42 for 45 days into the next General Assembly carried unanimously with 6 ayes.

Recess

The meeting was recessed at 4:45 p.m. to be reconvened at 9:00 a.m. Wednesday, September 8.

Reconvened  
Committee  
Business  
Health  
Ch 42

Chairman Schroeder reconvened the meeting at 9:15 a.m. with all members present. He brought up the matter of the Committee's action Tuesday when they voted to delay Health Department rules, chapter 42, 45 days into the next General Assembly. Tieden was somewhat apprehensive about that decision. He inquired as to what Oakley might recommend to the Governor. Oakley replied that he would find it difficult to recommend emergency amendments unless there was a "consensus of determination" by all.

Tieden expressed his opposition to the impact the rules would have on smaller hospitals. Oakley stressed the importance of advising "folks what policy end result we expect those rules to meet as a matter of legislative intent." He was not sure this had been accomplished.

In this instance, Schroeder was inclined toward emergency amendments to be filed simultaneously with a Notice of Intended Action to run through the full process the second time--a procedure this Committee would not ordinarily recommend.

Oakley opined that since there is no statutory support for licensing RT's, they should be informed that a separate decision is to be made legislatively. Also, that this Committee is going to "interpret the minimum standards as 'X' and are not going to address licensure." Chiodo thought Oakley's point was well taken. Holden agreed Oakley was suggesting something definitive. Tieden preferred a "meeting of the minds" to avoid discussing this matter at future meetings. Oakley saw no problem with going through rulemaking process on the proposed amendments if the Committee agrees. He concluded there were two issues: "Should these be emergency filed; are the policy decisions right?" Royce calculated that normal rulemaking would probably be completed in the middle of January.

Holden requested Oakley to submit his ideas for resolution of the issue. Priebe suggested that Oakley and Royce develop appropriate language for Committee perusal. He felt strongly that the public must be protected.

ch 17A

Royce initiated brief review of possible amendment to Iowa Code chapter 17A. He indicated he would obtain copies of the Model State Administrative Procedures Act in preparation for in-depth discussion at the October ARRC meeting. Holden opined the Committee should convey to the legislative leadership some problem areas in the law. It was Oakley's opinion that a comprehensive review of the APA could not be accomplished before the 1983 session. He concluded Iowa is very much ahead of most states in this field. It was noted that Holden is a member of the NCSL regulatory reform committee.

SOCIAL  
SERVICES

The Social Services Department was represented by Judy Welp, Rules and Manual Specialist, Don Bice, POS, Dan Gilbert and Kathi Kellen, Medical, Harold Poore, Day Care, Suzanne Boyde, Social Worker, Howel Shleng and Lesa Karl, Pharmacy Students, Carol VanDePol, Health Counselor, Joe Mahrenholz, PSE II, and Margaret Stober, Standards Officer. Also present: Merlie

SOCIAL SERVICES     Howell, Coalition for Family and Childrens Services, Martin  
 Dettmer, Mental Health Mentally Retarded Commission, and  
 Continued Gene Fitzsimmons.

Chairman Schroeder called on Social Services Department representatives for review of the following:

SOCIAL SERVICES DEPARTMENT [770]

ADC, trusts, 41.6(8) ARC 3134	.....FE.....	8/18/82
ADC, source of recoupment, 46.5 ARC 3135	.....FE.....	8/18/82
Medical assistance, hearing aids, 78.14 ARC 3136	.....FE.....	8/18/82
Medical assistance, providers, 79.1, 79.1(5) ARC 3137	.....FE.....	8/18/82
Social services block grants, ch 131 ARC 3138	.....FE.....	8/18/82
Iowa veterans home, 134.1(7) ARC 3139	.....FE.....	8/18/82
Residential services for adults, ch 162 ARC 3140	.....FE.....	8/18/82
Community mental health center standards, ch 33 ARC 3165	.....FE.....	9/1/82
Alternative diagnostic facilities, ch 34, filed emergency	ARC 3110.....FE.....	8/18/82
ADC, participation in a strike, 41.5(5)c 12, filed emergency	ARC 3131.....FE.....	8/18/82
Food stamp program, involvement in a strike, 65.17, filed emergency	ARC 3132.....FE.....	8/18/82
Medical assistance, eligibility, 75.5(3), filed emergency	ARC 3133.....FE.....	8/18/82
Medical assistance, recipient lock-in, 76.9 ARC 3128	.....N.....	8/18/82
Intermediate care facilities and intermediate care facilities for the mentally retarded, financial and statistical reports, 81.6(10)c, 82.5(10)c	ARC 3085.....N.....	8/4/82
Child care centers, 109.1(3), 109.1(8), 109.2(2)d, 109.2(3), 109.3(6), 109.5(4), 109.5(8), 109.6(3)b, 109.6(5)d, 109.7(3)d, 109.9	ARC 3129.....N.....	8/18/82
Purchases of services, rate limitations, 145.3(3) ARC 3086	.....N.....	8/4/82
Child abuse prevention program, ch 146 ARC 3108, also filed emergency	ARC 3107.....N?.....FE.....	8/18/82
Dependent adult abuse, ch 147 ARC 3130	.....N.....	8/18/82
Departmental organization and procedures, 1.1, 1.3, 1.4 ARC 3166	.....N.....	9/1/82
Purchase of service, ch 145 ARC 3168	.....N.....	9/1/82

41.6 (8) According to Welp, 41.6 (8), trusts, clarifies when trust assets are considered available in re ADC. Schroeder did not foresee the likelihood that a trust could be broken and was concerned for the cost involved. Holden pointed out that the trust might very well take care of the cost. Welp concurred. She also explained that, under the new rule, the state won't be spending more than it saves.

In a matter not officially before the Committee, Priebe had heard of pending proposals to change the reimbursement with respect to care facilities. Welp reasoned it would be for next year's budget--this year's appropriation freezes the reimbursement--if funding is available, the reimbursement would be increased. Priebe asked Welp to notify him if there was a proposal to shift more of the Title XIX patient cost to private pay and insurance companies. Welp was amenable.

46.5 In re source of recoupment in determining ADC eligibility, Clark inquired as to disposition of a memorial fund upon the death of a child. Welp explained that if the mother were to receive as much as \$2000, that would be counted as a resource--a trust would be handled differently. Schroeder interjected that a trust would be highly unlikely in ADC situations and Welp agreed. According to Welp, the Department will use the same criteria for recoupment as used in determining eligibility.

78.14 No questions re 78.14. Changes made in 79.1(249A) and 79.1(5)  
 79.1 were to implement 1981 Acts, SF 2394, \$98.

ch 131 No comments were forthcoming on chapter 131. According to Welp, 134.1(7) requires spouses of veterans and veterans who have no income to apply for Medicaid coverage if they wish to be admitted to the Title XIX wing of Marshalltown Veterans Home. Welp advised Priebe the state would receive a little more federal funding. Welp assured Schroeder the plans in chapter 162 were cost effective.

SOCIAL  
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Continued

According to Welp, chapter 33 was adopted by the Mental Health/ Mental Retardation Commission to govern Community Mental Health Centers and the DSS had received quite a few comments about requirement to provide Board minutes to the general public.

- ch 33 ARRC discussed format of public meetings re personnel, open and closed sessions and pros and cons of both issues. Generally, the Committee supports keeping minutes. Priebe conveyed his county supervisors' concern about verification of distribution of county tax dollars. He thought tax matters should be open to the public.
- 33.5(2) There was review of auditing provisions. In re 33.5(2), Schroeder thought on-site evaluation of centers should be unannounced. Clark supported the rule as did Oakley. Schroeder preferred more latitude--he contended 90 days' advance notice was excessive. He asked Department to consider revision to provide "When possible, a 90-day notice will be given" when chapter 33 is amended again. Welp agreed to take his suggestion under consideration. No comments re chapter 34.
- 41.5(5) Tieden suspected that amendment to 41.5(5)c(2) was almost meaningless. Welp admitted changes might have to be made in the future. Committee members could foresee the same situation with the food stamp program. [65.17]
- 75.5(3) Amendment to 75.5(3)--medical assistance eligibility--brings the Department into compliance with federal regulations. Welp said the rule answers opposition expressed by ARRC--DSS plans to implement entire rule through regular rulemaking process. The filed emergency rule was required because DSS was out of compliance with federal government. In response to Tieden's question as to public comments, Welp noted people indicated they would have trouble living on the \$284 SSI.
- 76.9 In 76.9(249A, 5th line, Holden suggested addition of "duplicate" before "medical assistance services or items" and deletion of "at a frequency .....necessary", otherwise, "shall" should be substituted for "may" in line 7. Welp indicated DSS prefers to peruse each case on individual basis. Mahrenholz added that the rule was designed to "get at" ardent abusers of the program.
- 81.6, 82.5 No questions or comments re 81.6(10) or 82.5(10). Clark reiterated her opposition to the ceiling height requirement in 109.5(4). Poore pointed out that portion of the rule was not changed.
- 109.5(4) Clark questioned 16-mesh wire requirement in 109.5(4)d. Schroeder preferred "16-mesh or smaller" requirement to avoid locking in one provider.
- 109.7(3) Clark inquired about design of stacked cribs--109.7(3)d. Poore displayed pictures showing them with ceilings and sides. In Department's opinion, that type of crib may be appropriate in a church setting but not in a day care center. Child development experts oppose the concept since children are confined too long.
- 109.9 Clark referred to 109.9(2)a and wondered if there were a move toward multiple-year licensing. Poore responded the language

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Continued

109.5

was a restatement of the law. Holden pointed to 109.3(6) and suggested use of parenthesis instead of commas around ("flood if area is susceptible to floods"). He asked inclusion of "room" before "temperature" in line 1 of 109.5(4)e. In 109.6(3), 5th line, Holden called attention to use of the word "both" as being incorrect and Poore concurred it should read "each". In 109.6(5), Holden favored reinstatement of "while preparing". Department officials concurred.

109.7(3)

Holden asked for use of "adjacent" in 109.7(3). He suggested that 109.9(1) be rewritten for clarity. In Holden's opinion, paragraphs "b", "c" and "d" were not relevant to 109.9(4). Further, he felt that 109.9(5) was vague.

145.3(3)  
chs 146,  
147

No questions re 145.3(3) and chapter 146. Oakley noted that public hearing had not been scheduled for chapter 147 which would provide opportunity for "retrospective criticism." He anticipated much comment when publicity does begin.

Tieden voiced opposition to a "verbal statement" alleging child abuse in 147.1(10). He could foresee a prejudiced individual creating problems. Clark called attention to the fact that the same provision was included in child abuse rules. General discussion. Welp announced there was a \$200,000 appropriation for this program.

Royce questioned authority for the definition of "caretaker"-- just because of relationship to an individual, you could be legally defined as the caretaker. He also raised question with respect to intent of "denial of critical care" definition. No formal action taken.

ch 1

In reviewing amendments to chapter 1, Clark pointed out an incomplete sentence in 1.3(8). No recommendations were offered for chapter 145.

ch 145

Recess

Schroeder recessed the Committee at 11:20 a.m.  
Reconvened at 11:28 a.m.

REVENUE  
DEPARTMENT

Carl Castelda, Michael Cox and Mel Hickman appeared on behalf of Revenue Department for review of the following:

## REVENUE DEPARTMENT[730]

Confidential information, 6.3, 11.9, 33.6, 51.7, 57.6, 63.19, 73.10, 81.14, 87.2(1), 88.2(1), 89.2(1), 103.9 ARC 3098 .F.....8/4/82  
Taxes, determination of filing status, 12.1, 12.13, 30.4(4), 46.3(3)\*b\*(4) ARC 3097 .F.....8/4/82  
Sales and use tax-deposits, exemptions, trade-ins, 12.1, 12.2, 12.10(3), 15.3(2)\*b", 15.19(1) to 15.19(4), 26.38,  
34.1(5) ARC 3171 .F.....9/1/82  
Motor fuel and special fuel--penalties, license, gasoline tax, metered pumps, 63.8, 63.27, 64.4(3), 64.4(4), 64.8,  
65.8, 65.20 ARC 3172 .F.....9/1/82  
Contested case proceedings, orders, 7.17(5) ARC 3151 .N.....8/18/82  
Taxes, penalties, 44.3(2), 44.3(3), 52.5(4), 58.5(4), 86.2(16)\*g", 86.2(17), 87.3(10)\*g", 87.3(11), 88.3(15)\*r", 88.3(16), 89.6(4)\*h",  
89.6(5) ARC 3152 .N.....8/18/82  
Assessors and deputy assessors, examination and certification, 72.2(6), 72.2(7), 72.2(8), 72.2(11), 72.2(12), 72.3 to 72.6, 72.8, 72.10(2),  
72.13, 72.18(2), 72.18(4), 72.18(8), 72.18(9) ARC 3153 .N.....8/18/82  
Reimbursement to the elderly and disabled for property tax paid and rent constituting property tax paid, 73.1 to 73.5, 73.7, 73.8,  
73.10 to 73.12, 73.14, 73.15, 73.17, 73.19, 73.20, 73.22, 73.24 to 73.29 ARC 3154 .N.....8/18/82  
Property exemptions, 78.2, 78.3, 78.4(3), 78.4(4), 78.6(1), 78.7 ARC 3155 .N.....8/18/82  
Real estate transfer tax and declaration of value, 79.2(7) ARC 3096 .N.....8/4/82  
Games of skill, chance, bingo and raffles, 91.5(2), 91.6(1)\*e" and "f", 92.8, 94.8 ARC 3156 .N.....8/18/82

REVENUE Castelda indicated the grammatical changes had been made  
 DEPARTMENT at ARRC request. In 38.6(422), Castelda said tax information  
 Continued was not given to other state agencies--BCI has taken Revenue  
 to court over that matter. Requests by other states can go  
 only to the Revenue Department and a signed agreement is pre-  
 sented and confidentiality statutes must concur. In addition,  
 the person requesting information must be approved under terms  
 of the agreement. Taxes, determination of filing status  
 amendments were filed identical to noticed version, according  
 to Castelda. Castelda recalled that the matter of exemptions  
 on trade-ins was discussed at length by this Committee at their  
 last meeting. Revenue officials extended invitation to the  
 Iowa Automobile Dealers Association to provide them with cir-  
 cumstances of operation. The Department contended the rule  
 was compatible with the statute.

12.1 In re 12.1, Holden questioned what appeared to be a difference  
 in the amounts collected. Castelda read from \$422.52 and in-  
 dicated they would submit proposed legislation to Royce.

With respect to amendment to 64.4(3), Holden was advised that  
 legislation would probably be pending to update the statute  
 re exise tax on gasohol.

44.3(2) No questions re 7.17(5). Clark referred to 44.3(2) and reasoned  
 if the mistake were on the part of the Department, the taxpayer  
 should not have to pay penalty. Castelda pointed out a statu-  
 tory change would be needed.

Castelda called attention to a statutory provision which allows  
 the director to "abate tax, penalty and interest on his own  
 motion." Each situation would be considered on its own merit.  
 General discussion. Schroeder suggested Revenue review the  
 matter further.

Holden referred to 44.3(2) and thought it could be misleading.  
 He cited a hypothetical case to make his point.

72.13 Cox informed Priebe that the two-week minimum field training  
 for assessors was eliminated in 72.13 to provide more flex-  
 ibility. Counties are billed for travel, etc., but if a basic  
 assessment is unnecessary, then the county should not be re-  
 quired to pay. It was Priebe's opinion they had eliminated  
 any minimum time. The Department makes the decision, not the  
 assessor.

72.18(9) Responding to Schroeder's question, Cox explained that the  
 exam is given at the end of a 2- to 3-hour course but this is  
 not the assessor exam. No questions were posed re amendments  
 to chapters 73 and 78. Brief discussion of 79.2(7).

Castelda explained that rules 91.5, 91.6, 92.8 and 94.8 re-  
 lating to discretionary revocation of a license were amended  
 to clarify the position of the Department.

Schroeder opined the rules should be studied carefully before  
 they are filed. Castelda noted that proposed legislation  
 should address what Department has interpreted was legislative  
 intent for raffles.

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REVENUE In answer to Chiodo, Castelda said, in the absence of rules,  
DEPARTMENT the statute controls. Cost of raffles and types of giveaways  
Continued were reviewed briefly.

Recess Chairman Schroeder recessed the Committee at 12:20 p.m. for  
lunch. Reconvened at 1:40 p.m.

INSURANCE Chapter 55, Iowa business opportunity sales Act, ARC 3102,  
DEPARTMENT Notice, IAB 8/4/82 was before the Committee. The Insurance  
ch 55 Department was represented by Frank Thomas, Assistant Attorney  
General; R. Cheryl Friedman, Attorney, Craig Goettsch, Super-  
intendent, Securities Division; and Teresa Abbot, Investigator,  
Consumer Protection Division.

Schroeder was advised that 55.1(9) was excerpted from the law.  
He thought the Department had "closed the door" on business  
consultant. Thomas differed with him and stated that anyone  
wishing to declare as a business consultant could do so by  
contacting the Insurance Department--under declaratory ruling.

Goettsch interjected that the issue raised has not been a  
problem. General discussion of the matter and procedure used  
in buying and selling business opportunities. Goettsch suggested  
a definition of "business consultant" could be beneficial to  
the rule. He assured Priebe the Department was not removing  
the "buyer beware" clause. He added that no one attended the  
hearing and the statute has been in place 14 months. The at-  
torney general's office had requested the legislation.

55.1(9) It was Priebe's opinion that 55.1(9) narrowed the scope making  
it more difficult to buy and sell.

Schroeder asked Friedman to request the Commissioner to submit  
legislation to Commerce Committees to delete the objectionable  
language since there were potential problems. Friedman reminded  
the Committee that many businesses would not be affected; i.e.,  
long-standing or trade-mark types. Royce observed that in  
some cases, the Department took general language of the statute  
and made it more specific, and, in other instances, left it  
vague.

55.6 Schroeder was curious about the \$50,000 letter of credit in  
55.6(2) since many businesses may be involved with less. He  
felt that if the Commissioner was allowed discretion beyond  
\$50,000, he should have that same discretion to lower the amount.  
Goettsch admitted this would be an area where the Department  
will be seeking amendment. He informed Schroeder that language  
55.8 in 55.8(3) was from the Uniform Securities Act and Uniform  
Business Opportunity Sales Act--essentially, a recognition of  
constitutional rights. Discussion of investigations in 55.8.

Goettsch informed Tieden that the Insurance Commissioner or  
Deputy would be the administrator--55.8(2). No formal action  
taken.



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ENERGY  
POLICY  
COUNCIL

The following rules of Energy Policy Council were before the Committee:

ENERGY POLICY COUNCIL[380]

Energy measures and energy audits, technical assistance and energy conservation, grant programs, 7.1(2)"k"(1), 7.5(3)"d", 7.7(2)"b", 7.8(1)"a", 8.2(2)"b"(2), 8.2(2)"c", 8.3(1)"d", 8.4(2)"a"(6), 8.6(2)"e"(2), 8.6(3), 8.6(5)"b", 8.7 ARC 3092 ..... 8/4/82  
Energy measures and energy audits, technical assistance and energy conservation, 7.3, 7.4, 7.6(1), 7.8(2)"a", 8.1, 8.5(2)"b", 8.5(6), 8.6(4)"c"(1), 8.6(5)"a" ARC 3091 ..... 8/4/82  
Energy auditors, 7.5(3)"a" ARC 3093 ..... 8/4/82

Appearing on behalf of the Council was Diane Storms, Administrative Assistant.

Committee members noted that dates certain for CFR references had not been included as requested when the rules were under Notice. There was brief discussion of the most expeditious way to follow up on Committee requests to Departments in general.

ARRC requested that EPC file emergency amendments to include the necessary dates. Oakley assured Committee that would be accomplished.

No questions raised on amendments to chapters 7 and 8 in ARC 3091. In re 7.5(3)a, Schroeder reiterated his strong opposition to method of certification of energy auditors. Tieden asked Storms to define associate energy auditor. However, she was not prepared to respond. No formal action.

TRANSPOR-  
TATION  
DEPARTMENT

Transportation rules on the agenda were:

TRANSPORTATION, DEPARTMENT OF[820]

Vehicle registration and certificate of title, special fuel, [07,D] 11.1(12), 11.7 ARC 3121 ..... 8/16/82  
Motor carrier application, [07,F] 4.5(2), 4.5(3), filed emergency after notice ARC 3173 ..... 9/1/82  
Liquid transport carriers, [07,F] 13.4(2), 13.4(3), filed emergency after notice ARC 3174 ..... 9/1/82

*Motorcycle license bill*

Al Chrystal, Chief Examiner, Bill Kendall, Driver License Director, and Carol Padgett and Pat Schnoor, Administration, and Jane Phillips, Transportation Regulation Authority, were present for DOT.

Proposed amendments to [07,D]11.1 and 11.7 define special fuel and direct placement of the special fuel identification sticker. Schroeder was informed that 100,000 stickers had been ordered. Discussion of [07,F]4.5(3)--hearing fees. DOT officials said hearings are held only if there is a protest. At this time, there were no problems. Clark suggested substituting "paid by check" in the last line. Schroeder took issue with the 14-day deadline for receipt of hearing fee. He thought limited discretion should be provided in 4.5(3)b. Padgett mentioned the Department would be revising divisions 07F, 12A and 12B of their rules in the fall. Schroeder reminded her that large quantities of rules are to be submitted when the Legislature is not in session.

Motorcycle Operators There was special review of licensing of motorcycle operators. Holden quoted from Code §321.189 and questioned DOT officials how they determined that, in order to operate a motorcycle, you must be licensed to drive a car. It was his contention that, under the agency's rules, a "restricted motorcycle" license could be issued. Chrystal cited 321.177 as prohibiting them from issuing a license to anyone under 18 unless they have had driver's education. The statute provides three exceptions, one of which is for a moped license. In an informal opinion, the AG had concurred with DOT philosophy.

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TRANSPOR- There was lengthy exchange between Holden and Chrystal as to  
TATION the pros and cons of the issue. Chrystal emphasized it was  
DEPARTMENT not a personal decision--only Code compliance. Holden took  
Continued the position the Department was far more restrictive than  
was intended. Schroeder and Holden thought the latitude  
was contained in 321.189. Chrystal maintained that 321.177  
took precedence. Schroeder asked if there was a chance the  
Department would extensively review the statutory language.  
There was discussion of definitions.

Chrystal, as chief examiner, personally had no resistance to  
issuing the "motorcycle only" license but based upon DOT  
interpretation of the Code and AG's opinion, they could not.  
Kendall called attention to the fact that the AG opinion was  
not solicited by DOT. However, he was willing to review the  
matter with their legal counsel.

Committee After further discussion, the Committee agreed to seek an  
to request opinion from the AG on the question.  
AG opinion

Priebe in the chair.

PLANNING & Lane Palmer, Community Development Block Grant Program Director,  
PROGRAM- Doug True, Deputy Director, JoAnn Callison, State Youth Co-  
MING ordinator, and David Patton, Attorney, were in attendance.

There was brief review of the following Planning and Programming  
rules:

PLANNING AND PROGRAMMING[630]  
Youth affairs, in-school public service employment, 14.4 ARC 3106 .X.....8/4/82  
Community development block grant nonentitlement program, ch 23 ARC 3186 .X.....9/1/82

No recommendations were offered.

Recess Committee was in recess for 5 minutes. Reconvened at 3:45  
p.m.

HEALTH Discussion of Health Department rules as follows was resumed:  
DEPARTMENT HEALTH DEPARTMENT[470]  
Intermediate care facilities, resident abuse prohibited, 58.43, 58.43(7)"I", filed without notice ARC 3103 .FWX.....8/4/82  
Special review: Residents' bill of rights -- status of mentally retarded resident, 58.1(19).....IAC

Susan Brammer, Assistant Attorney General, Dana Petrosky, Chief,  
Division of Health Facilities; William Dietch, Director, Li-  
censing and Certification; Ron Maxwell, Legislative Liaison,  
were present for the Department. Also present: Dan Schweiger  
and Pat Williams, Riverview Manor; Tom Hudspeth, Hillhaven, Inc.,  
Ted Ellis, IAHA; Kris Bullington and Vince Weber, Commission  
on Aging.

58.1(19) Brammer reported that amendments to 58.43 merely corrected  
scrivener's errors. There was special review of "responsible  
party" and "incompetent residents" in relation to the residents'  
bill of rights. Petrosky said the Department had wrestled with  
the sizeable issue of incompetent resident for over a year.  
Petrosky estimated 33,000 residents are living in intermediate  
care facilities and that of that number, 16,000 are confused  
as to time and place--4,000 have no one to "watch over them."

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HEALTH  
DEPARTMENT  
Continued

The Department had addressed the problem to the best of their ability.

Schweiger reviewed the particular circumstance and the problems faced by the providers on the question of incompetency. Gary Madsen, Iowa Association of Private Residential Facilities for the Mentally Retarded, referred to chapter 63 amendments and quoted from a written statement wherein he set out their specific areas of concern.

Petrosky and Madsen discussed the definition of "responsible party." Petrosky called attention to the fact that defining "incompetent" was very controversial and the Department was not sure it was right. There are people who have not been adjudicated incompetent. The Department thought there should be someone between those people and the individual who might take advantage of them. Petrosky pointed out that the very first problem which occurred after implementation of the rules was the responsible party wanted to restrict residents' rights. That was not anticipated by the Department and was not the intent in the definition.

Schweiger briefly reviewed a situation at his facility where the resident wanted freedom to go out on his own but the "responsible party" opposed this. There was general discussion of the inherent problems with the residents' bill of rights and possible solutions. It was the consensus of the Committee that the very complex matter would not be resolved soon.

Recess

Chairman Schroeder recessed the Committee at 4:25 p.m. to be reconvened Thursday, September 9, 1982 at 9:00 a.m.

9-9-82

Reconvened The Committee was reconvened at 9:17 a.m. in Committee Room 22.

CONSERVA- Conservation Commission was represented by Don Bonneau, Fisheries  
TION Supervisor, Richard Bishop, Wildlife Supervisor, Nancy Exline,  
COMMISSION Associate Superintendent, Roy Downing, Superintendent of Waters,  
for review of the following:

CONSERVATION COMMISSION[290]  
Zoning and watercraft uses, Black Hawk Lake, 30.10 ARC 3081...F.....8/4/82  
Motor regulations, ch 40 ARC 3082...F.....8/4/82  
Metal detectors in state parks and recreation areas, ch 43 ARC 3083...F.....8/4/82  
State parks and preserves, 45.2, 45.2(2)"c", 45.2(4), 45.2(5)"a" and "b", 45.2(6), 45.3 to 45.5 ARC 3084...F.....8/4/82  
Wildlife habitat stamp revenue cost assistance program on private lands, 22.5, 22.6 ARC 3079...N.....8/4/82  
State forest camping, 41.5, 41.7 to 41.10 ARC 3050...N.....8/4/82  
Wildlife habitat stamp revenue cost-sharing with local entities, 23.4, 23.10 ARC 3159...N.....9/1/82  
Certification of land as native prairie or wildlife habitat, ch 25 ARC 3160...N.....9/1/82  
Water skis and surfboards, 30.61, also ARC 2:96 terminated ARC 3161...N.....9/1/82  
Fishing regulations, 108.2(1), 103.2(3), 102.2(5)"a" ARC 3162...N.....9/1/82  
Falconry regulations for hunting waterfowl, ch 100, filed emergency after notice ARC 3158...F.E.A.N.....9/1/82

30.10 No questions concerning 30.10. In re 40.2, Priebe and Downing  
40.2 discussed size of motors and change of carburetion. Downing  
indicated citations would be issued for use of motors in ex-  
cess of 10 horsepower. No formal action taken on chapter  
chs 40,43 40 or 43 amendments.

CONSERVATION Schroeder inquired if the Department still received complaints  
COMMISSION about excessive use of state parks by out-of-state campers.  
Continued Exline was aware that Manawa has extremely high use by Nebraska  
ch 45 residents but she was unaware of complaints. Clark suggested a possible fee for out-of-state users. However, she would not support increased costs for Iowans. Priebe concurred with Clark. Exline recalled several states charge out-of-state fees.

45.2(5)b Schroeder questioned reason for 45.2(5)b and was informed that most campers pay as they come into the park. It was intended to prevent misuse of driver's licenses. Schroeder pointed out that not all counties were included. Bishop noted that counties had been added from the original projected habitat stamp revenue cost assistance program on private lands.

22.5 In reviewing 22.5 and 22.6, Priebe and Schroeder wondered  
22.6 when the entire state would be included in the program. According to Bishop, there was concentration on grassland areas first but the Department was hopeful all of the funds would be used and other counties would be included if the program succeeds.

41.9 In re 41.9(111), Schroeder asked for inclusion of "each visit".  
Exline was amenable.

23.10 Schroeder recommended addition of the words "unless extended by the Board" after "signed" in line 6. Bishop agreed to follow up. Clark and Downing discussed syntax of 30.61(1). Downing agreed to refer the matter to agency attorneys for possible clarification. Schroeder requested addition of a date certain in 30.61(2) following the CFR citation.

No recommendations were offered for fishing and falconry rules.

9:50 a.m. Oakley arrived.

CREDIT Betty Minor, Administrator, and James Brady, Deputy Administrator,  
UNION appeared on behalf of Credit Union Department. The  
DEPARTMENT following agenda was before the Committee:

CREDIT UNION DEPARTMENT[295]  
Real estate loans, ch 10 ARC 3099 .....N.....8/4/82

Also present: Howard K. Hall, Deputy Superintendent of Banking; John A. Pringle, Auditor of State's Office, and John Sullivan, Iowa Credit Union League.

Real Estate Minor reported that the Department conducted a public hearing  
Loans August 26. No one requested to speak and no written comments were received. She added that no CU's had received requests to make real estate loans.

Oakley indicated he was working with the Credit Union, Auditor and Banking Departments in completing their final rules governing real estate loans. An important question, in his judgment, was whether or not the agencies should emergency implement the rules. The Committee saw no problem with that approach.

AUDITOR  
OF STATE

9-9-82

John Pringle, Director, Financial Institutions Divisions, was present on behalf of the Auditor of State for review of:

AUDITOR OF STATE[130]

Real estate loans, industrial loan companies, 1.30 ARC 3104.....N.....8/4/82  
Real estate loans, savings and loan associations, ch 12 ARC 3105.....N.....8/4/82

1.30

He had met informally with representatives of Industrial Loan Industry and reported some revision would be made in rule 1.30.

Savings and Loan officials had made recommendations for chapter 12 revision, also. Hall explained that Banking Department held their hearing August 25. Lawyers representing Hawkeye Bancorporaton voiced concern about disclosure requirements. The Department anticipated minor changes to provide more flexibility, longer loan terms, and less disclosure--probably, similar to national bank practices.

Schroeder opined the rules should parallel those of National Bank Standards. Hall agreed to consider that possibility.

EMPLOYMENT  
SECURITY  
(Job  
Service)

Joseph Bervid, James Hunsaker, III, and Dennis Jacobs, IPERS, were present for review of the following Job Service Department rules:

EMPLOYMENT SECURITY[370]

Employer's contribution and charges, 3.41(1), 3.43(10)"a", "b" and "c", ARC 3148 ..F..... 8/18/82  
Job placement services, job orders, 7.3(19) to 7.3(24) ARC 3149 ..F..... 8/18/82  
Forms, 10.3, 10.4, 10.6, 10.7(11) ARC 3150 ....F..... 8/18/82  
Claims and benefits, 4.13(1), 4.24(4), 4.32(7), 4.39(13) ARC 3144 .....N..... 8/18/82  
Federal social security, 9.4(4), 9.5(1), 9.5(3), 9.6(5)"b" and "c", 9.6(6), 9.7(3), 9.8 ARC 3146 ..N..... 8/18/82  
Forms, 10.9 ARC 3147 .....N..... 8/18/82  
Iowa public employees' retirement system, 8.4(1)"a" and "f", 8.4(3)"a", 8.6(4), 8.8(5), 8.10(1), 8.12(9), 8.13(6)"a", 8.13(7), 8.13(8), 8.18(3), 8.19(6), 8.20 to 8.22 ARC 3163.....N.....9/1/82

Discussion of 3.41 and 3.43(10) changes, which were minor in nature.

Schroeder wondered if the Department would be in a position to attach refunds from Iowa state income tax. Bervid responded that the method of handling overpayments wasn't specifically addressed. "Basically, the law provides we can either require payment of the amount from the individual or we may offset it if they become eligible for benefits. We have used the income tax refund if we are aware they might have such a refund for the collection of taxes. We have not done so on overpayment." Bervid continued that they also have authority to file a lien against any property.

7.3  
ch 10

No questions were posed re 7.3 amendments. Re chapter 10, Schroeder asked and Bervid agreed to provide the Committee and Royce with copies of forms when they are modified in the future.

4.13(1)

Schroeder raised question about 4.13(1)--lump sum payments of vacation pay. Bervid noted it was the result of a recent supreme court case.

9.7(3)

In reply to question raised by Holden in 9.7(3), Committee members were advised of the procedure followed by the state

EMPLOYMENT in collecting and depositing social security contributions  
SECURITY for all government employees.

(Job Service) Bervid was requested to provide a set of forms referred to in  
Continued 10.9 to Royce.

ch 8 Department officials agreed to correct the inadvertent deletion of "by" in 8.12(9), line 3. In 8.21(2), Schroeder thought "or guardian" should be included in the first line after "retiree". Committee members were concerned for situations where guardians were not court appointed. Jacobs concurred with Schroeder's suggestion. He knew of one case, in twenty years, where funds were intentionally misappropriated.

Jacobs agreed to study 8.20(2) to determine if the words "regardless of their legal competency or incompetency" could be deleted.

Recess Chairman Schroeder recessed the Committee for 5 minutes.

CITY Ron Amosson, Comptroller's Office; Warren Jenkins, Deputy  
FINANCE Auditor of State; James Lynch, Planning and Programming;  
COMMITTEE Darol Schweer, Comptroller's Office; and Robert C. McMahon, Auditor's Office, appeared on behalf of the City Finance Committee for review of budget amendments and fund transfers, chapter 2, ARC 3122, Notice, IAB 8/18/82.

Also present: Edward H. Allen, Jr., Larry Huntley, and Dave Long, League of Municipalities; Stribling Boynton, City of Urbandale; Tim A. Zisoff, Administrative Assistant and R. T. Long, City Clerk, Indianola.

Amosson commented that, in the past, there have been requests to include capital projects in the regular budgeting process for cities and the City Finance Committee developed a program.

They propose that the capital improvements portion of city operations be put in the budgeting program along with budgeting for transfers as well. Amosson emphasized that the City Finance Committee is attempting to provide information for public awareness. Presently, all budgeting expenditures are included under different programs with different categories. The proposal would place city operations into 3 different categories. There would be specific columns for transfers. In the case of utilities, they would have to budget to transfer money to other funds and that would be clearly shown on the budget forms.

Chiodo asked if there would be more scrutiny than previously. Amosson doubted there would be more leverage over the budget, but more opportunity for citizen participation would be afforded. Most cities have some type of capital project going almost continuously. The budget form now does not reflect the finance or expenditures for those capital projects.

Priebe was informed that cash transfers would appear separately on the form but would not be published. The annual budget is published. Appropriation transfers rule would remain in effect.

CITY  
FINANCE  
COMMITTEE  
Continued

Priebe could not envision how city clerks in small communities could keep up with the requirement. McMahon spoke in favor of the rules and pointed out that Cedar Rapids had been using the practice since 1973. He didn't believe the workload had increased greatly. Priebe predicted the rules would result in many "legalizing Acts". McMahon was of the opinion that small cities could work out the necessary requirements.

Tieden queried, "Why force some cities to comply with the change, unless there are problems at the auditor's office or someplace else?" Tieden was advised that the Code requires the auditor to be represented on the City Finance Committee. That demonstrates support on the part of city officials.

Long introduced Huntley, who read a statement of opposition from the League of Iowa Municipalities to the proposed rules. They concluded that taxpayers, voters or cities would not be well served by these rules. Huntley opined that including capital improvement projects in the annual operation budget conflicted with the last sentence of Code §384.25. The matter had been discussed with bond attorneys.

In response to Schroeder, McMahon explained the forms would be uniform and simplified. There was discussion of the function and makeup of the City Finance Committee as set out in Code Chapter 384. It was noted that the membership of the City Finance Committee had changed since the rules were first drafted. It was reported that most cities have very low turnout at their budget hearings.

Boynton distributed copies of the comments which he shared with the Committee. He viewed the rules as being unnecessary. He contended they would only compound and frustrate local officials.

Haynie, who had served as a consultant without pay when the City Code was drafted 8 or 9 years ago, spoke of opposition to the proposed change (capital improvements added in budgets) on behalf of law firm Ahlers, Cooney, Dorweiler, Haynie & Smith.

The public hearing was scheduled to be held in Cedar Rapids to coincide with the League of Iowa Municipalities convention. Responding to Priebe's question as to whether an amended budget would have to be published, Haynie replied in the affirmative.

Jenkins stressed that opposition diminishes when the proposal is fully understood. No formal action.

PUBLIC  
SAFETY

Wilbur Johnson, Fire Marshal, and Connie White, Program and Policy, were present for review of the following Public Safety Department rules:

PUBLIC SAFETY DEPARTMENT[680]

Flammable and combustible liquids code and liquefied natural gas, 5.300, 5.301(6), 5.301(7), 5.304(3), 5.307, 5.308, 5.350, 5.400, 5.450, 5.275 ARC 3078 ... 8/4/82

Brief review with Johnson noting the amendments do not address the matter of waste oil furnaces. Laboratory improvement has not been forthcoming for the burner for diesel oil use.

9-9-82

PUBLIC  
SAFETY  
Continued

Priebe asked Johnson to visit Turnis Garage at Ledyard to advise Turnis concerning this matter. He was amenable.

CIVIL  
RIGHTS

Civil Rights and Educational Radio and Television agencies were moved to the No Representative status. They were as follows:

Ed TV &  
Radio  
Facility

CIVIL RIGHTS COMMISSION[240]  
Procedure for oral argument, 1.21 ARC 1029 terminated ARC 3157 ..N.....9/1/82  
EDUCATIONAL RADIO AND TELEVISION FACILITY BOARD[340]  
Complete revision, chs 1 to 18 ARC 3088 ..N.....8/4/82

AGRICUL-  
TURE  
DEPT.

Dr. Merle Lang, State Veterinarian, and Mark Truesdell, were present for Agriculture Department and Livestock Health Advisory Council rules as follows:

Livestock  
Health  
Advisory  
Council

AGRICULTURE DEPARTMENT[30]  
Eradication of swine brucellosis, 16.67, 16.68, 16.71 ARC 3175 ..F.....9/1/82  
Livestock importation, brucellosis-cattle, 17.5 ARC 3176 ..F.....9/1/82  
LIVESTOCK HEALTH ADVISORY COUNCIL[565]  
Recommendations - appropriation, 1.1 ARC 3087...F.....8/4/82

No substantive questions were posed re Agriculture rules. Truesdell briefly reviewed the appropriations recommendations for the 1982-82 fiscal year.

Truesdell said there was a considerable consensus that pasteurella is the predisposing agent that weakens the calf being shipped. There was substantial interest in that on the part of the Council.

PUBLIC  
INSTRUC-  
TION

The following rules of Public Instruction Department were before the Committee:

PUBLIC INSTRUCTION DEPARTMENT[670]  
Area vocational schools and community colleges, instruction course for drinking drivers, 5.30, 5.31 ARC 3095 ..F.....8/4/82  
Endorsements, authorization for postsecondary personnel, 15.32 to 15.37 ARC 3111 ..F.....8/18/82

Charles Moench, Division Director, Tom Grimm and Howard Hammond, Consultants, Orrin Nearhoof, Director, Teacher Certification, and Don Wederquist, Chief, ADED, were present.

Schroeder raised question as to why DOT Drivers License Division had no input in approving these courses. Moench explained the makeup of the Committee that worked on the rules, which included a representative of DOT.

5.30

Holden asked Department officials to enumerate examples of specific alternatives for drinking and driving. Moench offered examples, such as complete avoidance, arrangements for a driver, or some other form of transportation.

Schroeder suggested better monitoring of the AEA program. He favored flexibility as to arrival time at the course.

No questions were posed re ARC 3111.

SOIL  
CONSERVA-  
TION

Jim Gulliford, Director, and Kenneth Tow, Deputy, appeared on behalf of Soil Conservation for the following review:

Surface mining and reclamation operations—hydrologic balance, water quality standards, effluent limitations and map scales, 4.522(11), 4.522(15), 4.522(41), 4.522(56), 4.522(65), 4.523(15), 4.523(38), 4.523(60), 4.55(1), 4.55(5), 4.311(2)"e", 4.322(13) ARC 3184 ..F.....9/1/82  
Iowa financial incentives program for soil erosion control, 5.20(1), 5.20(27), 5.20(18), 5.20(20), 5.30, 5.31(1)"a" and "b", 5.31(2)"a" and "b", 5.32, 5.33, 5.33(1) to 5.33(3), 5.74(3)"b", 5.74(4)"e", 5.74(5)"a", 5.74(5)"e"(1), (2) and (3), 5.74(6), 5.95(1), filed emergency after notice ARC 3183 ..F.E.A.N.....9/1/82  
Iowa soil 2000 program, 6.40, 6.50 ARC 3185 ..N.....9/1/82



9-9-82

SOIL CONSERVATION DEPARTMENT Discussion centered on the amendments to chapter 5. Priebe voiced opposition to striking language in 5.30 which provided for review and appeal process. He felt strongly that the landlord or farm operator should have that right. Tow said the provision was no longer consistent with the Act. Schroeder and Priebe wanted to peruse the matter. Tow emphasized the Department would utilize actual administrative order as a last resort. Gulliford said the amendments were filed emergency so share checks could be issued.

Iowa Soil 2000 Gulliford stated that rules 6.40 and 6.50 were two parts of the Iowa soil 2000 program which were not included with the initial guidelines. He added that the program was being developed but funding has not been provided.

Committee Business Discussion of 17A was deferred until a later meeting when 2 hours would be allotted.

Radiology ch 42 p. 1795 Chairman Schroeder called up the matter of Health Department rules pertaining to radiology, being Chapter 42. The Committee reviewed their action taken on September 7 to delay those rules 45 days into the next General Assembly. See page 1795

Their final position was they could not condone rules as currently written because of the excessive financial burden which would be placed on small hospitals. They were aware of the Department's willingness to amend the rules but advised that the normal rulemaking process should be followed. In addition, the Committee would not support emergency rule-making for the modifications. The 45-day delay into the General Assembly would stand at this time.

Minutes Holden moved to approve the August minutes as submitted. Motion carried.

Priebe advised the Committee that he would not be present at the December meeting.

No Reps Agency representatives were not required to appear for the following:

COMPTROLLER, STATE[270]  
Deferred compensation, 4.3(2), 4.4(3) ARC 3101 *E*.....8/4/82

INSURANCE DEPARTMENT[510]  
HMO, governing body, 40.4 ARC 3127 *E*.....8/18/82

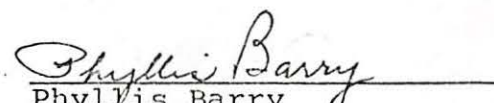
MERIT EMPLOYMENT DEPARTMENT[570]  
Pay plan, 4.5(1)"b", filed emergency after notice ARC 3089 *FEAN*.....8/4/82

Adjourned Chairman Schroeder adjourned the meeting at 1:30 p.m. Next regular meeting scheduled for October 12 and 13, 1982.

APPROVED:

Respectfully submitted,

  
Chairman

  
Phyllis Barry  
Assisted by Vivian Haag