

MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting The special meeting of the Administrative Rules Review Committee (ARRC) was held on Monday and Tuesday, April 5 and 6 in Senate Room 22, State Capitol, Des Moines.

Members present Senator Berl E. Priebe, Co-chair; Representative Janet Metcalf, Co-chair; Senators H. Kay Hedge, John P. Kibbie and Sheldon Rittmer; representatives Horace Daggett, Minnette Doderer, Roger Halvorson and David Schrader. Absent: Senator William Palmer.

Also present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Mary Ann Scott, Administrative Assistant; Caucus Staff and other interested persons.

Convened Co-chair Priebe convened the meeting at 7 a.m., announcing that a quorum was present.

Minutes Kibbie moved to approve the minutes of the March meeting as submitted. Carried.

HUMAN SERVICES The following Human Services agenda was reviewed and those present from the Department included Mary Ann Walker, Gary Gesaman, Kathleen Kellen, Kathleen Ellithorpe, Joe Finnegan, Susan Bergwall, Norma Hohlfeld, JoAnn Sheeley, James Chesnik, Mike Murphy and Barry Bennett.

HUMAN SERVICES DEPARTMENT[441]

Iowa Veterans Home, rescind ch 10, Filed Emergency ARC 3800A..... 3/3/93

Mental health, mental retardation and developmental disabilities special services fund, 39.1, 39.2,

39.3(1)"c," 39.3(2), 39.6(1), 39.10, 39.21, 39.22, 39.23, 39.23(4), 39.23(4)"b," "g," "h," and "o,"

39.23(5), 39.29, Notice ARC 3804A 3/3/93

SSI cost-of-living adjustment increases; community spouse maintenance needs; personal needs allowance for

RCF residents, 51.4(1), 51.7, 52.1(1), 52.1(2), 52.1(3)"a"(2), 75.5(3)"d," 75.16(2)"d"(3),

Filed ARC 3799A 3/3/93

Payment for treatment of root canals, 78.4(5)"c"(1), 78.28(2)"d"(1), Notice ARC 3803A..... 3/3/93

Payment for case management services for children under 18 years of age receiving HCBS/MR or

HCBS/MR/OBRA waiver services, 78.33(1)"c," Notice ARC 3805A..... 3/3/93

Hospital reimbursement, 79.1(5), Notice ARC 3802A 3/3/93

PROMISE JOBS program, 93.2(3), 93.2(4), 93.3, 93.5(1)"c," 93.5(2), 93.5(3), 93.5(3)"a," 93.5(3)"a"(4),

93.6, 93.9, 93.11, 93.12(3), 93.13, 93.14(3), 93.14(8), 93.14(11), 93.14(11)"a," 93.14(11)"b"(5) and (6),

93.20(6), 93.21(1), 93.21(1)"d" to "f," 93.22 to 93.28, 93.32(3), 93.32(9), 93.32(10), 93.33(2),

93.33(2)"a" and "c," 93.35(2)"b," 93.40(1), 93.40(2), 93.41(1), 93.41(1)"b," "d," and "e," 93.41(3),

93.41(3)"b" to "d," 93.43, 93.46 to 93.49, Filed ARC 3798A 3/3/93

Social services block grant funds — income guidelines, 130.3(1)"d"(2),

Filed Emergency After Notice ARC 3797A 3/3/93

Termination of case management services delivered by the department, 130.5(2)"j," Notice ARC 3801A.. 3/3/93

Payments for foster care and foster parent training, 156.1, 156.6(2), 156.6(4)"a," 156.6(6), 156.7(3),

156.8(3) to 156.8(5), 156.8(7), 156.9(1), 156.9(3)"b," 156.9(4), 156.11, 156.13, 156.18(6), 156.20(1)"c,"

Notice ARC 3839A 3/17/93

Interviews with patients in institutions by the news media or other outside groups, 28.6(2),

Filed ARC 3854A 3/31/93

Medicaid—day treatment services for persons aged 20 and under, 78.16(6), 78.16(6)"a," "b," "d," 78.16(7),

78.31(1), 78.31(4)"d"(7)"6," 78.31(4)"d"(7), 78.31(4)"d"(10), 79.1(2), 85.25(1), 85.25(3), 85.26, 88.5(3),

88.25(3), Notice ARC 3860A 3/31/93

HUMAN SERVICES (Cont.)

Nursing home policies, 79.1(9)"e," 81.1, 81.3(2), 81.4(3)"e," 81.6(3), 81.19(2)"e," Filed ARC 3855A..... 3/31/93
 Nonassistance child support recovery program, 96.15(1) to 96.15(5), Filed ARC 3856A 3/31/93
 Wrap-around funding program, ch 179, Filed ARC 3857A 3/31/93
 Subsidized adoptions, 201.4(4), 201.5(1), 201.6(1)"a," Notice ARC 3861A 3/31/93

Also present were David Campbell, Broadlawns Hospital, and Linda Goeldner, Iowa Hospital Association.

- Report Before addressing the agenda, Walker distributed a report that had been requested by the ARRC at the March meeting in regard to a list of institutions that had converted from foster care to ICF/MR and a comparison of those facilities before and after as to level of care. This report which is on file with the Administrative Code Editor also included profiles of several clients affected by the conversions.
- Ch 10 No questions or comments regarding rescission of Chapter 10, Iowa Veterans Home, which is now under the Commission of Veterans Affairs.
- Ch 39 In review of amendments to Chapter 39, Chesnik informed Hedge that Stewart McKinney was the name given to a federal law relating to homeless persons.
- 51.4 et al.; Chs 78, 79 There were no questions or recommendations on amendments to 51.4 et al.; 78.4, 78.4(5), 78.28(2); 78.33(1) or 79.1(5).
- Ch 93 Chapter 93, PROMISE JOBS program amendments were discussed.
- Kibbie asked why county boards of supervisors, local county agencies and community work experience program services were stricken in 441—93.3. Hohlfeld responded that an ADC-UP work program was created and that all new work experience placements would be made through the JTPA office. She spoke of good coordination between that office and the Job Services Office over community service work.
- 130.3, .5 No questions or comments on amendments to 130.3(1)"d"(2) and 130.5(2)"j."
- Ch 156 In reviewing amendments to Chapter 156, Walker informed Doderer that before these rules were finalized, the Department would be reviewing the area of establishing paternity. Doderer made reference to use of "whenever feasible" and "if appropriate" in 156.9(4)"d"(3) and 156.9(4)"e"(2) and questioned difference in meaning. She cited a court case currently in the news.
- 28.6 No recommendations for 28.6(2) which was identical to the Notice.
- 79.1(9)"e" et al. Amendments to nursing home policies, 79.1(9)"e" et al. were before the Committee.
- Priebe questioned why a facility would be allowed to change its fiscal year once every two years. Gesaman responded that currently there were no restrictions in this regard. He continued that many facilities had shifted their fiscal years to coordinate with the nursing system. Priebe contended the rules should at least contain a provision to require a facility to justify the shift. Hedge was in agreement with Priebe.
- Motion – Delay 70 days Kibbie moved to delay 70 days for further study 81.6(3), first unnumbered paragraph, which included new language on fiscal years. Motion carried.
- In response to Metcalf concerning reserve bed days in 81.3(2), Kellen advised that a patient who transfers from a nursing facility to a skilled nursing facility would be allowed to continue the same reserve bed day policy followed in the nursing facility.
- Priebe announced further review of ARC 3860A with respect to day treatment services for persons aged 20 and under. He recognized Linda Goeldner of the

HUMAN SERVICES (Cont.)

Iowa Hospital Association who described the rules as "much improved" but cautioned about possible problems in downsizing the mental health system. Goeldner stressed the importance for Medicaid services in communities to be workable for those individuals needing the services—in particular, children and adolescents (under 20 years of age). Goeldner continued that it was important to make sure that services developed at the community level were appropriate for treatment to those children. Of particular concern was the cumbersome and lengthy application process. Other areas to be addressed included the definition of "qualified mental health professional"; education and licensure requirements; services being provided only on premises of a hospital.

Dave Campbell, Broadlawns Hospital, addressed the Committee. He recommended that day treatment be offered 30 hours per week as opposed to the 15-day limitation. According to Campbell, by national standards, 15 hours would be the minimum required for an effective after-school program but some patients would require full day programs. He requested clarification of types of services and necessary staff if hours were decreased.

Kellen responded that the Department reviewed existing day treatment programs before preparing these amendments and found that providers typically provided 15 hours per week or less. Providers were limited to the three categories cited in 79.1(2) and were those currently enrolled in the program, two of which were currently certified for day treatment services for adults. The Department anticipated that day treatment services would be transferred to Adult, Children and Family Services and at that time expansion of other provider groups might be appropriate. Funding was not afforded to this particular endeavor by the legislative mandate, resulting in financial concerns.

Priebe expressed concern about the 180-day limit for stay in a day treatment program with evaluation not being made until the end of the stay—in 78.16(7)"a"(6).

No formal action.

There were no questions or recommendations on the remainder of the Human Services agenda.

There was discussion of the pending legislation to rename the Department of Human Services to the Department of Human Investment. Walker suspected it was included with welfare reform in an attempt to change the focus of the department. Cost involved was an apparent factor and questions were raised as to how this name change would "benefit people."

AGRICULTURE

Present from the Department were Ronald Rowland, Roland McCubbin, John Schlitz, Assistant State Veterinarian, and John Hinshaw for the following agenda:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Disposition of breeder's awards withheld due to noncompliance with animal welfare requirements, 62.43,

Notice ARC 3789A 3/3/93

Waiver of negative testing requirements for goats from class "free" states (brucellosis and tuberculosis)

for exhibition, 64.34(3), Notice ARC 3808A 3/3/93

Renewable fuel — ethanol production incentive program, ch 11, Notice ARC 3858A 3/31/93

62.43

Rowland explained the horse and dog breeding program and the proposed amendment to 62.43. Priebe had received many letters of opposition to withholding payment of breeder's awards for noncompliance with animal welfare laws. Rowland advised Priebe that the person to whom he was referring had not been in compliance for two or three years and an administrative hearing on this individual was planned.

- 64.34(3) An amendment to 64.34(3) was reviewed with no questions.
- Ch 11 In review of Chapter 11, McCullin responded to Priebe that requirements in 11.3(2)"d" for fermentation, distillation and dehydration ethanol was a direct result of legislation.
- RACING AND GAMING** Charles Patton and Lou Baranello briefed the Committee on the following agenda:
- RACING AND GAMING COMMISSION[491]**
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
 Commission approval of contracts and business arrangements, change of custody when drug testing a licensee, greyhound and thoroughbred racing, stockholder reporting, 4.1, 4.27(2), 4.28, 4.29, 5.8, 7.1, 7.5(9), 7.6(18), 7.7(6), 7.9(4)"e" and "f," 7.10(3), 10.4(1), 10.4(1)"d," 10.4(16)"a"(8), 10.4(16)"a"(12) to (15), 10.4(16)"c"(7), 10.4(16)"d"(1) and (6), 10.4(17)"b"(6) to (11), 10.5(1)"g," 10.5(2)"h" and "k," 10.5(6)"b," 10.5(16)"f," 10.5(17)"a"(1)"2," 10.5(17)"f," amendments to ch 22, 24.14(7), Notice ARC 3794A ... 3/3/93
 Change of custody for drug testing of licensees, 4.27(2), Filed Emergency ARC 3793A 3/3/93
 Greyhound and thoroughbred racing, simulcasting, 7.1, 7.14(11), 10.1, 12.1, 12.10, 12.11, Filed Emergency ARC 3846A, also Filed ARC 3845A 3/31/93
- There were no recommendations on the agenda.
- Objection Priebe brought before the Committee an objection that had been placed on 491—4.27 at the ARRC meeting held April 8, 1991 and reinstated on February 3, 1992. The rule essentially prohibited licensees or employees of a horse or dog track from having an alcohol level of .05 or, in some cases, .10. The Committee had contended that it was unnecessary to impose the limitation for licensees who were not actually working at the track such as an owner/observer in a restricted area.
- Motion Kibbie moved to reinstate the objection. Motion carried.
- Patton was willing to consider rewording the rule so that .05 would apply only to those individuals who were on the track with the horses and possibly some with critical safety-oriented positions.
- Baranello advised Metcalf that a jockey was not an employee but a licensee. He was willing to clarify "licensee" in the rules.
- EDUCATIONAL EXAMINERS** Susan Miller, Licensure Consultant for the Board, was present to review the following agenda:
- EDUCATIONAL EXAMINERS BOARD[282]**
EDUCATION DEPARTMENT[281]"umbrella"
 Conviction of crimes, child abuse, sexual and other immoral conduct with or toward children or students and alcohol or drug abuse, 12.2, Notice ARC 3831A 3/17/93
 Fees — issuance and renewal of license, licensure evaluation, 14.30(1), 14.30(4), Notice ARC 3852A 3/31/93
- 12.2 In amendments to 12.2, Doderer inquired why 12.2(1)"c" was being stricken. She was advised that sexual or immoral conduct was already covered. Doderer wanted assurance that it was addressed and asked that ARC 3831A be deferred until the May meeting. So ordered.
- Deferred to May
- 14.30 No questions or comments on amendments to 14.30.
- ARRC Meeting Dates Dates for upcoming meetings were discussed. Priebe suggested following the statutory dates (second Tuesday) and if someone had a conflict, it should be brought up at the previous meeting. The following dates were agreed upon: May 11 and 12 (statutory); June 8 and 9 (statutory); July 8 and 9 (Thursday and Friday); August 3 and 4 (tentative). See also page 5403.

EDUCATION

Kathy Collins, Jeananne Hagen and Joseph Freiling represented the Department for the following:

EDUCATION DEPARTMENT[281]

Extracurricular interscholastic competition, 36.15(3)"c," 36.15(6), 36.15(7), Filed ARC 3820A 3/3/93
 Special education — autism, head injury, rehabilitation counseling, transition services, individualized education program, 41.2(3), 41.3, 41.4(1), 41.18(2)"d," 41.33(4), 41.33(6), Notice ARC 3880A 3/31/93

36.15

Collins reviewed amendments to 36.15 and pointed out that summer camps and clinics for athletes and coaching contacts out of season were controversial areas. She advised Daggett that a separate hearing was not held after the changes were made regarding open gyms.

Hedge referred to 36.15(7), first paragraph, last sentence, which provided, "At the conclusion of the school sport season, . . . a student may then participate on a nonschool team without jeopardizing eligibility." He inquired about problems with a student on a semipro team. Collins advised there was a separate rule that governed amateur status.

Rittmer was skeptical that the rules would really make a difference since those involved often find a way of circumventing regulation. Collins admitted that the rules were only as good as enforcement. She added that the Department was also taking other measures to try and empower students to say "no" when their coach wants them to participate in activities contrary to law (practicing on Thanksgiving or Christmas Day, for instance).

Ch 41

In 41.4(1), Hagen advised Daggett that new language relative to special education was mandated by federal regulations. Statutory changes were also made.

COMM. ACTION AGENCIES

Sue Downey, John Burnquist, Deb Capaldo and Rod Huenemann represented the Division for the following:

COMMUNITY ACTION AGENCIES DIVISION[427]**HUMAN RIGHTS DEPARTMENT[421]"umbrella"**

Affordable heating program, 11.2, 11.3, 11.3(1), 11.4(1), 11.4(5), 11.6(2), 11.10, Notice ARC 3823A 3/3/93
 Emergency community services homeless grant program, 23.5, Notice ARC 3833A 3/17/93

Ch 11

In discussing amendments to Chapter 11, Metcalf noted the substantial increase in 11.4(1)—unreimbursed medical expenses to a maximum of \$2,400 from \$200 per year. Downey responded this was a typographical error from the first draft and it was intended to be \$200 per month.

Kibbie inquired as to the reason for rescission of the definition of "Assessment" and Downey replied this was at the direction of Health and Human Services, their federal funding agency. This has been a controversial part of the legislation. Kibbie then asked if the heating systems where the elderly are living would be assessed. Downey said this type of service was basically provided by the Weatherization Assistance Program.

Paul Stanfield, Public Policy Services, spoke against this rule change. He indicated he had worked on the establishment of this program as a lobbyist and was on the advisory committee until he had to resign because of the ethics law. He urged that definitions of "assessment" and "resolution" be retained in the Affordable Heating Program (AHP) rules as well as in the Low-Income Home Energy Assistance Program (Ch 10).

Downey saw no problem with the suggestion but viewed it as being redundant since the definitions were contained in the general rules that pertain to all clients.

COMM. ACTION
(Cont.)

Stanfield pointed out that the GA annually appropriates \$1 million to assessment and resolution without limiting the funds to AHP.

Stanfield's letter to the ARRC is on file in the office of Administrative Code Editor.

Schrader suggested reinstatement of the stricken definitions.

23.5

Capaldo briefed members on amendments to 23.5 which reflected changes in federal regulations. She explained the difference in funding for violence counseling and counseling training as opposed to current law as stated in new language in 23.5(1).

**ECONOMIC
DEVELOPMENT**
25.4 et al.

Lane Palmer, Bureau of Community Financing Chief, gave a brief overview of amendments to 25.4(1)"d," 25.7(1)"g," and 25.9(1) relating to the HOME Investment Partnership Program, Noticed and Filed Emergency in IAB 3/17/93 as ARC 3836A and 3835A, respectively. The amendment allows DED to use up to 10 percent of the annual allocation for state and local administration. Currently, funding must be taken from other programs. Palmer responded to Priebe that this was the same amount allowed by the Community Development Block Grant. He advised Doderer that the grant in 1993 was \$6,500,000 and the Department would be making about 30 awards to cities, counties, or nonprofit organizations. Some members expressed the opinion that 10 percent for grants was excessive.

Palmer stated that under CBG, the housing programs that they fund are the most expensive to administer. Many of them are housing rehabilitation programs where the funds are given to a community or organization and they will then restore 10 or 12 homes. This would be more expensive than operation of a sewer and water project under CBG, for example.

In putting this in perspective, Halvorson reminded that all of the 10 percent goes back to the local level—for planned and administrative uses for helping the cities that apply for the grants. Halvorson also observed that many of these programs were staff-intensive because of the multiple locations of assistance and concluded that they were not out of line.

Priebe thought cities would have planning personnel for the program.

Halvorson pondered that regardless of which "pocket" the dollars were taken, should the dollars needed for planning and administration come from the program itself or from other available dollars. It seemed logical to him that they should come from the program being administered.

Palmer noted that Cedar Rapids and Iowa City had grants from DED and were using their Community Development Block Grant. Federal legislation now prohibits this. Palmer added that the Community Development Block Grant on the federal level allows up to 20 percent for administration costs. Priebe contended that was excessive. No action.

DOT

The Department of Transportation was represented by Julie Fitzgerald, John Hocker, George F. Sessan, Shirley Andre, Ruth Sklezacek and Terry Dillinger. The following agenda was addressed:

TRANSPORTATION DEPARTMENT[761]

Consent for the sale of goods and services, 26.1(2), 26.3, Filed ARC 3825A 3/17/93
General requirements and covenants for highway and bridge construction, 125.1, Notice ARC 3788A . 3/3/93
Construction projects, ch 128, Notice ARC 3828A 3/17/93
Special mobile equipment, interstate registration and operation of vehicles, interstate motor vehicle fuel permits,
special permits for operation and movement of vehicles and loads of excess size and weight, truck operators

DOT (Cont.)

and contract carriers, motor carriers and charter carriers, liquid transport carriers, 410.3(2), 500.1, 500.2, 500.3(1), 500.3(3), 500.3(4)"a" and "c," 500.3(5), 500.3(6), 500.6 to 500.12, 500.14, 500.17, 500.20, 505.2, 505.3(2) to 505.3(7), 505.4(12)"b," 505.6(2)"b," 511.2, 511.2(1), 511.4(1), 511.4(2), 511.5(1), 511.5(6)"b"(3), 511.7 to 511.10, 511.11(2), 511.14(2)"g" and "i," 511.14(3)"e," 523.1(4)"a," 523.3, 523.3(1), 523.5(2), 523.7, 523.8(3), 523.8(4), 523.8(13)"c" and "d," 525.1(7), 525.3(4), 525.4, 525.4(1), 525.5, 525.5(1), 525.5(4), 525.7, 525.12, 525.14(3), 525.14(4), 525.14(12)"c" and "d," 525.15(2), 525.15(3), 528.1(1), 528.2(1), 528.3, 528.3(1), 528.4(1), 528.4(6), 528.7, 528.11(3), 528.11(4), 528.11(11)"c" and "d," 528.13(2), 528.13(3), Notice ARC 3792A 3/3/93
Commercial driver licensing, 607.6(2), 607.29, 607.36, 607.49, Notice ARC 3827A 3/17/93

26.1, 26.3

No recommendations on amendments to 26.1(2) and 26.3.

125.1

In review of 125.1, Hocker pointed out that small contractors would be benefited in that a contract for less than \$25,000 would not require a bond.

Ch 128

No questions or comments on proposed Chapter 128.

410.3(2) et al.

Sklezacek explained the corrective and updated amendments to 410.3(2) et al. Noticed in ARC 3792A.

Priebe was advised that the only time a special mobile equipment (SME) plate was required was when the power unit was exempt from the combined gross weight.

In 500.3(1)"e," Priebe suggested that "appropriate fees" should be specified. Sklezacek noted that many of their fees were set by statute and clearly defined there.

Ch 607

Dillinger explained amendments to Chapter 607, commercial driver licensing, and informed Halvorson that the restricted commercial driver's license waives the requirement for testing prior to its issuance—it requires a two-year driving history with a "clean record."

PUBLIC SAFETY

Representing the Department were Roy Marshall, Fire Marshal, Michael Coveyou, and Peter Green. The following agenda was discussed:

PUBLIC SAFETY DEPARTMENT[661]

Fire marshal, 5.2, 5.3(2), 5.50(11), 5.250, 5.275, 5.300, 5.301(1), 5.301(6), 5.301(7), 5.302, 5.304, 5.304(1) to 5.304(5), 5.305, 5.502(1)"c," 5.552(1)"f," 5.600(12), 5.601(1)"b" and "c," 5.603, 5.807(6), Filed ARC 3830A 3/17/93
State building code — Americans with Disabilities Act Accessibility Guidelines (ADAAG), 16.701, 16.705(3), 16.705(3)"a," 16.705(6)"b," 16.705(7), 16.705(12), 16.705(14), 16.705(15), 16.706(1), Table 705A, Division VII—Figure 13, 16.800(3), 16.800(4)"i," Filed ARC 3822A 3/3/93

5.2 et al.

Chapter 5 amendments were reviewed. Priebe questioned the exception in 5.300 under subsection 2-3.7.1 and asked why a check valve would not be required. Marshall agreed to research this.

16.701 et al.

Doderer asked if the amendments to state building code would apply to the Capitol. Marshall responded that they would apply to new and existing buildings where readily achievable. This would be determined by the Department of Justice under the Americans with Disabilities Act.

The definition of the word "occupancy" in 16.705(3)"a," Exception 3, "1," was explained to Doderer's satisfaction.

EPC

Present from the Environmental Protection Commission were Michael Murphy, Keith Bridson, Jeff Fiagle, Tom Anderson, Tom Blewett and Randy Clark to review the following agenda:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Evaluation of ability to pay — owners and operators of underground storage tanks, 135.11,

Notice ARC 3840A 3/17/93

Grants for regional collection centers of conditionally exempt small quantity generators and

household hazardous wastes, ch 211, Filed ARC 3841A 3/17/93

Loans for waste reduction and recycling, ch 212, Notice ARC 3837A 3/17/93

Packaging — heavy metal content, ch 213, Notice ARC 3838A 3/17/93

135.11

Murphy summarized new rule 135.11.

Hedge inquired about an appeal process if someone disagreed with an assessment. Murphy explained the rule was primarily intended to categorize sites and to determine when the LUST Trust Fund would be used. If subsequent action were taken, e.g., an order to clean up even though the party was unable to pay, they could appeal to the Environmental Protection Commission.

Ch 211

Fiagle briefed members on new Chapter 211 and distributed copy of comments received from League of Iowa Municipalities and Cerro Gordo County Area Solid Waste Agency.

Metcalf requested that in the future, the agency enumerate in the Preamble of the final rules any substantive changes from the Noticed version.

Responding to Priebe, Blewett noted that the "regional government" definition was added because Iowa League of Municipalities had requested that the 28E Agreement be referenced in the rules. Priebe was also advised there were no other funding sources other than state appropriations but the rule would allow any available resources. EPA had indicated possible support for the program. Funds could be shifted within their department but Priebe could foresee problems with this approach.

Metcalf referred to 211.6, and asked if it would be helpful to include some parameters for site modification and education programs. Fiagle indicated this would be addressed in their scoring criteria in the manual.

Priebe and Fiagle discussed ineligible costs which include land acquisition.

No action taken.

Ch 212

Anderson gave brief explanation on new Chapter 212, loans for waste reduction and recycling. Any business whose activities are within the state of Iowa would be eligible. Schrader was informed that tipping fees were the funding source.

Halvorson was advised there is approximately \$500,000 per year available but the fund would continue to increase. Priebe viewed the amount as conservative, stating that Lake Mills tipping fees in 16 months amounted to \$151,000. He requested a fiscal note in this regard. Theresa Kehoe from the Senate Democrat Caucus Staff added that 27 1/2 cents of solid waste tonnage fees would raise \$550,000 per year.

Ch 213

No questions or comments on new Chapter 213.

NATURAL RESOURCE COMMISSION

The Commission was represented by Randy Clark, Steve Dermend, Bill Farris, Don Cummings, Willie Suchy and Kevin Szcodronski. The following agenda was presented:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Sales of goods and services, 1.11, <u>Notice</u> ARC 2968A Terminated, <u>Notice</u> ARC 3862A	3/31/93
REAP — project selection criteria, grant ceilings, 33.30(4), 33.40(3), <u>Notice</u> ARC 3864A	3/31/93
Nursery stock prices, 71.3, <u>Notice</u> ARC 3863A	3/31/93
Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(2)"g," <u>Notice</u> ARC 3865A	3/31/93
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1(1), 96.2, 96.3, <u>Notice</u> ARC 3866A	3/31/93
Common snipe, Virginia rail and sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4, <u>Notice</u> ARC 3868A	3/31/93
Wild turkey fall hunting, 99.1, 99.4, <u>Notice</u> ARC 3869A	3/31/93
Crow season, 100.1, <u>Notice</u> ARC 3870A	3/31/93
Mobile radio transmitters, ch 103, <u>Filed</u> ARC 3871A	3/31/93
Deer hunting, ch 106, <u>Notice</u> ARC 3873A	3/31/93
Deer hunting — emergency powers, rescind 106.11, <u>Filed Emergency</u> ARC 3872A	3/31/93
Rabbit and squirrel hunting, 107.1 to 107.3, <u>Notice</u> ARC 3874A	3/31/93
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and spotted skunk seasons, 108.1, 108.1(2), 108.2 to 108.4, 108.5(2), <u>Notice</u> ARC 3875A	3/31/93
Trapping limitations, 110.1, <u>Notice</u> ARC 3876A	3/31/93

1.1; 33.30, 33.40;
71.3
Ch 91

No questions or comments on amendments to 1.11, 33.30(4), 33.40(3) or 71.3.

Amendments to Chapter 91 were reviewed. Halvorson had received comments from Ducks Unlimited who were unhappy with the season dates north of Highway 30 and he asked if Commission representatives ever met with any of these groups. Cummings replied that meetings were scheduled for Cedar Rapids, Spencer, Creston and Ottumwa. He added that the Commission has a good rapport with Ducks Unlimited.

Ch 96; 97

No action on amendments to Chapters 96 or 97 (ARCs 3866A or 3868A).

99.1, 99.4

In discussing amendments to 99.1 and 99.4, Halvorson commented that some organizations in northeast Iowa had expressed concerns that there would not be fall hunting of wild turkey until population increased in most parts of the state.

Hedge remarked about the decrease in turkeys in southern Iowa. Cummings cited weather conditions as a contributing factor and Suchy reported that a research project was being conducted to address this problem.

In review of amendments to 100.1, Priebe inquired why a crow season was necessary and Cummings stated that a National Treaty signed with Mexico in the '70s would preclude year around hunting of crows.

Ch 103

Dermend reviewed new Chapter 103 which provided exceptions to use of mobile radio transmitters while hunting. No Committee recommendations.

Ch 106

In review of revised Chapter 106, Schrader referred to 106.11, deer depredation permits, and wondered if the Commission had the personnel to enforce this rule. Cummings responded that they had 20 biologists as well as conservation officers throughout the state. He pointed out that permits would be granted only to producers who grow horticultural crops such as Christmas trees. Schrader asked if the Department would grant a depredation permit to one of these horticultural interests who would not allow hunting and Cummings was quite sure they would not. He lauded the rules as the most cost-effective means for controlling these deer.

DNR (Cont.)

Priebe observed orchard damage by deer and had heard complaints from producers who had to dispose of the deer carcasses if they had a depredation permit. There was discussion as to the Commission's responsibilities in this respect. Cummings indicated that agency representatives would be available to provide assistance or answer questions regarding preparation of deer carcasses for human consumption. He noted that DOT picks up the road kill along the interstate highways.

Rittmer inquired about rules regarding the disposal or pick up of deer on other highways. Cummings replied that the conservation officers or DNR employees would usually take care of most of them. Priebe favored clarifying rules to address this issue and Cummings was willing to bring it before the Commission.

In reference to the letter from the State Horticultural Society, Metcalf requested the Commission to respond to their concerns regarding deer depredation permits.

No questions or comments on the remainder of the agenda.

Recess

Co-chair Priebe recessed the meeting at 10 a.m. and reconvened it at 7 a.m. Tuesday, April 6, 1993.

04-06-93

PUBLIC HEALTH The following Public Health Department agenda was before the Committee with Carolyn Adams, Michael Magnant and Donald Flater in attendance.

PUBLIC HEALTH DEPARTMENT[641]

Swimming pools and spas, 15.12(1)"c"(1), Filed Emergency ARC 3849A 3/31/93
Radiation, 41.1(12)"c"(4), 41.1(12) Appendices I and II, Filed ARC 3848A 3/31/93

15.12 Amendment to 15.12(1)"c"(1) was addressed and Kibbie was advised this rule would have no impact if a pool has no water slides. Magnant explained that the inspection fee for a smaller pool with no water slide would be \$170.

Ch 41 No questions or recommendations on the Filed radiation amendments to Chapter 41.

CORRECTIONS Fred Scaletta represented the Department for the following:

CORRECTIONS DEPARTMENT[201]

Inmate mail, 20.4, Filed ARC 3842A 3/17/93
Violator programs, 20.18, Filed ARC 3844A 3/17/93
Supervision under interstate compact, 46.3(4), Notice ARC 3843A 3/17/93

In 20.4(3)"g" and "h" regarding inmate mail, Doderer took the position that prohibition of correspondence with other inmates/offenders was a bit harsh. She did not see the security risks involved and Scaletta cited examples of potential problems.

Priebe asked if "justifiable cause" were defined in 20.4(1) and Scaletta said this was a fairly common legal term which could be interpreted several ways.

Doderer asked to be recorded as opposing 20.4(3)"h" because it was too vague. The paragraph read, "Inmates will be denied mail privileges with persons that might present a risk to the order and security of the institution."

20.18; 46.3

No comments or recommendations re amendments to 20.18 or 46.3(4).

WALLACE TECH. TRANSFER FOUNDATION

Douglas Getter explained new Chapter 12, Manufacturing Modernization Implementation Fund published as a Notice of Intended Action in IAB 3/31/93 as ARC 3867A.

Metcalf stated she would work with Getter to clarify language in 12.3(4)"b" regarding matching funds.

Halvorson questioned the viability of the program for the state of Iowa since the available dollars would reach so few. Getter reasoned the key element would be to test it in the market place.

Hedge was advised that the program would be limited to manufacturers statewide with less than 500 employees.

Real Estate May Agenda

Priebe explained that the hearing on the following rules of Real Estate would not be held until April 21 and he requested that this Notice be placed on the May agenda.

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Business conduct — prohibited practices, 1.31, Notice ARC 3464A Terminated, Notice ARC 3853A3/31/93

REVENUE AND FINANCE

Carl Castelda, Deputy Director, presented amendment to 53.15(1)"a," Determination of net income—consolidated Iowa corporation tax returns, published as Notice of Intended Action in 3/3/93 IAB as ARC 3819A.

Since time allowed, Castelda explained the noticed rules which were on the "No Rep" portion of the March agenda regarding 40.44, taxation of nonresidents' pensions and annuities, 2/19/93 IAB, ARC 3751A, which became a very controversial issue. He spoke of 1992 legislation and an opinion of the attorney general saying that Iowa automatically had a reciprocal agreement with every state with an income tax. In order to administer the Iowa tax laws relating to nonresidents, a complete understanding of tax laws in the other 42 states was necessary which was an impossible task for the Department. The Department promulgated detailed rules on the area of nonresident pensions and spelled out the provisions of the reciprocal agreement with Illinois. The rules set forth some formulas for nonresidents who have worked part of their lives in Iowa and part in another state. A request for a public hearing had been received from the Iowa Taxpayers Association and the Iowa Association of Business and Industry, so the rule had been held in abeyance until the public hearing scheduled for May 4.

Castelda estimated the nonresident pension issue at about \$10 million. The total pension income, if all pensions were excluded from taxation, would be between \$50 and \$70 million.

In answer to Doderer's inquiry, Castelda explained the current system of handling pensions of judges, police, fire, highway patrol and IPERS recipients who move away.

INSURANCE

The Division was represented by Jo Page, Dennis Britson and Craig Goettsch. The following agenda was reviewed:

INSURANCE DIVISION[191]**COMMERCE DEPARTMENT[181]"umbrella"**

Life insurance policies sold to applicants aged 60 or over, 15.69(5)"a," Notice ARC 3818A 3/3/93

Regulation of securities offerings and those who engage in the securities business — books and record-keeping requirements, 50.3(1), 50.3(1)"d"(7), 50.3(1)"e" and "h," 50.3(1)"i"(8) and (9), 50.3(1)"n," Notice ARC 3834A 3/17/93

Iowa retirement facilities, ch 24, Filed ARC 3851A 3/31/93

- 15.69 No questions or comments on amendments to 15.69(5)"a,"
- 50.3 Brief discussion of amendments to 50.3 intended to implement 1990 legislation.
- Ch 24 The Iowa Retirement Facilities, Chapter 24, was reviewed by Britson. He suspected that jurisdiction had been delegated to the Insurance Division because of their expertise in reviewing disclosure documents. Although the legislation was initially a registration statute it was amended to become more of a disclosure-oriented type of regulation. No Committee action.

PROFESSIONAL LICENSURE

Representing the Division were Barbara Nervig, Harriett Miller and Kathy Williams for the following agenda:

PROFESSIONAL LICENSURE DIVISION[645]**PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

Barbers — hours of attendance in barber schools, 20.6(1), Notice ARC 3811A 3/3/93

Optometry — examinations, advertising, 180.4, 180.5(3)"c" and "e" to "g," 180.115(6), Notice ARC 3810A 3/3/93

Massage therapists — continuing education, disciplinary procedures, uniform rules, 130.1, 130.3 to 130.10, chs 131, 136 to 139, Notice ARC 3881A 3/31/93

Optometry examiners, prescriptions, 180.9, ARC 3687A Delayed 70 days 1/6/93

Psychology — educational requirements for licensure, 240.5(10), 240.5(10)"a," Notice ARC 3859A .. 3/31/93

Psychology — ethics and code of conduct, 240.212(14), Filed ARC 3882A 3/31/93

Respiratory care practitioners, 260.7(4)"a," 260.10(9), 260.13(1)"b," 260.15(5), Filed ARC 3850A .. 3/31/93

- 20.6; Ch 80 No questions or Noticed amendments to 20.6(1) or Chapter 180.
- 130.1 et al. Responding to Priebe re massage therapists, Nervig stated there was no state licensure or accreditation of massage therapy schools which has been one of the problems facing the advisory board and practitioners. Pending legislation was intended to correct the statutory problem.
- 180.9 Amendment to 180.9, prescriptions by an optometrist which had been delayed 70 days, was before the ARRC. Dr. James Hartzell, Optometry Board Examiner Chairman, told the Committee that it was the Board's intent to rescind rule 180.9 and seek legislation to redefine the release of a prescription since the issue embraced the medical and pharmacy boards as well .
- At the February ARRC meeting there was consensus that a patient should be furnished without charge a copy of their prescription for contact lens or eyeglasses.
- The remainder of the agenda was reviewed without recommendation.

**INSPECTIONS
AND APPEALS**
Economic Impact
57.12

There was brief review of the Economic Impact Statement on 481—57.12(2)"a" which was published in the 3/31/93 IAB upon request of the ARRC at their December meeting.

The proposed amendment may require additional staffing above established ratios for staff members and residents in residential care facilities.

In response to Metcalf, Royce advised that as part of the general regulations of nursing homes, the Department had clear authority to set out professional staffing requirements and, in this case, they have increased the limit for special needs people. Royce continued that the Committee's power was not limited to determining authority for rules, it must also consider reasonableness. It would be within the Committee's jurisdiction to determine whether it was reasonable to impose this additional cost—is the benefit, in fact, worth the cost.

There was consensus to consider the amendment in depth when it has been adopted and published in its final version.

August meeting

It was tentatively agreed that the ARRC would meet on August 2 and 3 (Monday and Tuesday) in lieu of the statutory date.

NO REPS

No agency representative was requested for the following:

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Registration, continuing education, disciplinary action, 2.2(1), 2.4, 3.1(3), 5.21, Filed ARC 3877A ... 3/31/93

Sales of goods and services, ch 7, Filed Emergency ARC 3878A 3/31/93

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

Application procedures — hearings, 2.4(3), 2.12(1), 2.12(10)"a," Notice ARC 3814A 3/3/93

Electronic transfer of funds, ch 10, Filed ARC 3817A 3/3/93

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Electronic transfer of funds, ch 24, Filed ARC 3816A 3/3/93

EDUCATION DEPARTMENT[281]

Phase III, educational excellence program, ch 91, *[Committee review delayed until their May 1993 meeting]*

Filed ARC 3826A 3/17/93

EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Amend and transfer Disaster Services Division[607] to Emergency Management Division[605],

Notice ARC 3824A 3/17/93

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Historic resource development program, 49.2, 49.5(1), 49.5(3), 49.5(4)"a," 49.7(1)"b"(6),

Notice ARC 3821A 3/3/93

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Child labor, 32.8(2)"a," 32.8(9)"d," 32.8(11), subrule implementations, Notice ARC 3791A 3/3/93

NO REPS (Cont.)**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Increase in licensure fees, 3.1, 7.1, Filed Emergency After Notice ARC 3790A 3/3/93**PERSONNEL DEPARTMENT[581]**Iowa Public Employees' Retirement System, amendments to ch 21, Filed ARC 3809A 3/3/93**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]**

Administration of the environmental protection charge imposed upon petroleum diminution — definitions,

6.1, Notice ARC 3829A 3/17/93**PHARMACY EXAMINERS BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Judgmental functions — authorized person, 8.1, 8.1(5), 8.1(6), Filed ARC 3796A 3/3/93

Discipline — procedures for administrative hearings by board panel of pharmacists and appeal of panel's

proposed decision, 9.6(1), 9.6(1)"h," 9.6(3), 9.6(5), 9.6(10), 9.6(11), Filed ARC 3795A 3/3/93**SAVINGS AND LOAN DIVISION[197]**

COMMERCE DEPARTMENT[181]"umbrella"

Electronic transfer of funds, ch 14, Filed ARC 3815A 3/3/93**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Americans With Disabilities Act, 10.3(2), 11.4(2), 24.7(3), Notice ARC 3832A 3/17/93

Purchased gas adjustments — over/undercollections, 19.10(1), 19.10(1)"b," 19.10(4), 19.10(5)"c,"

19.10(7)"b"(1) and (2), 19.10(7)"c" and "d," Filed ARC 3813A 3/3/93Clean Air Act — emission allowances, 20.1(3), 20.1(4), 20.17, 24.2, 24.4(1)"e," Notice ARC 3812A . 3/3/93**VETERANS AFFAIRS COMMISSION[801]**Contested cases, ch 8, Notice ARC 3806A, also Filed Emergency ARC 3807A 3/3/93**VETERINARY MEDICINE BOARD[811]**Application for licensure, 6.1(1), 6.4, Filed Emergency ARC 3847A 3/31/93**Adjournment**

The meeting was adjourned at 8:15 a.m. The next meeting was scheduled for May 11 and 12, 1993.

Respectfully submitted,

Phyllis Barry, Secretary
Assisted by Mary Ann Scott

Berl E. Priebe, Co-chair