

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Thursday and Friday, January 4 and 5, 1990, Committee Room 22, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of January 9 and 10, 1990.

Members Present

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

Convened

Chairman Priebe convened the meeting at 10:05 a.m. and called on Agriculture representatives for the following:

AGRICULTURE AND LAND STEWARDSHIP

Weights and measures, 85.33, 85.48(10) to 85.48(14), Notice ARC 508A 12/13/89
Weights and measures, 85.48(11), Filed Emergency ARC 509A 12/13/89

Present for the Department were James M. O'Connor, Weights and Measures, and Ron Rowland, Director, Regulatory Division. Also present: Jerry Levine, Director, Corporate Studies, Amoco Oil Company; Dave Smitherman, Iowa Petroleum Association; Dan Gunderson, Amoco Oil; John Van Pelt, Archer Daniel Midlands; Larry Blixt, Midwest Service Station Association.

85.48

Rowland commented that the Noticed amendments were relative to motor vehicle fuel including minimum standards for ethanol and gas pump labeling requirements. The emergency amendment to 85.48 addressed the method of gas pump labeling for methyl tertiary butyl ether (MTBE). The statute requires that consumers be informed when this oxygenate octane enhancer is in gasoline.

Chairman Priebe recognized Levine who distributed a prepared statement on the oil industry's position on the issue of labeling alcohols and nonalcohol additives. Levine contended that "another label on the pump" would serve no purpose to the consumer. He continued that gasoline varies from brand to brand and within any given brand, it will vary seasonally to provide the best balance of performance and cost. Gasoline is adjusted about five times a year in Iowa. Gas from refineries may vary from week to week. Levine stressed that gasoline is a mixture of several hundred chemical compounds which are mixed to meet specifications. He briefly discussed the computer control system and indicated that based on a 12-month review of the Iowa market, it was found that almost no MTBE was being used. Current market conditions do not indicate a change. Levine distributed copies of supporting data.

AGRICULTURE
AND LAND
STEWARDSHIP
(Cont'd.)

From a consumer's perspective for air quality reasons, some auto manufacturers, notably General Motors, recommend the use of MTBE. Consumers may want gasoline with MTBE and Levine referenced possible liability if there were none added in any given week. He could foresee labels being put up and taken down with great regularity and useful information would not be provided.

Doyle was advised that MTBE had been used in some amount for about 10 years and he questioned the need for an emergency filing. Rowland thought the statute was clear that MTBE was to be labeled. Information indicated that MTBE would soon be introduced and the Department acted quickly to comply with statute and provide a benefit to the consumer. Clark reasoned that the Department should have asked the Legislature to repeal the statute. Rowland pointed out that some groups feel the statute is appropriate and that any additive should be labeled. The Department has taken no position. Clark suggested that enforcement of the labeling be withheld pending Legislative action.

Motion to
Object

Royce suggested rescission of the emergency by another emergency filing. Tieden moved to object to the emergency subrule, 85.48(11). Schrader stated that the Department had justified their emergency filing by stating that a benefit was conferred upon the public. He favored review by the Legislature. Priebe saw problems with removing and replacing labels and the emergency filing. There was discussion of "tank farms" used by service stations and private pipelines. According to Levine, MTBE is generally added at the refinery--ethanol must be blended at the tank.

Priebe supported use of ethanol instead of MTBE. He referenced calls from truckers who are concerned that increased cost of diesel fuel will force them out of business.

Smitherman supported pump labeling when there is a reason for consumer notification and the issue should be perused this year. Department officials assured Schrader that MTBE was not being singled out from a group of blended fuels. Schrader stated that he would not support the objection since the Department was following the statutory directive.

Royce clarified that the objection would be "a procedural" one wherein the Committee would contend there were inadequate grounds to avoid Notice and public participation.

Van Pelt saw the issue as being whether or not the consumer has a right to know if gasoline contains MTBE. He read warranty statements of caution regarding MTBE from Nissan, Jaguar, BMW, North America and Mercedes

AGRICULTURE Benz. Van Pelt said that Sun Oil was using 15 percent
AND LAND MTBE in their 93 octane gasoline which is being shipped
STEWARDSHIP into Iowa.

(Cont'd.)

Doyle, in support of buying "American-Made," asked if any American cars had problems with MTBE. O'Connor saw the need for consumers to be alerted as to the type of additives being used in the event of problems with cars. He stressed the importance of ethanol use to the Iowa economy.

Clark reiterated her opposition to emergency rules which, in most instances, make a "mockery of the normal filing procedure."

Motion to Question on the Tieden motion was called. Chairman
Object -- Priebe announced that the motion to object to 85.48(11)
Failed failed on a tie vote.

Motion Clark moved that the matter be referred to the appro-
priate Legislative Committees. Motion carried.
Pavich in the Chair.

COLLEGE AID Laurie Wolf and Justine Foley presented the following
COMMISSION agenda for College Aid Commission:

EDUCATION DEPARTMENT[281] "umbrella"
Iowa Stafford loan program, 10.2(1)"2." 10.11. Notice ARC 518A 12/27/89
Iowa work-study program, 18.12, 18.13. Filed ARC 517A 12/27/89
Iowa national guard loan payments program, ch 20. Filed ARC 520A 12/27/89
Iowa nursing loan payments program, ch 21. Filed ARC 519A 12/27/89
Iowa minority grants for economic success, ch 22. Filed ARC 521A 12/27/89

Ch 10 There was discussion of amendments to Chapter 10 with
Tieden raising question as to the authority to expand
the definition for Iowa-based lenders to make ICAC loans
to out-of-state students. Royce agreed to review the
law to determine whether or not it should be revised to
allow the rule.

Ch 21 There was discussion of rule 21.1. Department officials
said they had worked with the Board of Nursing in drafting
the language. They were hopeful that schools would re-
cruit and, once in the program, payment would be made.

Ch 22 No questions on Chapter 22, or 18.

DENTAL Connie Price, Dental Examiners, presented the following:
EXAMINERS
BOARD

PUBLIC HEALTH DEPARTMENT[411] "umbrella"
Continuing education, 25.1, 25.2(6) to 25.2(9), 25.3(2), 25.3(4) to 25.3(7), 25.4(2), 25.4(4), 25.7,
25.10. Notice ARC 531A 12/27/89

Price described the rule making as an attempt to incor-
porate long-standing continuing education guidelines
into rule form. No public comment had been received.
No Committee action.

ECONOMIC Melanie Johnson and Steve McCann appeared on behalf of
DEVELOPMENT Economic Development for the following:

Retraining program, ch 6. Filed ARC 498A 12/13/89
COG assistance, ch 44. Filed ARC 497A 12/13/89
Small business incubator center, ch 52 title, 52.1 to 52.4, 52.6 to 52.8, 52.10 to 52.12. Notice ARC 496A 12/13/89

ECONOMIC
DEVELOP-
MENT
(Cont'd.)

According to Johnson, Chapter 6 generated a great deal of comment at the public hearing where focus was on the criteria and application process. As a result, the allocation formula was retained and criteria remain the same and concerns about the application process will be addressed at the time of application.

Another potential problem was access to the financial records because of SEC restrictions. As an alternative, the Department provided for a credit rating report from a reliable company such as Moody to give indication of the viability of a business.

6.8(16)

With respect to evaluation criteria, Clark raised question as to union endorsement in 6.8(16) and Johnson indicated that it was statutory. Tieden pointed out that in many areas such as his, very little union organization exists. It was Schrader's understanding that the union endorsement factor would be considered in the evaluation process only if employees in a union plant withheld endorsement and the 30 points would be deducted. Johnson concurred with that assessment and added that the number of businesses that might be participating and union endorsement would apply only if it were a union shop and a joint application.

Ch 44
Ch 52

No questions were raised on Chapter 44. Johnson said that public hearing on Chapter 52, revision of the business incubator center program, was being held this morning. The rules incorporate new legislation on a new eligible source of funding. At the recommendation of Clark, Johnson was amenable to substituting "preexisting" for "pre" in 52.8(4)c(2).

Schrader took the position that the eighth item of evaluation criteria was vague. It read: "Other items that the director may determine..." Royce recognized the Department's need for flexibility for the individual program. Schrader could foresee unfairness since points are not involved. Pavich thought the provision should be rewritten and Royce suggested including examples of "other items" and the general areas where they may fall. Johnson was amenable.

EDUCATION
DEPARTMENT

The Education Department was represented by Robert Roush and Ray Morley and the following agenda was considered:

Driver education, 26.2(1), 26.2(2)g, 26.5, 26.8, 26.8(4), 26.9, 26.9(1), 26.9(2), 26.9(2)b, 26.9(3),
26.9(4), Notice ARC 489A 12/13/89
School-based youth services programs, ch 66, Notice ARC 490A, also Filed Emergency ARC 491A 12/13/89
Procedures for charging and investigating incidents of abuse of students by school employees, 102.2, 102.6(3),
102.8(1), 102.8(5), 102.9(1), 102.9(3), 102.9(4), 102.11, Filed ARC 479A 12/13/89

Ch 26

Roush indicated amendments to Chapter 26 create more flexibility for school districts in scheduling driver education. Tieden had received letters from superintendents concerning the "hardship exemption," SF 157, [1989 Acts, ch 266]. Roush pointed out that DOT had promulgated rules on the subject and problem areas were being addressed. He discussed various methods superintendents were using for driver education and stated that DOT does not anticipate problems. No action.

EDUCATION
DEPARTMENT
(Cont'd.)
Ch 66

Morley explained that Chapter 66 was filed emergency to allow public schools to have the school-based youth service program operational by July 1, 1990, as required by legislation. Public schools need information so the contracts can be issued by May 15. Public hearings have been held. Morley continued that the massive effort would require tremendous cooperation among the Department of Public Health, Mental Health, Job Service, Employment Service and the public schools.

Schrader opined that in studying the bill and emergency rules, there seemed to be a conflict. He was reminded that several departments had been involved in the planning process. Morley continued that FINE Foundation is an evaluation component which can come later and contact has been made.

Morley advised ARRC that the Health Department prefers a change in the definition of preventive and primary health care by including "degreed, licensed or certified nutritionists, social workers, psychologists, physical or occupational therapists, dental hygienists, respiratory therapists." Also, school social workers suggested adding "school" before "social workers." He read a letter from an individual in Corning with a negative attitude toward education.

Clark was told that the evaluation criteria were defined by the legislation--each of the model programs sets criteria which will be indicative of improvement in services. Third party evaluation, which will be provided by the FINE Foundation, had not been defined. Clark suspected that the \$800,000 appropriation would permit little participation by many schools and Morley estimated no more than five. Concentration would center on heavily populated urban areas such as Cedar Rapids, Des Moines and Waterloo.

Schrader raised a procedural question as to whether rules can be promulgated under legislation which will not be effective until July 1, 1990.

Royce advised that without the statute, there was no lawful authority to implement the rules.

Motion

After further discussion, Schrader moved to refer the matter to the Speaker of the House and the President of the Senate for referral to the appropriate committees with ARRC recommendation that an acceptable effective date be passed to legalize the rules. Motion carried. Deferred until the afternoon.

Ch 102
HEALTH

Pierce Wilson and Rose Vasquez, Assistant Attorney General, presented the following:

DATA
COMMISSION

Uniform hospital billing form, submission of data, 5.5, 6.3(6), Filed Emergency ARC 538A 12/27/89
Data accessibility and confidentiality of public records and fair information practices, ch 7 title, 7.1, 7.4, 7.7 to 7.12, Filed ARC 541A 12/27/89
Health care utilization task force, ch 9, Filed ARC 541A 12/27/89

HEALTH
DATA
(Cont'd.)
Ch 9

Wilson gave brief overview of 5.5, 6.3 and Chapter 9. Vasquez explained Chapter 7 and there were no questions. In review of Chapter 9, Wilson said there were 16 Task Force members and he did not envision problems. Tieden reasoned it was extremely difficult to conduct business when Committees are too large. He cited scheduling problems as an example. No other comments.

PUBLIC
HEALTH
DEPARTMENT

Robert Minkler, Inspections and Appeals, was present for the following:

Hospital protocol for donor requests, 51.4(5) to 51.4(11), rescind ch 180. Notice ARC 9982 Terminated
Notice ARC 645A 12/27/89

Minkler stated that, upon advice of their legal counsel, Chapter 180 was rescinded. In the matter of age of an organ donor, Tieden was told that the physician and the procurement organization determine if organs are satisfactory for transplant.

PHARMACY
EXAMINERS

Lloyd Jessen, Executive Secretary, appeared for review of the wholesale drug license fees, 3.5, filed, ARC 536A, 12/27/89 IAB. Fees were increased from 50 to 100 dollars because of the prescription drug marketing Act, which requires states to license and inspect drug wholesale companies. Although Iowa has always licensed, they have not routinely inspected.

Recess
Reconvened

The Committee was recessed for lunch at 11:50 a.m. and reconvened by Vice Chairman Pavich at 1:35 p.m.

EXECUTIVE
COUNCIL
Ch 11

Carl Castelda, Deputy Director, and Ben Brown, Policy Division, Revenue and Finance, appeared on behalf of the Executive Council to review inheritance tax payments, 420-- Chapter 11, Notice, ARC 528A, 12/27/89 IAB.

Castelda discussed Code section 450.6 which allows donation of property to the state and the value of that property is, basically, considered the same as a payment of tax. The Executive Council's desire to notify the public as to types of acceptable property, conditions, etc. resulted in the promulgation of rules and proper forms. The rules apply to generation skipping tax, state tax, and inheritance tax found in 11.8.

In response to Tieden, Castelda explained that once decision is made by the Executive Council to accept gift property, Revenue is involved since the value of the property would be considered tax. Castelda estimated that 12 transfers had been made in that many years. Brown added that it was essentially land transferred to Natural Resources. Brown emphasized that the rules do nothing to preclude gifts of property to any governmental unit.

HUMAN
SERVICES

Mary Ann Walker, Sharon Stilwell, and Charlene Hansen were present for the Department. The agenda follows.

HUMAN SERVICES (Cont'd.)

Appeals and hearings, ch 7 title, 7.1 to 7.10, 7.13(1), 7.13(2), 7.13(4), 7.14, 7.15, 7.16(2) to 7.16(9), 7.17, 7.18(1), 7.18(2), 7.20 to 7.22. Filed ARC 486A 12/13/89
SSI cost-of-living adjustment increases, personal needs allowance for residents of residential care facilities, 51.4(1), 51.7, 52.1(1), 52.1(2), 52.1(3)"a"(2)"1." Notice ARC 483A, also Filed Emergency ARC 484A 12/13/89
Administration, 65.28(2)"c." 65.28(8), 65.28(8)"a" and "e." 65.28(9)"a." "d." "i." 65.28(11), 65.28(13), 65.28(15)"a." 65.35. Filed ARC 488A 12/13/89
Application and investigation, 76.9(2), 76.9(3)"b" and "c." 76.9(5). Filed ARC 478A 12/13/89
Medicaid coverage of optometric services, 78.2(5), 78.6, 78.7(1)"b." 78.7(2), 78.7(3)"d." 78.28(3). Filed ARC 486A 12/13/89
Social services block grant funds eligibility, 130.3(1)"d"(2). Notice ARC 481A, also Filed Emergency ARC 482A 12/13/89
General provisions, social services block grant, 130.8, 153.5(6), 153.5(7), 153.6(2), 153.6(7). Filed ARC 480A 12/13/89

Ch 7

In re appeals and hearings, Chapter 7, Walker reminded that ARRC had requested changes from the Notice of Intended Action. An Attorney General's opinion was requested as to whether the Human Services Department had authority to promulgate the rule or whether this authority would be limited to the Department of Inspections and Appeals. The opinion clarified that Human Services was within their authority. General discussion. Also, language was added to 7.6(1), 7.8(4), 7.14(217) etc. concerning the right of individuals to attend a hearing unless otherwise prohibited by statute or federal regulation. Walker reminded ARRC that information on hearings and percentages of denials or approvals was sent to Royce.

Pavich was concerned about denial of hearings to clients. Walker said that out of 3000 to 4000 hearing requests monthly, approximately 300 to 350 are held. Approximately 50 percent of the requests are denied because of failure to appeal within the appropriate time frame.

51.4(1)
et al.

Walker gave brief overview of amendments to 51.4(1) et al. and there were no questions.

Ch 65

Brief discussion of amendments to Chapter 65 relative to Promise Jobs and Job Clubs. Walker advised Tieden that 63 counties participate in Job Clubs--it is not cost effective for all counties. She agreed to provide additional information to Tieden.

No questions regarding 76.9 et al., 78.2(5) et al., 130.3(1) and 130.8 et al.

INSPEC- TIONS AND APPEALS Ch 53

Rebecca Walsh and Mary Oliver appeared on behalf of Inspections and Appeals. The agenda follows:

Hospice license standards, ch 53, Notice ARC 530A 12/27/89

Walsh explained that Chapter 53 contained licensing standards for Hospice organizations. Persons involved in developing the rules included representatives of Hospice organizations from both rural and urban areas, the Board of Nursing, Pharmacy Association and the religious community. The standards may be followed by persons who elect to voluntarily license Hospices.

According to Oliver, twelve Hospice organizations are Medicare-certified under a very complex set of regulations. Forty to fifty small Hospices are not licensed.

53.2(2)

Doyle questioned derivation of the \$500 biennial license fee in 53.2(2) and Oliver explained that the original

INSPECTIONS
AND
APPEALS
(Cont'd.)

legislation required the cost of the program to be covered. That amounted to \$1800 for a Medicare-certified Hospice and approximately \$2000 for others. This proved to be cumbersome and the Legislature delegated authority to the Department to determine the license fee. Doyle wondered if \$500 would serve to discourage some and he was interested in projection of potential licensed groups. Oliver had no information at this time.

Tieden failed to see the advantage of a licensing program which was not mandatory. Oliver thought the point was well taken. She cited benefit to the consumer in knowing that a Hospice has met certain standards. Oliver pointed out that Iowa was unique in this approach. No Committee action. Priebe resumed the Chair.

Priebe was interested in reaction from smaller communities and Oliver thought they were more "frightened by the requirements." She reiterated that rural Hospices had served on the Committee and representation from larger Hospices was very cognizant of the problems facing smaller operations. Priebe was bothered by requirements in 53.4(1), which would require the governing body to "...c. Assume responsibility for the total operation of the hospice..." and "...h. Develop policies and...procedures to govern..." Oliver agreed to substitute "relating to" for "govern" in paragraph "h". General discussion. No formal action.

53.4

IOWA FINANCE AUTHORITY Julian Garrett, Title Guaranty Division, presented the following:

Title guaranty division, 9.1. 9.12 to 9.15, 9.17, 9.20, 9.30. Notice ARC 511A 12/13/89

9.1 et al. According to Garrett, proposed changes were for the most part in compliance with statutory changes.

9.14 Priebe questioned statutory authority to set the fee on insurance liability at \$50,000--9.14(220). Royce indicated that while it was not listed in statute, the Finance Authority had regulatory authority over the program. Tieden wondered if there had been comments since the issue had been quite controversial. Garrett assured ARRC that the program was strong and the volume was up substantially--in 1988, 1500 title guaranty certificates were sold; in 1989, there were in excess of 5000. Garrett concluded that a few elements would prefer title insurance but that was not a substantial sentiment. No other comments.

INSURANCE DIVISION Kevin Howe appeared on behalf of the Insurance Division for the following:

COMMERCE DEPARTMENT(181)"umbrella"
Transitional requirements for the conversion of Medicare supplement insurance benefits and premiums to
conform to repeal of Medicare Catastrophic Coverage Act, ch 41. Filed Emergency ARC 546A 12/27/89

Ch 41

Howe explained that Chapter 41 provided transitional rules promulgated by the Insurance Commissioner's Association in response to the repeal of the Catastrophic Coverage Act of 1988.

INSURANCE At the recommendation of Clark, Howe agreed to include
DIVISION specific dates in 41.2(2)a, 41.5(1) and 41.7(2).
(Cont'd.) Pavich in the Chair.

LOTTERY Nichola Schissel and Stephen King represented the Lottery
DIVISION Division. The agenda follows:

REVENUE AND FINANCE DEPARTMENT(701) "umbrella"
General operation of the lottery, 1.18, 1.27, 1.28, Filed ARC 547A..... 12/27/89
Licensing, 2.1, Filed ARC 548A..... 12/27/89
Licensed retailers, 3.3, 3.11, Filed ARC 549A..... 12/27/89
Scratch ticket general rules, 8.3, Notice ARC 809A, Terminated ARC 552A..... 12/27/89
Iowa lotto, 10.13(1), 10.19, Filed ARC 550A..... 12/27/89
Lotto America, 12.5, 12.10, 12.15(1), Filed ARC 551A..... 12/27/89

There was brief discussion and no questions on 1.18 et al., 2.1, 3.3 and 8.3. Priebe resumed the Chair.

10.13 Schissel explained that 10.13(1) contained clarification
and realignment of the information to ensure a smooth
12.5 process. No questions re 12.5.

Tieden was interested in disposition of unclaimed prizes and King responded that winners of Iowa Lottery have 90 days to claim prizes; with Lotto America, they have one year. There was discussion of jackpot prizes.

Committee Chairman Priebe announced that Walt McDonald, Department
Business of Transportation, would appear Friday morning at 8:45 a.m. to present information on the commercial driver license (CDL)--a new federal program.

NATURAL Representatives present for Natural Resources Commission
RESOURCES were Richard A. Bishop, Bob Walker and Al Farris. The following agenda was considered:

NATURAL RESOURCES DEPARTMENT(561) "umbrella"
Public-owned lakes eligibility process, 31.2, 31.3(1), 31.3(3), Notice ARC 533A..... 12/27/89
Snowmobiles, ch 50 title, 50.1, 50.2, 50.5, 50.9, Notice ARC 532A..... 12/27/89
Wild turkey spring hunting regulations, 98.1, 98.2(5), 98.3, 98.4, Filed Emergency After Notice ARC 535A..... 12/27/89
Nonresident wild turkey spring hunting, 98.10 to 98.15, Notice ARC 534A..... 12/27/89

Ch 98 Bishop explained amendments to wild turkey spring hunting as they apply to Iowa residents--98.1 to 98.4. Bishop also reviewed the amendments as they pertain to nonresident hunters--98.10 to 98.15. He indicated that the Department planned to begin taking applications February 8. Bishop noted that wild turkey hunting zones are, again, similar to deer zones. However, DNR would prefer a better system for turkey zones.

Tieden commented he had not had complaints from farmers in his area about the nonresident deer hunting and referenced the fact that there were a few hunting accidents and one person was killed. He saw the risk of more fatalities, since hunters were in groups as large as 25.

Priebe and Bishop discussed the funding for the program. Bishop pointed out that dollars coming into it were insufficient--if officers continue to be added, there will be a deficit. He envisioned a need for increased license fees.

Schrader referred to the preamble for nonresident wild turkey spring hunting which stated that the rules were

NATURAL
RESOURCES
(Cont.)

being noticed under the "assumption that the General Assembly would relax restrictions imposed in 1989." Licenses could be issued only for zones in which the estimated wild turkey population was at least 110 percent of the minimum population required for a biological balance. Schrader wondered if this issue should be referred to the appropriate legislative committees. Priebe saw no problem with a referral but thought a corrective bill was being recommended by the Department of Natural Resources. Bishop noted there would be no nonresident permits for the second turkey season. No Committee action. Brief discussion of possible legislation to increase license fees.

Ch 50 Proposed amendments to Chapter 50 would include all terrain vehicles.

Ch 50.9 At the request of Clark, Walker was amenable to substituting "shall" for "will", in new language added to 571--50.9(321G).

PERSONNEL
DEPARTMENT

Clint Davis and Sherry Barry, represented the Department for consideration of:

Reduction in force; promotional lists for regents employees; eligibility lists; appointments; probationary employees; transfer and demotion; appeal of department action; sick leave, holidays, travel time to military service and jury duty; deferred compensation, withdrawal; political expressions; drug and drug testing prohibitions. 3.2(6), 5.2(4)"a," 5.2(4)"b," 7.7(3), 8.1, 8.13, 9.1, 10.2, 10.4, 11.1(1)"e," 11.2(3), 11.3(5), 11.3(5)"a," 12.2(2), 12.2(4), 14.3(4), 14.8(1), 14.8(4), 14.8(5), 14.9(1), 14.12(3), 15.6(8)"h," 16.1(3), 16.1(4), 19.5(1), 19.5(4). Notice ARC 508A..... 12/13/89

Davis briefed the ARRC relative to the nonsubstantive changes. Tieden was told the rules apply only to noncontractual employees. No Committee action.

EDUCATION
DEPARTMENT
Ch 102

Chairman Priebe called on Kathy Collins, Education Department, for review of amendments to Chapter 102 which were deferred from this morning. The rules pertain to procedures for charging and investigating incidents of abuse of students by school employees. Collins spoke of the success of the "system" with respect to developing the rules and public involvement over a three and one-half-year period. She reminded that separate rules were not filed on corporal punishment--an investigation where a school employee may have struck a student. She assured Schrader that his recommendation on uniformity between language of the corporal punishment Act and Department's was incorporated.

According to Collins, the Department had reports of 8 to 10 cases of child abuse. She was working with several committees on child abuse. Collins emphasized that Iowa law does not recognize the possibility of child abuse by teachers and school employees. However, she cautioned against changing the law until after it has had an opportunity to work. A training film is being prepared.

Collins supported a uniform process throughout the state but recognized that if DHS were required to investigate, their workload would increase dramatically. Clark would not support that approach.

EDUCATION There was discussion of level-one and level-two investiga-
 DEPARTMENT tions and revision in the rules with respect to resolution
 of a complaint at level-one. No Committee action.

MINUTES Pavich moved approval of the December minutes. Carried.

NATURAL Al Farris appeared for review of publicly owned lakes
 RESOURCES eligibility process, 31.2, 31.3(1), 31.3(3), Notice, ARC 533A,
 DEPARTMENT 12/27/89 IAB. He briefly explained changes to establish a
 31.2, priority list of watersheds above publicly owned lakes and
 31.3 areas within whose watersheds are the highest priority,
 based on soil loss. He called attention to 31.3(3) contain-
 ing the rating system and discussed the weighting factors.

Priebe was advised that James Gulliford of Soil Conservation serves on the Review and Selection Committee. He was reminded that determining watersheds is a two-step process. The DNR recommends to the Committee which lakes should have funding based on a combination of factors and assured the ARRC there was no way to control the factors. General discussion.

Farris and Priebe discussed Crystal Lake and the Soil Conservation Division's involvement. Priebe questioned whether Brushy Creek would meet the criteria. Farris said Mike Carrier had indicated that it would not. Farris continued that over 90 percent of Brushy Creek watershed has less than a three percent soil content. Brushy Creek will not be benefited by this change. Priebe understood there would be a federal environmental impact statement and Farris predicted that it would contain nothing different from existing reports. Schrader was curious as to implications for Red Rock Lake and Farris said it would not be affected. It was Schrader's understanding the process applies to public lakes owned by Iowa, the counties or municipalities and not by the federal government. Schrader said his commissioners were interested in watershed projects on Red Rock Lake. Farris responded he would have to read the law but it was his understanding that the funding and these rules apply only to publicly owned lakes owned by Iowa, the counties, or municipalities, not the federal government or REAP.

Recess Committee in recess at 3:45 p.m.

Reconvened
FRIDAY
Jan. 5, '90

The meeting was reconvened by Chairman Priebe at 8:40 a.m., Friday, January 5, 1990. All members and staff were present.

TRANSPORTA-
TION
DEPARTMENT

Chairman Priebe recognized Transportation Department officials who included Walter McDonald, Ruth Skluzacek, Motor Carrier Services, and Mike Winfray, Asst. Director of Motor Vehicle Enforcement; G. W. Anderson, Deputy Director, Development; Lowell Richardson, Larry Jesse, Harvey Olson, Federal Contracts Officer, and Will Zitterich. Also present: Scott Weiser, President, Iowa Motor Truck Assn.; Gary Kaufman, Senior Legal Counsel, and Julie Craggs, Legislative Service Bureau; William Hansen, Associated General Contractors of Iowa; Charles Wasker, Home Builders Association of Iowa.

CDL

McDonald gave an interesting and informative presentation on the proposed Iowa Commercial Driver Licenses Program to be implemented 7/1/90. There was general discussion.

The scheduled agenda follows:

Utilities within the right-of-way, 115.1, Filed ARC 516A 12/27/89
Contracts set aside for disadvantaged business enterprises, ch 126, Special Review
Special great river road fund, county and city bridge construction funds, ch 160, Notice ARC 524A 12/27/89
Vehicle registration and certificate of title, special mobile equipment, 400.2(7), 400.48, 400.49, ch
410, Notice ARC 527A 12/27/89
Regulations applicable to carriers, 520.1(1)"a" and "b," 520.1(2), Filed ARC 522A 12/27/89

115.1

Zitterich gave brief overview of amendment to 115.1. No questions or comments.

Special
Review
Ch 126

Chairman Priebe announced a special review of 761-- Chapter 126, which implements Iowa Code section 314.14. It was his understanding that problems exist with the federal-aid highway construction contracts set aside for disadvantaged business enterprise program.

Anderson recalled a specification had been revised as a result in changes in federal law in 1987.

Schrader expressed concern that the rules process had not been followed to keep current with changes in federal specifications. He referenced Supplemental Specifications dated October 31, 1989, and pointed out that the rule contained December 15, 1987. [125.1] Anderson admitted that the Department was behind in updating the rules and he was willing to correct the date. Department officials pointed out that Code Chapter 314 directs them to develop specifications.

Schrader and Priebe were also concerned with respect to requirements for determining if an individual bidder meets the goals set by the Department.

Chairman Priebe recognized Hansen who contended that additional language was necessary in Chapter 126 and it should be stressed that each state implements, within federal mandate, in their own manner. He referenced the

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(Cont.)
Special
Review

fact that, since October 1989, the contractor no longer has 48 hours in which to fulfill all of the DBE requirements. In addition, the bid will no longer be awarded to the lowest responsive bidder but to the contractor who "hits" the magic percentage on the DBE since they average everyone's percentage compliance. Hansen cited a Dubuque \$2.3 million project as an example.

Anderson responded, in that instance, the low bidder would not have qualified because the DBE was not Iowa-certified.

126.2(3)

Priebe referred to 126.2(3) and the use of "prequalified" DBEs. Anderson explained that DOT, under federal code, needs assurance that a firm meets criteria of a disadvantaged business. Discussion of the 48-hour provision which had been eliminated.

Anderson described problems with the postbid opening process which included bidders using the 48 hours as a loophole to gain advantage over other bidders.

DOT prefers preliminary screening so the actual bidder meets all of the criteria and can be selected objectively, not subjectively, after the bids are opened. Priebe reminded him that, while all of that was good, the general public did not have that "inside" information.

There was discussion of ARRC options and Royce advised that they could not act on an issue not yet in rule form. However, they could request that specifications dealing with the disadvantaged business enterprises program be included as part of the regulatory program by rule making.

Motion to
refer

Schrader moved that the issue relating to disadvantaged business minority be referred to the Lt. Governor and Speaker of the House for forwarding to the appropriate Legislative Committees.

Anderson pointed out that prior to this supplemental specification, extensive meetings were held with the industry, and changes were made prior to its adoption.

Tieden expressed his continuing concern about an apparent "fine line between policy and rules." He understood that it was not possible to set out every detail by rule and he asked if there were guidelines. Royce commented that, legally speaking, all policy that affects the public, with limited exceptions, should go through the rules process. As a practical matter, that is not possible so they "pick and choose when problems come up."

Olson stated that the Code of Federal Register sets DOT standards. He referenced the five or six problems in the preletting process. Contractors would not meet the 48-hour deadline, and a week later would still want to bargain. This system was not working. Olson reminded "prequalify" was statutory and that DOT does prequalify contractors.

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There is a list of approximately 450 and minorities are not prequalified. Olson noted that use of "previously qualified" would be preferable.

Responding to Priebe, Olson said that for the DBE goal, they can count only those who are prequalified.

Vote

The Schrader motion carried.

Hansen, for the record, saw the main problem as the specification issue and the need to update references in Chapter 125. No further discussion.

Ch 160

According to Anderson, Chapter 160 was patterned after the federal bridge program and DOT has met with counties and cities in developing the rules. Applications will be ranked according to a priority system developed with those organizations. General discussion. No action.

Chs 400,
410, 520

Skluzacek gave brief overview of amendments to Chapters 400, 410, 520. No action.

PETROLEUM
UNDERGROUND
STORAGE
TANK FUND

Dave Dorff, Assistant Attorney General, was present for review of:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Administration of the environmental protection charge imposed upon petroleum diminution, ch 6.
Filed ARC 492A 12/13/89

Dorff said that Chapter 6 was being adopted parallel to adoption by Revenue and Finance and following up on Notice published June 28, 1989. There had been no comments.

PUBLIC
SAFETY
DEPARTMENT

Mike Coveyou, Jen Worthington, Public Safety Department, and Steve Conlin, Division of Criminal Investigation, appeared on behalf of Public Safety to consider:

Fire marshal, 5.313, 5.552(1)"a," 5.651, 5.655(2), Notice ARC 510A 12/13/89
Missing person information clearinghouse, 19.2, 19.3"2," 19.12, Notice ARC 487A 12/13/89

5.313

After brief overview of 5.313 by Worthington, Tieden asked who required the observation wells. Worthington said it was dependent upon the situation. However, Natural Resources has a requirement which is part of a total federal program. No other questions.

Ch 19

Conlin and Coveyou explained amendments to Chapter 19. In response to Pavich, Conlin said that 8600 persons were recorded as missing in the state in 1989 and the majority were located. Individuals such as Johnny Gosch of Des Moines constitute a small percentage of overall figures. Schrader asked if a time frame for reporting missing persons were set by rule and if procedures differed for children and adults. Conlin mentioned pending legislation to change the Code definition of "missing person." He added that current practice was to automatically place information in the Iowa Case Radio System where it is broadcast throughout the state. This is done immediately for juveniles. Clark wondered when the Department would suspect that persons were in danger if they had not been taken by another person--19.3. Department

PUBLIC
SAFETY
DEPARTMENT
(Cont.)

officials mentioned a recent case where, because of the technicality of the definition, the missing person did not qualify to be placed in the system--a vehicle was found in another state but the individual was not found. However, the Department recognizes that circumstances can indicate possible problem. No Committee recommendations.

There was further exchange as to the fine line between policy and rules. Schrader reiterated his frustration that the rules process was being circumvented in many instances. Royce advised that the ARRC can selectively review rules at any time.

Recess

The Committee in recess for 15 minutes.

RACING AND
GAMING
COMMISSION

Mick Lura, Lorenzo Creighton, and "Chuck" Patton were present for consideration of the following:

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"
Organization and operation, rule making and declaratory rulings, public records and fair information practices,
practice and procedure before the racing commission and board of stewards, applications for track licenses
and racing dates, greyhound racing, mutuel departments, harness racing, thoroughbred racing, amendments
to chs 1 to 5, 7 to 10, Notice ARC 526A 12/27/89
Excursion gambling boat license -- application process and criteria for granting a license chs 20, 21,
Filed ARC 526A 12/27/89

Lura indicated that many of the amendments were nonsubstantive. He then highlighted areas of significant change. There was discussion of the Board of Stewards. Two members are Racing and Gaming employees each receiving \$175 dollars a day. A third member is a track employee paid by the track. Lura mentioned the fact that the makeup of the Riverboat Board has not been decided. There will be officials on the boats but it has not been determined who will be assigned to the hearing board. They will be appointed by Racing and Gaming and appeal rights exist. It was noted that the position of steward was very itinerant. However, Iowa's stewards have 60 years of experience with only one discharge.

In response to question by Clark regarding failure to qualify under screening policies, Lura agreed to clarify that not all of paragraphs (1) to (9) would be waived. Also, he was willing to make grammatical change in 8.2(4)d(6) and to clarify 9.4(10)c.

9.7(3)

10.4(9)k(3)

Doyle reasoned that in 9.7(3), the words "and any other factors the commission may deem appropriate" were too broad. In 10.4(9)k(3), Doyle called attention to use of "serious or aggravated misdemeanor" and wondered if there were a specific statement and Lura did not believe so. Doyle interpreted the provision as saying that if the conviction of a misdemeanor had been over 10 years, it would not be considered. He pointed out that the law normally would not consider it after six years. Lura recalled much input by the Commission on the subject and he would consult with them.

RACING AND GAMING COMMISSION
10.4(9)c(1) In 10.4(9)c(1), Doyle recommended that the provision be more stringent for bad checks written on nonexistent accounts. Lura was amenable. Schrader thought the word "only" could be stricken from the first sentence of 8.2(4).

10.5(17)g(2) Schrader raised question in 10.5(17)g(2) with respect to requiring the horse to "continue to race at the track where claimed for the balance of the race meeting." Previous language allowed for 30 days or the balance of the meet. Lura thought it should read:... "to the balance of the meet." General discussion.

Lura informed Tieden that when races are to be simulcast, it is known well in advance. Tieden thought 10 per track would be preferable over a total of 10 for the entire state.

Doyle brought up the fact of bingo at the Indian Reservations and wondered if there were anything preventing them from having simulcast racing? Lura replied in the negative. Federal law would require them to contract with the state; however, the state would have to negotiate in good faith.

10.6(1)g Priebe questioned language in 10.6(1)g "In order for a horse that is on a bleeder's list in another state to be granted reciprocity and be placed on a bleeder's list, rules governing...must equal or exceed those in Iowa." Lura answered that with that language, an endoscopic examination could be avoided since Iowa is more restrictive than Nebraska. Priebe wondered if that close scrutiny were necessary.

Chs 20,21 Discussion moved to excursion boat licensing, being Chapters 20 and 21. At the suggestion of Pavich, Lura agreed to reword conflicting language in 20.10(5)i. Pavich took the position that 21.10(10) should be clarified with respect to the "statement." Pavich preferred inclusion of a statement to that effect as to location of the excursion boats.

21.12 Doyle called attention to 21.12--licensing of persons under age 21. He recalled disagreement about 18-year-olds. Lura said it was possible for an 18-year-old to be hired as a technician since that would not involve gaming.

REVENUE AND FINANCE DEPARTMENT Carl Castelda, Deputy Director, introduced Dennis Meredith, Supervisor, Policy Section, who will draft rules and review legislation for the Department.

Castelda made brief comments concerning the following agenda:

Interest rate on interest-bearing taxes, 10.2(9), Filed ARC 505A 12/13/89
Sales and use tax, 11.4(2), 11.10(1)c, 11.10(3), 12.10(3)a, 12.14(4)c, 16.12, 16.20, 16.22, 16.51(1)a(4),
17.3(1)d, 18.21, 18.45(1), 19.13(3), 19.20, 26.16, 26.16, 26.39, 31.4, 32.9, 33.2, Filed ARC 504A 12/13/89
Electronic remittances, 12.2, 34.4, 46.3(3)a(3), 46.3(3)b(3), 52.4(8), 56.2(2)d, 66.4, Filed ARC 503A 12/13/89
Exempt sales, taxable and exempt sales determined by method of transaction or usage, 17.18, 17.19(2)b,
18.53, Filed ARC 502A 12/13/89
Individual income tax--drought relief provision, indexation of optional standard deduction for inflation, capital
gains deduction, repeal of special refund for capital gains, nonrefundable earned income credit, 38.12, 39.10,
40.38, 41.4, 42.2(9), 43.7, Notice ARC 501A 12/13/89
Alternative minimum tax credit, definition of corporations subject to Iowa tax expanded, apportionment of
income by corporations which receive income without Iowa allowed, 42.8, 52.1, 52.1(1)c, 52.5(4), 54.1(4),
58.5(4), Notice ARC 500A 12/13/89

REVENUE AND FINANCE (Cont.) No recommendations re 10.2(9), 11.4(2) et al., or 12.2 et al. Castelda stated that amendments to 17.18 et al. reflect recent legislation, providing sales tax exemption for films, video tapes, etc. to certain facilities which teach mentally retarded children.

38.12 et al. Castelda explained that 38.12 et al. reflect changes to individual income tax passed by the General Assembly.

SOIL CONSERVATION Kenneth Tow, and William McGill, Chief, Financial Incentives Bureau, appeared on behalf of Soil Conservation to review:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT 1211 "umbrella"
Regions of representation for state soil conservation committee farmer members, operation of state soil conservation committee, chs 1, 2; rescind ch 3. Filed ARC 554A 12/27/89
Water protection practices — water protection fund, ch 12. Filed ARC 553A 12/27/89

Tow gave brief overview of the regions of representation for state soil conservation farmer members, operation of the Committee, and water protection practices--Chapters 1, 2, and 12. No Committee action.

ARRC Agenda Discussion of agenda and Doyle suggested that Royce and the Chairman make a decision what items will be considered while the Legislature is in session.

TREASURER OF STATE Mike Tramontina represented the Treasurer for the following:
Linked investments for tomorrow (LIFT), ch 4; rescind ch 8. Filed ARC 499A 12/13/89
LIFT--main street program, 4.8. Notice ARC 542A 12/27/89
South Africa investment restrictions, ch 11. Filed ARC 543A 12/27/89

Tramontina announced that he had accepted a position in the private sector, and today would be his final appearance before the ARRC. He reviewed the history of the Linked Investments for Tomorrow (LIFT) program, and pointed out that existing Chapter 8, "Linked Deposit Program for Targeted Small Business," had been merged with the new Chapter 4. Tramontina said that a joint public hearing will be held February 6, 1990, with the Treasurer of State, Cultural Affairs and Economic Development Departments on the LIFT--main street program.

Tramontina reviewed the functions of each of the three departments with respect to LIFT. He indicated that it would probably be necessary to adopt the rules as emergency after notice assuming there is no controversy. Priebe saw no problem.

Ch 11 According to Tramontina, there had been no public comment or problems with Chapter 11. No Committee action.

UTILITIES DIVISION Gary Stump, Anne Preziosi, and Vicki Place appeared on behalf of the Utilities Division to review:

COMMERCE DEPARTMENT 1181 "umbrella"
Response times to board for information, 18.3. Notice ARC 513A 12/13/89
Customer rights and remedies to avoid disconnection, 19.4(15)"b"(3). Filed ARC 514A 12/13/89
Lowest rate quotes--telephone, 22.4(1)"a"(2). Notice ARC 515A 12/13/89
Blocking terminating access, 22.6(13). Notice ARC 512A 12/13/89

Preziosi stated that two options were proposed in 18.3 to shorten the time in which utilities may answer data requests from the Board. This will ensure completion of audits in a timely fashion.

UTILITIES Comments received had generally favored the 15-day option.
DIVISION Priebe suspected there would be opposition to shortening the time and he suggested referral to the Commerce Committee.

Schrader took the position that the rule would be beneficial to the consumer and any opposition would originate with the industry. According to Preziosi, most companies respond in less than 30 days.

Motion Clark moved that proposed rule 199--18.3 (availability of records) be referred to the Speaker of the House and the Lieutenant Governor for review by the appropriate committees.
Carried Motion carried.

Brief review of amendments to 19.4, 22.4, or 22.5. Stump explained that blocking means that the company would refuse use of the telephone line because of suspected fraudulent use. No other comments.

NO AGENCY REPRESENTATIVES REQUESTED TO APPEAR:

CREDIT UNION DIVISION[189]
COMMERCE DEPARTMENT[181] "umbrella"
Examination and supervision fees, ch 3. Filed ARC 537A 12/27/89
PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Cosmetology examiners, cosmetology continuing education, 60.7(1)"c" and "d," 60.8(1), 60.10(4) to 60.10(7), 62.1, 62.2(1), 62.2(5), 62.2(6), 62.4(1), 62.12(2), 62.101, 62.113(14), Notice ARC 539A 12/27/89
Board of mortuary science examiners, 101.1(3), 101.1(4), 101.2(6), 101.101(1), 101.101(2), 101.101(4), 101.212(1), 101.212(1)"e," 101.212(1)"h," Filed ARC 540A 12/27/89
Licensure of nursing home administrators, continuing education, 141.1, 141.2(2)"b," 141.3, 141.4(1)"d," 141.6(2)"b"(7), 141.6(2)"d," 141.6(3), 142.2(5), Filed ARC 507A 12/13/89
SECRETARY OF STATE[721]
Facsimile documents, 21.11, Filed ARC 529A 12/27/89
Filing documents by telecopier, 40.1, Notice ARC 493A 12/13/89
Reinstatement of corporations, 40.2, Notice ARC 494A 12/13/89
Names distinguishable upon corporate records, 40.3, Filed Emergency After Notice ARC 495A 12/13/89
TRANSPORTATION DEPARTMENT[761]
Changes of address and phone number; office of driver services, office of vehicle registration, motor vehicle division, office of motor carrier services, office of motor vehicle enforcement, amendments to chs 1, 400, 405, 420 to 422, 424, 430, 431, 450, 451, 480, 500, 505, 600, 602, 604, 610, 615, 620, 640, Filed Emergency ARC 523A 12/27/89

Adjournment Chairman Priebe adjourned the meeting at 12:30 p.m.

The next meeting was tentatively scheduled for February 12, 1990, 8:00 a.m.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:

CHAIRMAN