

Sen. Judiciary 3/11 Do Pass 3/17 (J 876)

MAR 9 1988

Place On Calendar

HOUSE FILE 2430
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House Study Bill 311)

Passed House, Date 3/11/88 (J 149) Passed Senate, Date 3/29/88 (J 1094)

Vote: Ayes 81 Nays 8 Vote: Ayes 41 Nays 4

Approved April 26, 1988

A BILL FOR

1 An Act to designate hearing officers as administrative law
2 judges.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 10A.101, subsection 3, Code 1987, is
2 amended to read as follows:

3 3. "Administrators" means the chief hearing-officer
4 administrative law judge, chief inspector, chief investigator,
5 and chief auditor.

6 Sec. 2. Section 10A.201, subsection 1, Code 1987, is
7 amended to read as follows:

8 1. "Administrator" means the chief hearing-officer
9 administrative law judge, who shall coordinate the
10 administration of this division.

11 Sec. 3. Section 10A.601, subsection 4, Code 1987, is
12 amended to read as follows:

13 4. The appeal board may on its own motion affirm, modify,
14 or set aside a decision of a ~~hearing-officer~~ an administrative
15 law judge on the basis of the evidence previously submitted in
16 the contested case, or direct the taking of additional
17 evidence, or may permit any of the parties to the decision to
18 initiate further appeals before the appeal board. The appeal
19 board shall permit further appeal by any of the parties
20 interested in a decision of a ~~hearing-officer~~ an
21 administrative law judge and by the representative whose
22 decision has been overruled or modified by the ~~hearing-officer~~
23 administrative law judge. The appeal board shall review the
24 case pursuant to rules adopted by the appeal board. The
25 appeal board shall promptly notify the interested parties of
26 its findings and decision.

27 Sec. 4. Section 17A.11, Code 1987, is amended to read as
28 follows:

29 17A.11 PRESIDING OFFICER --ADMINISTRATIVE HEARING-OFFICERS
30 LAW JUDGES.

31 1. The presiding officer in evidentiary hearings required
32 to be conducted by an agency according to the provisions of
33 this chapter governing contested cases shall be the agency,
34 one or more members of a multimember agency, or an
35 administrative ~~hearing-officer~~ law judge appointed according

1 to the terms of this section. Each agency needing the
2 services of one or more permanent full-time or part-time
3 administrative hearing-officers law judges shall appoint as
4 many of them to its staff as are necessary for this purpose.
5 Agencies shall assign administrative hearing-officers law
6 judges to cases in rotation unless it is not feasible.
7 Administrative hearing-officers law judges shall not perform
8 duties inconsistent with their duties and responsibilities as
9 hearing-officers administrative law judges.

10 2. Administrative hearing-officers-~~shall be~~ law judges are
11 covered by the merit system of personnel administration,
12 chapter 19A. The department of personnel or other appropriate
13 agency specified in section 19A.3 shall, insofar as
14 practicable, provide for different classes of administrative
15 hearing-officers law judges with different salary scales.

16 3. An agency whose work load is such that the appointment
17 of a permanent full-time or part-time administrative hearing
18 officer law judge is unwarranted, or an agency whose work load
19 is such that one or more additional administrative hearing
20 officers law judges are temporarily required, may use
21 administrative hearing-officers law judges selected by the
22 department of personnel from other agencies having hearing
23 officers administrative law judges that are temporarily
24 available and that are qualified to preside at the hearings
25 held by the agency requesting the temporary use of a hearing
26 officer an administrative law judge. In cases where an agency
27 borrows one or more administrative hearing-officers law judges
28 from other agencies, the salaries and expenses of those
29 administrative hearing-officers law judges shall be
30 apportioned and charged to the several agencies according to
31 their use.

32 Sec. 5. Section 20.6, subsection 4, Code 1987, is amended
33 to read as follows:

34 4. Hold hearings and administer oaths, examine witnesses
35 and documents, take testimony and receive evidence, issue

1 subpoenas to compel the attendance of witnesses and the
2 production of records, and delegate such power to a member of
3 the board, or persons appointed or employed by the board,
4 including ~~hearing-officers~~ administrative law judges for the
5 performance of its functions. The board may petition the
6 district court at the seat of government or of the county
7 ~~wherein-any~~ where a hearing is held to enforce a board order
8 compelling the attendance of witnesses and production of
9 records.

10 Sec. 6. Section 20.11, subsection 2, Code 1987, is amended
11 to read as follows:

12 2. The board may designate ~~a-hearing-officer~~ an
13 administrative law judge to conduct the hearing. The hearing
14 ~~officer-shall-have-such~~ administrative law judge has the
15 powers as may be exercised by the board for conducting the
16 hearing and shall follow the procedures adopted by the board
17 for conducting the hearing. The decision of the ~~hearing~~
18 ~~officer~~ administrative law judge may be appealed to the board
19 and the board may hear the case de novo or upon the record as
20 submitted before the ~~hearing-officer~~ administrative law judge,
21 utilizing procedures governing appeals to the district court
22 in this section so far as applicable.

23 Sec. 7. Section 89A.10, subsection 2, unnumbered paragraph
24 1, Code 1987, is amended to read as follows:

25 If the owner does not make the changes necessary for
26 compliance as required in subsection 1 within the period
27 specified by the commissioner, the commissioner, upon notice,
28 may suspend or revoke the operating permit, or may refuse to
29 issue the operating permit for the facility. The commissioner
30 shall notify the owner of any action to suspend, revoke, or
31 refuse to issue an operating permit and the reason for the
32 action by certified mail. An owner may appeal the
33 commissioner's initial decision. The appeal shall be heard by
34 ~~a-hearing-officer~~ an administrative law judge of the
35 department of inspections and appeals. An owner who, after a

1 hearing before ~~a hearing officer~~ an administrative law judge,
2 is aggrieved by a suspension, revocation, or refusal to issue
3 an operating permit may appeal to the employment appeal board
4 created under section 10A.601. Notice of appeal shall be
5 filed with the appeal board within thirty calendar days from
6 receipt of the notice of the commissioner's action.

7 Sec. 8. Section 89A.10, subsection 2, unnumbered paragraph
8 3, Code 1987, is amended to read as follows:

9 No proceedings before the commissioner or the
10 commissioner's agents, ~~a hearing officer~~ an administrative law
11 judge, the appeal board, or any district court of this state
12 shall be deemed to deny any an owner an operating permit until
13 there is a final adjudication of the matter. No An objection
14 which has not been urged before the appeal board shall not be
15 considered by the court, unless the failure or neglect to urge
16 the objection is excused because of extraordinary
17 circumstances. The findings of the appeal board with respect
18 to questions of fact, if supported by substantial evidence on
19 the record considered as a whole, are conclusive. The appeal
20 board's copy of the testimony shall be available to all
21 parties for examination at all reasonable times, without cost,
22 and for the purpose of judicial review of the appeal board's
23 orders. Upon the filing of the record with it, the
24 jurisdiction of the court is exclusive and its judgment and
25 decree is final, except that it is subject to review by the
26 Iowa supreme court.

27 Sec. 9. Section 96.6, subsections 2 and 3, Code 1987, are
28 amended to read as follows:

29 2. INITIAL DETERMINATION. A representative designated by
30 the commissioner shall promptly notify all interested parties
31 to the claim of its filing, and the parties have ten days from
32 the date of mailing the notice of the filing of the claim by
33 ordinary mail to the last known address to protest payment of
34 benefits to the claimant. The representative shall promptly
35 examine the claim and any protest, take the initiative to

1 ascertain relevant information concerning the claim, and, on
2 the basis of the facts found by the representative, shall
3 determine whether or not the claim is valid, the week with
4 respect to which benefits shall commence, the weekly benefit
5 amount payable and its maximum duration, and whether any
6 disqualification shall be imposed. The claimant has the
7 burden of proving that the claimant meets the basic
8 eligibility conditions of section 96.4. The employer has the
9 burden of proving that the claimant is disqualified for
10 benefits pursuant to section 96.5. However, the claimant has
11 the initial burden to produce evidence showing that the
12 claimant is not disqualified for benefits in cases involving
13 section 96.5, subsection 1, paragraphs "a" through "i", and
14 subsection 10. Unless the claimant or other interested party,
15 after notification or within ten calendar days after
16 notification was mailed to the claimant's last known address,
17 files an appeal from the decision, the decision is final and
18 benefits shall be paid or denied in accordance with it. If a
19 hearing-officer an administrative law judge affirms a decision
20 of the representative, or the appeal board affirms a decision
21 of the hearing-officer administrative law judge allowing
22 benefits, the benefits shall be paid regardless of any appeal
23 which is thereafter taken, but if the decision is finally
24 reversed, no employer's account shall be charged with benefits
25 so paid.

26 3. APPEALS. Unless such the appeal is withdrawn, a
27 hearing-officer an administrative law judge, after affording
28 the parties reasonable opportunity for fair hearing, shall
29 affirm or modify the findings of fact and decision of the
30 representative. The hearing shall be conducted pursuant to
31 the provisions of chapter 17A relating to hearings for
32 contested cases. Before the hearing is scheduled, the parties
33 shall be afforded the opportunity to choose either a telephone
34 hearing or an in-person hearing. A request for an in-person
35 hearing shall be approved unless the in-person hearing would

1 be impractical because of the distance between the parties to
2 the hearing. A telephone or in-person hearing shall not be
3 scheduled before the seventh calendar day after the parties
4 receive notice of the hearing. Reasonable requests for the
5 postponement of a hearing shall be granted. The parties shall
6 be duly notified of the ~~hearing-officer's~~ administrative law
7 judge's decision, together with the ~~hearing-officer's~~
8 administrative law judge's reasons therefor for the decision,
9 ~~which shall-be-deemed-to-be~~ is the final decision of the
10 division, unless within fifteen days after the date of
11 notification or mailing of ~~such~~ the decision, further appeal
12 is initiated pursuant to this section.

13 Appeals from the initial determination shall be heard by a
14 ~~hearing-officer~~ an administrative law judge employed by the
15 division of job service. ~~A-hearing-officer's~~ An
16 administrative law judge's decision may be appealed by any
17 party to the employment appeal board created in section
18 10A.601. The decision of the appeal board is final agency
19 action and an appeal of the decision shall be made directly to
20 the district court.

21 Sec. 10. Section 96.7, subsection 3, paragraph a,
22 subparagraph (6), Code Supplement 1987, is amended to read as
23 follows:

24 (6) As soon as practicable after the close of each
25 calendar quarter, and in any event within forty days after the
26 close of ~~such~~ each quarter, the division shall notify each
27 employer of the amount that has been charged to the employer's
28 account for benefits paid during ~~such~~ that quarter. This
29 statement to the employer shall show the name of each claimant
30 to whom ~~such~~ the benefit payments were made, the claimant's
31 social security number, and the amount of benefits paid to
32 ~~such~~ the claimant. ~~Any~~ An employer who has not been notified
33 as provided in section 96.6, subsection 2, of the allowance of
34 benefits to such claimants may within thirty days after the
35 receipt of ~~such~~ the statement appeal to the commissioner for a

1 hearing to determine the eligibility of the claimant to
2 receive such benefits. The commissioner shall refer the same
3 to ~~a hearing-officer~~ an administrative law judge for hearing
4 and both the employer and the claimant shall receive notice of
5 the time and place of ~~such~~ the hearing.

6 Sec. 11. Section 96.7, subsection 4, paragraph d,
7 unnumbered paragraph 3, Code Supplement 1987, is amended to
8 read as follows:

9 A hearing on an appeal shall be conducted according to the
10 ~~regulations-and~~ rules ~~promulgated~~ adopted by the division. A
11 copy of the decision of the ~~hearing-officer~~ administrative law
12 judge shall be sent by regular mail to the last address,
13 according to the records of the division, of each affected
14 employing unit or employer.

15 Sec. 12. Section 96.11, subsection 7, paragraph f, Code
16 Supplement 1987, is amended to read as follows:

17 f. An employee of the division, ~~a hearing-officer~~ an
18 administrative law judge, or a member of the appeal board who
19 violates this section is guilty of a serious misdemeanor.

20 Sec. 13. Section 97B.25, Code 1987, is amended to read as
21 follows:

22 97B.25 APPLICATIONS FOR BENEFITS.

23 A representative designated by the administrator and
24 referred to in this chapter as a benefits deputy, shall
25 promptly examine applications for retirement benefits and on
26 the basis of facts found shall determine whether or not the
27 claim is valid and if valid, the month with respect to which
28 benefits shall commence, the monthly benefit amount payable,
29 and the maximum duration. The deputy shall promptly notify
30 the applicant and any other interested party of the decision
31 and the reasons. Unless the applicant or other interested
32 party, within thirty calendar days after the notification was
33 mailed to the applicant's or party's last known address, files
34 an appeal to ~~a hearing-officer~~ an administrative law judge in
35 the department of inspections and appeals, the decision is

1 final and benefits shall be paid or denied in accord with the
2 decision.

3 Sec. 14. Section 97B.26, Code 1987, is amended to read as
4 follows:

5 97B.26 HEARING-OFFICER ADMINISTRATIVE LAW JUDGE.

6 If an appeal is filed and is not withdrawn, a hearing
7 ~~officer~~ an administrative law judge in the department of
8 inspections and appeals, after affording the parties
9 reasonable opportunity for fair hearing, shall affirm, modify,
10 or reverse the findings of fact and decision of the benefits
11 deputy. The hearing shall be recorded by mechanical means and
12 a transcript of the hearing shall be made. The transcript
13 shall then be made available for use by the employment appeal
14 board and by the courts at subsequent judicial review
15 proceedings under the Iowa administrative procedure Act, if
16 any. The parties shall be duly notified of the hearing
17 ~~officer's~~ administrative law judge's decision, together with
18 the ~~hearing-officer's~~ administrative law judge's reasons. The
19 decision is final unless, within thirty days after the date of
20 notification or mailing of the decision, review by the
21 employment appeal board is initiated pursuant to section
22 97B.27.

23 Sec. 15. Section 97B.27, Code 1987, is amended to read as
24 follows:

25 97B.27 REVIEW OF DECISION.

26 Anyone aggrieved by the decision of the hearing-officer
27 administrative law judge may, at any time before the hearing
28 ~~officer's~~ administrative law judge's decision becomes final,
29 petition the department of inspections and appeals for review
30 by the employment appeal board established in section 10A.601.
31 The appeal board shall review the record made before the
32 ~~hearing-officer~~ administrative law judge, but no additional
33 evidence shall be heard. On the basis of the record the
34 appeal board shall affirm, modify, or reverse the decision of
35 the ~~hearing-officer~~ administrative law judge and shall

1 determine the rights of the appellant. It shall promptly
2 notify the appellant and any other interested party by written
3 decision.

4 Sec. 16. Section 148.7, subsections 3 and 5, Code 1987,
5 are amended to read as follows:

6 3. The hearing shall be before a member or members
7 designated by the board or before ~~a hearing-officer~~ an
8 administrative law judge appointed by the board. The
9 presiding board member or ~~hearing-officer-is-empowered-to~~
10 administrative law judge may issue subpoenas, administer oaths
11 and take or cause depositions to be taken in connection with
12 the hearing. The presiding board member or ~~hearing-officer~~
13 administrative law judge shall issue subpoenas at the request
14 and on behalf of the licensee. The hearing shall be open to
15 the public.

16 The compensation of the ~~hearing-officer~~ administrative law
17 judge shall be fixed by the medical examiners. The ~~hearing~~
18 ~~officer~~ administrative law judge shall be an attorney vested
19 with full authority of the board to schedule and conduct
20 hearings. The ~~hearing-officer~~ administrative law judge shall
21 prepare and file with the medical examiners the ~~hearing~~
22 ~~officer's~~ administrative law judge's findings of fact and
23 conclusions of law, together with a complete written
24 transcript of all testimony and evidence introduced at the
25 hearing and all exhibits, pleas, motions, objections and
26 rulings of the ~~hearing-officer~~ administrative law judge.

27 5. If a person refuses to obey a subpoena issued by the
28 presiding member or ~~hearing-officer~~ administrative law judge
29 or to answer a proper question during the hearing, the
30 presiding member or ~~hearing-officer~~ administrative law judge
31 may invoke the aid of a court of competent jurisdiction or
32 judge of this court in requiring the attendance and testimony
33 of ~~such~~ the person and the production of papers. A failure to
34 obey ~~such~~ the order of the court may be punished by the court
35 as a civil contempt may be punished.

1 Sec. 17. Section 169.5, subsection 9, paragraph e, Code
2 1987, is amended to read as follows:

3 e. Hold hearings on all matters properly brought before
4 the board and administer oaths, receive evidence, make the
5 necessary determinations, and enter orders consistent with the
6 findings. The board may require by subpoena the attendance
7 and testimony of witnesses and the production of papers,
8 records, or other documentary evidence and commission
9 depositions. An administrative ~~hearing-officer~~ law judge may
10 be appointed pursuant to section 17A.11, subsection 3 to
11 perform those functions which properly repose in an
12 administrative ~~hearing-officer~~ law judge.

13 Sec. 18. Section 169.14, subsections 3 and 5, Code 1987,
14 are amended to read as follows:

15 3. The hearing shall be before a member or members
16 designated by the board or before a ~~hearing-officer~~ an
17 administrative law judge appointed by the board. The
18 presiding board member or ~~hearing-officer~~ administrative law
19 judge may issue subpoenas, administer oaths, and take or cause
20 depositions to be taken in connection with the hearing. The
21 member or officer shall issue subpoenas at the request and on
22 behalf of the licensee.

23 5. If a person refuses to obey a subpoena issued by the
24 presiding member or ~~hearing-officer~~ administrative law judge
25 or to answer a proper question put to that person during the
26 hearing, the presiding member or ~~hearing-officer~~
27 administrative law judge may invoke the aid of a court of
28 competent jurisdiction in requiring the attendance and
29 testimony of that person and the production of papers. A
30 failure to obey the order of the court may be punished by the
31 court as a civil contempt may be punished.

32 Sec. 19. Section 191A.7, Code 1987, is amended to read as
33 follows:

34 191A.7 DISCIPLINARY ACTION.

35 A license issued under this chapter may be revoked by the

1 regulatory authority for violation by the licensee of a
2 provision of this chapter or an applicable rule of the
3 department. In lieu of license revocation, the regulatory
4 authority may require the immediate discontinuance of
5 operation of a vending machine or commissary if it finds
6 unsanitary conditions or other conditions which constitute a
7 substantial hazard to the public health. The order shall
8 apply only to the vending machines, commissary, or product
9 involved. A person whose license is revoked, or who is
10 ordered to discontinue the operation of a vending machine or
11 commissary, may appeal that decision to the director. The
12 director or the chief ~~hearing-officer~~ administrative law judge
13 of the department shall schedule and hold a hearing upon the
14 appeal not later than thirty days from the time of revocation
15 or the order of discontinuance. The director or the chief
16 ~~hearing-officer~~ administrative law judge shall issue a
17 decision immediately following the hearing. Judicial review
18 may be sought in accordance with the ~~terms-of-the~~ Iowa
19 administrative procedure Act.

20 Sec. 20. Section 272A.8, Code 1987, is amended to read as
21 follows:

22 272A.8 APPOINTMENT OF HEARING-~~OFFICERS~~ ADMINISTRATIVE LAW
23 JUDGES.

24 The commission shall maintain a list of qualified persons
25 to serve as ~~hearing-officers~~ administrative law judges who are
26 experienced in the educational system of this state when a
27 hearing is requested under ~~the-provisions-of~~ section 279.24.
28 When requested under ~~the-provisions-of~~ section 279.24, the
29 commission shall submit a list of five qualified ~~hearing~~
30 ~~officers~~ administrative law judges to the parties. The
31 hearing shall be held pursuant to the provisions of chapter
32 17A relating to contested cases. The full costs of the
33 hearing shall be shared equally by the parties. A person who
34 is employed as a teacher or administrator by a school district
35 ~~shall~~ is not be eligible to serve as a ~~hearing-officer~~ an

1 administrative law judge.

2 Sec. 21. Section 279.24, unnumbered paragraphs 7, 8, 9,
3 and 10, Code Supplement 1987, are amended to read as follows:

4 Within five days after receipt of the written notice that
5 the board has voted to consider termination of the contract,
6 the administrator may request in writing to the secretary of
7 the board that the notification be forwarded to the
8 professional teaching practices commission along with a
9 request that the professional teaching practices commission
10 submit a list of five qualified ~~hearing-officers~~

11 administrative law judges to the parties. Within three days
12 from receipt of the list the parties shall select a ~~hearing~~
13 ~~officer~~ an administrative law judge by alternately removing a
14 name from the list until only one name remains. The person
15 whose name remains shall be the ~~hearing-officer~~ administrative
16 law judge. The parties shall determine by lot which party
17 shall remove the first name from the list. The hearing shall
18 be held no sooner than ten days and not later than thirty days
19 following the administrator's request unless the parties
20 otherwise agree. If the administrator does not request a
21 hearing, the board, not later than April 15, may determine the
22 continuance or discontinuance of the contract. Board action
23 shall be by majority roll call vote entered on the minutes of
24 the meeting. Notice of board action shall be personally
25 delivered or mailed to the administrator.

26 The ~~hearing-officer~~ administrative law judge selected shall
27 notify the secretary of the board and the administrator in
28 writing concerning the date, time, and location of the
29 hearing. The board may be represented by a legal
30 representative, if any, and the administrator shall appear and
31 may be represented by counsel or by representative, if any. A
32 transcript or recording shall be made of the proceedings at
33 the hearing. ~~No~~ A school board member or administrator ~~shall~~
34 be is not liable for any damage to ~~any~~ an administrator or
35 board member if ~~any~~ a statement made at the hearing is

1 determined to be erroneous as long as the statement was made
2 in good faith.

3 The ~~hearing-officer~~ administrative law judge shall, within
4 ten days following the date of the hearing, make a proposed
5 decision as to whether or not the administrator should be
6 dismissed, and shall give a copy of the proposed decision to
7 the administrator and the school board. Findings of fact
8 shall be prepared by the ~~hearing-officer~~ administrative law
9 judge. The proposed decision of the ~~hearing-officer~~
10 administrative law judge shall become the final decision of
11 the board unless within ten days after the filing of the
12 decision the administrator files a written notice of appeal
13 with the board, or the board on its own motion determines to
14 review the decision.

15 If the administrator appeals to the board, or if the board
16 determines on its own motion to review the proposed decision
17 of the ~~hearing-officer~~ administrative law judge, a private
18 hearing shall be held before the board within five days after
19 the petition for review, or motion for review, has been made
20 or at such other time as the parties may agree. The private
21 hearing shall is not be subject to ~~the-provisions-of~~ chapter
22 21. The board may hear the case de novo upon the record as
23 submitted before the ~~hearing-officer~~ administrative law judge.
24 In cases where there is an appeal from a proposed decision or
25 where a proposed decision is reviewed on motion of the board,
26 an opportunity shall be afforded to each party to file
27 exceptions, present briefs and present oral arguments to the
28 board which is to render the final decision. The secretary of
29 the board shall give the administrator written notice of the
30 time, place, and date of the hearing. The board shall meet
31 within five days after the hearing to determine the question
32 of continuance or discontinuance of the contract. The board
33 shall make findings of fact which shall be based solely on the
34 evidence in the record and on matters officially noticed in
35 the record.

1 Sec. 22. Section 281.6, unnumbered paragraph 3, Code 1987,
2 is amended to read as follows:

3 Notwithstanding section 17A.11, the state board of
4 education shall adopt rules for the appointment of an
5 impartial administrative ~~hearing-officer~~ law judge for special
6 education appeals. The rules shall comply with federal
7 statutes and regulations.

8 Sec. 23. Section 321J.13, subsection 3, Code Supplement
9 1987, is amended to read as follows:

10 3. After the hearing the department shall order that the
11 revocation be either rescinded or sustained. ~~In-the-event~~
12 ~~that~~ If the revocation is sustained, the administrative
13 ~~hearing-officer~~ law judge who conducted the hearing ~~has~~
14 ~~authority-to~~ may issue a temporary restricted license to the
15 person whose motor vehicle license or operating privilege was
16 revoked. Upon receipt of the decision of the department to
17 sustain a revocation, the person contesting the revocation
18 ~~shall-have~~ has ten days to file a request for review of the
19 decision by the director. The director or the director's
20 designee shall review the decision within fifteen days and
21 shall either rescind or sustain the revocation or order a new
22 hearing. If the director orders a new hearing, the department
23 shall grant the person a new hearing within thirty days of the
24 director's order.

25 Sec. 24. Section 421.8A, Code 1987, is amended to read as
26 follows:

27 421.8A DISPUTED ASSESSMENTS.

28 For ~~any~~ a contested case, as defined in section 17A.2,
29 commenced on or after January 1, 1987, the person disputing
30 the assessment must pay all tax, interest and penalty
31 pertaining to the disputed assessment prior to the
32 commencement of the contested case. Upon a showing of good
33 cause, the ~~hearing-officer~~ administrative law judge shall
34 allow the person to post a bond in an amount established by
35 the ~~hearing-officer~~ administrative law judge, but not in

1 excess of all tax, interest, and penalty, in lieu of paying
2 all tax, interest and penalty.

3 The director shall adopt rules establishing procedures for
4 payment of taxes under protest. If it is finally determined
5 that the tax is not due in whole or in part, the department
6 shall refund the part of the tax payment which is determined
7 not to be due together with interest on the amount of the
8 refund at the rate as determined under section 421.7.

9 Sec. 25. Section 421.17, subsection 21, paragraph e, Code
10 Supplement 1987, is amended to read as follows:

11 e. Upon notice of entitlement to a refund or rebate the
12 child support recovery unit, the foster care recovery unit, or
13 the office of investigations shall send written notification
14 to the debtor, and a copy of the notice to the department of
15 revenue and finance, of the unit's or office's assertion of
16 its rights or the rights of an individual not eligible as a
17 public assistance recipient to all or a portion of the
18 debtor's refund or rebate and the entitlement to recover the
19 debt through the setoff procedure, the basis of the assertion,
20 the opportunity to request that a joint income tax refund or
21 rebate be divided between spouses, the debtor's opportunity to
22 give written notice of intent to contest the claim, and the
23 fact that failure to contest the claim by written application
24 for a hearing will result in a waiver of the opportunity to
25 contest the claim, causing final setoff by default. Upon
26 application filed with the department within fifteen days from
27 the mailing of the notice of entitlement to a refund or
28 rebate, the child support recovery unit, the foster care
29 recovery unit, or the office of investigations shall grant a
30 hearing pursuant to chapter 17A. An appeal taken from the
31 decision of ~~a hearing officer~~ an administrative law judge and
32 subsequent appeals shall be taken pursuant to chapter 17A.

33 Sec. 26. Section 421.17, subsection 23, paragraph e, Code
34 Supplement 1987, is amended to read as follows:

35 e. Upon notice of entitlement to a refund or rebate, the

1 college aid commission shall send written notification to the
2 defaulter, and a copy of the notice to the department of
3 revenue and finance, of the commission's assertion of its
4 rights to all or a portion of the defaulter's refund or rebate
5 and the entitlement to recover the amount of the default
6 through the setoff procedure, the basis of the assertion, the
7 defaulter's opportunity to request that a joint income tax
8 refund or rebate be divided between spouses, the defaulter's
9 opportunity to give written notice of intent to contest the
10 claim, and the fact that failure to contest the claim by
11 written application for a hearing before a specified date will
12 result in a waiver of the opportunity to contest the claim,
13 causing final setoff by default. Upon application, the
14 commission shall grant a hearing pursuant to chapter 17A. An
15 appeal taken from the decision of ~~a-hearing-officer~~ an
16 administrative law judge and any subsequent appeals shall be
17 taken pursuant to chapter 17A.

18 Sec. 27. Section 601A.15, subsection 3, paragraphs a, b,
19 and c, Code 1987, are amended to read as follows:

20 a. After the filing of a verified complaint, a true copy
21 shall be served within twenty days by certified mail on the
22 person against whom the complaint is filed. An authorized
23 member of the commission staff shall make a prompt
24 investigation and shall issue a recommendation to ~~a-hearing~~
25 officer an administrative law judge under the jurisdiction of
26 the commission, who shall then issue a determination of
27 probable cause or no probable cause.

28 b. For purposes of this chapter, ~~a-hearing-officer~~ an
29 administrative law judge issuing a determination of probable
30 cause or no probable cause under this section ~~shall be~~ is
31 exempt from ~~the provisions of~~ section 17A.17.

32 c. If the ~~hearing-officer~~ administrative law judge concurs
33 with the investigating official that probable cause exists
34 regarding the allegations of the complaint, the staff of the
35 commission shall promptly endeavor to eliminate the

1 discriminatory or unfair practice by conference, conciliation,
2 and persuasion. If the ~~hearing-officer~~ administrative law
3 judge finds that no probable cause exists, the ~~hearing-officer~~
4 administrative law judge shall issue a final order dismissing
5 the complaint and shall promptly mail a copy to the
6 complainant and to the respondent by certified mail. A
7 finding of probable cause shall not be introduced into
8 evidence in an action brought under section 601A.16.

9 Sec. 28. Section 601A.15, subsection 5, Code 1987, is
10 amended to read as follows:

11 5. When the director is satisfied that further endeavor to
12 settle a complaint by conference, conciliation, and persuasion
13 is unworkable and should be bypassed, and the thirty-day
14 period provided for in subsection 3 has expired without
15 agreement, the director with the approval of a commissioner,
16 shall issue and cause to be served a written notice specifying
17 the charges in the complaint as they may have been amended and
18 the reasons for bypassing conciliation, if the conciliation is
19 bypassed, and requiring the respondent to answer the charges
20 of the complaint at a hearing before the commission, a
21 commissioner, or a person designated by the commission to
22 conduct the hearing, hereafter referred to as the hearing
23 ~~officer~~ administrative law judge, and at a time and place to
24 be specified in the notice.

25 Sec. 29. Section 601A.16, subsection 2, Code 1987, is
26 amended to read as follows:

27 2. Upon a request by the complainant, and after the
28 expiration of one hundred twenty days from the timely filing
29 of a complaint with the commission, the commission shall issue
30 to the complainant a release stating that the complainant has
31 a right to commence an action in the district court. A
32 release under this subsection shall not be issued if a finding
33 of no probable cause has been made on the complaint by the
34 ~~hearing-officer~~ administrative law judge charged with that
35 duty under section 601A.15, subsection 3, or a conciliation

1 agreement has been executed under section 601A.15, or the
2 commission has served notice of hearing upon the respondent
3 pursuant to section 601A.15, subsection 5.

4 Sec. 30. Section 602.9206, unnumbered paragraph 2, Code
5 1987, is amended to read as follows:

6 A senior judge also shall be available to serve in the
7 capacity of administrative ~~hearing-officer~~ law judge under
8 chapter 17A upon the request of an agency, and the supreme
9 court may assign a senior judge for temporary duties as a
10 ~~hearing-officer~~ an administrative law judge. A senior judge
11 shall not be required to serve a period of time as a ~~hearing~~
12 ~~officer~~ an administrative law judge which, when added to the
13 period of time being served by the person as a judge, if any,
14 would exceed the maximum period of time the person agreed to
15 serve pursuant to section 602.9203, subsection 2.

16 Sec. 31. Section 903A.1, Code 1987, is amended to read as
17 follows:

18 903A.1 CONDUCT REVIEW.

19 The director of the Iowa department of corrections shall
20 appoint independent ~~hearing-officers~~ administrative law judges
21 whose duties shall include but are not be limited to review,
22 as provided in section 903A.3, of the conduct of inmates in
23 institutions under the department.

24 Sec. 32. Section 903A.3, subsections 1 and 2, Code 1987,
25 are amended to read as follows:

26 1. Upon finding that an inmate has violated an
27 institutional rule, the independent ~~hearing-officer~~
28 administrative law judge may order forfeiture of any or all
29 good conduct time earned and not forfeited up to the date of
30 the violation by the inmate. The independent ~~hearing-officer~~
31 administrative law judge has discretion within the guidelines
32 established pursuant to section 903A.4, to determine the
33 amount of time that should be forfeited based upon the
34 severity of the violation. Prior violations by the inmate may
35 be considered by the ~~hearing-officer~~ administrative law judge

1 in the decision.

2 2. The orders of the ~~hearing-officer~~ administrative law
3 judge are subject to appeal to the superintendent or warden of
4 the institution, or the superintendent's or warden's designee,
5 who may either affirm, modify, remand for correction of
6 procedural errors, or reverse an order. However, sanctions
7 shall not be increased on appeal. A decision of the
8 superintendent, warden, or designee is subject to review by
9 the director of the Iowa department of corrections who may
10 either affirm, modify, remand for correction of procedural
11 errors, or reverse the decision. However, sanctions shall not
12 be increased on review.

13 EXPLANATION

14 The bill changes the title of "hearing officer" to
15 "administrative law judge".

16 SUCCESSOR TO HSB 311 (LSB 2585HC)

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Judiciary & Law Enforcement

Now

HOUSE FILE *2430*

BY (PROPOSED COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT BILL)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act to designate hearing officers as administrative law
2 judges.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUB COMMITTEE ASSIGNMENTS

CHAIR: *Gay*
COMMITTEE: *Judiciary*
3/20/87

1 Section 1. Section 10A.101, subsection 3, Code 1987, is
2 amended to read as follows:

3 3. "Administrators" means the chief ~~hearing-officer~~
4 administrative law judge, chief inspector, chief investigator,
5 and chief auditor.

6 Sec. 2. Section 10A.201, subsection 1, Code 1987, is
7 amended to read as follows:

8 1. "Administrator" means the chief ~~hearing-officer~~
9 administrative law judge, who shall coordinate the
10 administration of this division.

11 Sec. 3. Section 10A.601, subsection 4, Code 1987, is
12 amended to read as follows:

13 4. The appeal board may on its own motion affirm, modify,
14 or set aside a decision of ~~a-hearing-officer~~ an administrative
15 law judge on the basis of the evidence previously submitted in
16 the contested case, or direct the taking of additional
17 evidence, or may permit any of the parties to the decision to
18 initiate further appeals before the appeal board. The appeal
19 board shall permit further appeal by any of the parties
20 interested in a decision of ~~a-hearing-officer~~ an
21 administrative law judge and by the representative whose
22 decision has been overruled or modified by the ~~hearing-officer~~
23 administrative law judge. The appeal board shall review the
24 case pursuant to rules adopted by the appeal board. The
25 appeal board shall promptly notify the interested parties of
26 its findings and decision.

27 Sec. 4. Section 17A.11, Code 1987, is amended to read as
28 follows:

29 17A.11 PRESIDING OFFICER --ADMINISTRATIVE HEARING-OFFICERS
30 LAW JUDGES.

31 1. The presiding officer in evidentiary hearings required
32 to be conducted by an agency according to the provisions of
33 this chapter governing contested cases shall be the agency,
34 one or more members of a multimember agency, or an
35 administrative ~~hearing-officer~~ law judge appointed according

1 to the terms of this section. Each agency needing the
2 services of one or more permanent full-time or part-time
3 administrative hearing-officers law judges shall appoint as
4 many of them to its staff as are necessary for this purpose.
5 Agencies shall assign administrative hearing-officers law
6 judges to cases in rotation unless it is not feasible.
7 Administrative hearing-officers law judges shall not perform
8 duties inconsistent with their duties and responsibilities as
9 hearing-officers administrative law judges.

10 2. Administrative hearing-officers-~~shall~~-be law judges are
11 covered by the merit system of personnel administration,
12 chapter 19A. The department of personnel or other appropriate
13 agency specified in section 19A.3 shall, insofar as
14 practicable, provide for different classes of administrative
15 hearing-officers law judges with different salary scales.

16 3. An agency whose work load is such that the appointment
17 of a permanent full-time or part-time administrative hearing
18 officer law judge is unwarranted, or an agency whose work load
19 is such that one or more additional administrative hearing
20 officers law judges are temporarily required, may use
21 administrative hearing-officers law judges selected by the
22 department of personnel from other agencies having hearing
23 officers administrative law judges that are temporarily
24 available and that are qualified to preside at the hearings
25 held by the agency requesting the temporary use of a hearing
26 officer an administrative law judge. In cases where an agency
27 borrows one or more administrative hearing-officers law judges
28 from other agencies, the salaries and expenses of those
29 administrative hearing-officers law judges shall be
30 apportioned and charged to the several agencies according to
31 their use.

32 Sec. 5. Section 20.6, subsection 4, Code 1987, is amended
33 to read as follows:

34 4. Hold hearings and administer oaths, examine witnesses
35 and documents, take testimony and receive evidence, issue

1 subpoenas to compel the attendance of witnesses and the
2 production of records, and delegate such power to a member of
3 the board, or persons appointed or employed by the board,
4 including ~~hearing-officers~~ administrative law judges for the
5 performance of its functions. The board may petition the
6 district court at the seat of government or of the county
7 ~~wherein-any~~ where a hearing is held to enforce a board order
8 compelling the attendance of witnesses and production of
9 records.

10 Sec. 6. Section 20.11, subsection 2, Code 1987, is amended
11 to read as follows:

12 2. The board may designate ~~a-hearing-officer~~ an
13 administrative law judge to conduct the hearing. The ~~hearing~~
14 ~~officer-shall-have-such~~ administrative law judge has the
15 powers as may be exercised by the board for conducting the
16 hearing and shall follow the procedures adopted by the board
17 for conducting the hearing. The decision of the ~~hearing~~
18 ~~officer~~ administrative law judge may be appealed to the board
19 and the board may hear the case de novo or upon the record as
20 submitted before the ~~hearing-officer~~ administrative law judge,
21 utilizing procedures governing appeals to the district court
22 in this section so far as applicable.

23 Sec. 7. Section 89A.10, subsection 2, unnumbered paragraph
24 1, Code 1987, is amended to read as follows:

25 If the owner does not make the changes necessary for
26 compliance as required in subsection 1 within the period
27 specified by the commissioner, the commissioner, upon notice,
28 may suspend or revoke the operating permit, or may refuse to
29 issue the operating permit for the facility. The commissioner
30 shall notify the owner of any action to suspend, revoke, or
31 refuse to issue an operating permit and the reason for the
32 action by certified mail. An owner may appeal the
33 commissioner's initial decision. The appeal shall be heard by
34 ~~a-hearing-officer~~ an administrative law judge of the
35 department of inspections and appeals. An owner who, after a

1 hearing before ~~a hearing officer~~ an administrative law judge,
2 is aggrieved by a suspension, revocation, or refusal to issue
3 an operating permit may appeal to the employment appeal board
4 created under section 10A.601. Notice of appeal shall be
5 filed with the appeal board within thirty calendar days from
6 receipt of the notice of the commissioner's action.

7 Sec. 8. Section 89A.10, subsection 2, unnumbered paragraph
8 3, Code 1987, is amended to read as follows:

9 No proceedings before the commissioner or the
10 commissioner's agents, ~~a hearing officer~~ an administrative law
11 judge, the appeal board, or any district court of this state
12 shall be deemed to deny any an owner an operating permit until
13 there is a final adjudication of the matter. No An objection
14 which has not been urged before the appeal board shall not be
15 considered by the court, unless the failure or neglect to urge
16 the objection is excused because of extraordinary
17 circumstances. The findings of the appeal board with respect
18 to questions of fact, if supported by substantial evidence on
19 the record considered as a whole, are conclusive. The appeal
20 board's copy of the testimony shall be available to all
21 parties for examination at all reasonable times, without cost,
22 and for the purpose of judicial review of the appeal board's
23 orders. Upon the filing of the record with it, the
24 jurisdiction of the court is exclusive and its judgment and
25 decree is final, except that it is subject to review by the
26 Iowa supreme court.

27 Sec. 9. Section 96.6, subsections 2 and 3, Code 1987, are
28 amended to read as follows:

29 2. INITIAL DETERMINATION. A representative designated by
30 the commissioner shall promptly notify all interested parties
31 to the claim of its filing, and the parties have ten days from
32 the date of mailing the notice of the filing of the claim by
33 ordinary mail to the last known address to protest payment of
34 benefits to the claimant. The representative shall promptly
35 examine the claim and any protest, take the initiative to

1 ascertain relevant information concerning the claim, and, on
2 the basis of the facts found by the representative, shall
3 determine whether or not the claim is valid, the week with
4 respect to which benefits shall commence, the weekly benefit
5 amount payable and its maximum duration, and whether any
6 disqualification shall be imposed. The claimant has the
7 burden of proving that the claimant meets the basic
8 eligibility conditions of section 96.4. The employer has the
9 burden of proving that the claimant is disqualified for
10 benefits pursuant to section 96.5. However, the claimant has
11 the initial burden to produce evidence showing that the
12 claimant is not disqualified for benefits in cases involving
13 section 96.5, subsection 1, paragraphs "a" through "i", and
14 subsection 10. Unless the claimant or other interested party,
15 after notification or within ten calendar days after
16 notification was mailed to the claimant's last known address,
17 files an appeal from the decision, the decision is final and
18 benefits shall be paid or denied in accordance with it. If a
19 ~~hearing-officer~~ an administrative law judge affirms a decision
20 of the representative, or the appeal board affirms a decision
21 of the ~~hearing-officer~~ administrative law judge allowing
22 benefits, the benefits shall be paid regardless of any appeal
23 which is thereafter taken, but if the decision is finally
24 reversed, no employer's account shall be charged with benefits
25 so paid.

26 3. APPEALS. Unless such the appeal is withdrawn, a
27 ~~hearing-officer~~ an administrative law judge, after affording
28 the parties reasonable opportunity for fair hearing, shall
29 affirm or modify the findings of fact and decision of the
30 representative. The hearing shall be conducted pursuant to
31 the provisions of chapter 17A relating to hearings for
32 contested cases. Before the hearing is scheduled, the parties
33 shall be afforded the opportunity to choose either a telephone
34 hearing or an in-person hearing. A request for an in-person
35 hearing shall be approved unless the in-person hearing would

1 be impractical because of the distance between the parties to
2 the hearing. A telephone or in-person hearing shall not be
3 scheduled before the seventh calendar day after the parties
4 receive notice of the hearing. Reasonable requests for the
5 postponement of a hearing shall be granted. The parties shall
6 be duly notified of the ~~hearing-officer's~~ administrative law
7 judge's decision, together with the ~~hearing-officer's~~
8 administrative law judge's reasons therefor for the decision,
9 which ~~shall-be-deemed-to-be~~ is the final decision of the
10 division, unless within fifteen days after the date of
11 notification or mailing of ~~such~~ the decision, further appeal
12 is initiated pursuant to this section.

13 Appeals from the initial determination shall be heard by a
14 ~~hearing-officer~~ an administrative law judge employed by the
15 division of job service. ~~A-hearing-officer's~~ An
16 administrative law judge's decision may be appealed by any
17 party to the employment appeal board created in section
18 10A.601. The decision of the appeal board is final agency
19 action and an appeal of the decision shall be made directly to
20 the district court.

21 Sec. 10. Section 96.7, subsection 3, paragraph a,
22 subparagraph (6), Code 1987, is amended to read as follows:

23 (6) As soon as practicable after the close of each
24 calendar quarter, and in any event within forty days after the
25 close of ~~such~~ each quarter, the division shall notify each
26 employer of the amount that has been charged to the employer's
27 account for benefits paid during ~~such~~ that quarter. This
28 statement to the employer shall show the name of each claimant
29 to whom ~~such~~ the benefit payments were made, the claimant's
30 social security number, and the amount of benefits paid to
31 ~~such~~ the claimant. ~~Any~~ An employer who has not been notified
32 as provided in section 96.6, subsection 2, of the allowance of
33 benefits to such claimants may within thirty days after the
34 receipt of ~~such~~ the statement appeal to the commissioner for a
35 hearing to determine the eligibility of the claimant to

1 receive such benefits. The commissioner shall refer the same
2 to ~~a-hearing-officer~~ an administrative law judge for hearing
3 and both the employer and the claimant shall receive notice of
4 the time and place of ~~such~~ the hearing.

5 Sec. 11. Section 96.7, subsection 4, paragraph d,
6 unnumbered paragraph 3, Code 1987, is amended to read as
7 follows:

8 A hearing on an appeal shall be conducted according to the
9 ~~regulations-and rules promulgated~~ adopted by the division. A
10 copy of the decision of the ~~hearing-officer~~ administrative law
11 judge shall be sent by regular mail to the last address,
12 according to the records of the division, of each affected
13 employing unit or employer.

14 Sec. 12. Section 96.11, subsection 7, paragraph f, Code
15 1987, is amended to read as follows:

16 f. An employee of the division, ~~a-hearing-officer~~ an
17 administrative law judge, or a member of the appeal board who
18 violates this section is guilty of a serious misdemeanor.

19 Sec. 13. Section 97B.25, Code 1987, is amended to read as
20 follows:

21 97B.25 APPLICATIONS FOR BENEFITS.

22 A representative designated by the administrator and
23 referred to in this chapter as a benefits deputy, shall
24 promptly examine applications for retirement benefits and on
25 the basis of facts found shall determine whether or not the
26 claim is valid and if valid, the month with respect to which
27 benefits shall commence, the monthly benefit amount payable,
28 and the maximum duration. The deputy shall promptly notify
29 the applicant and any other interested party of the decision
30 and the reasons. Unless the applicant or other interested
31 party, within thirty calendar days after the notification was
32 mailed to the applicant's or party's last known address, files
33 an appeal to ~~a-hearing-officer~~ an administrative law judge in
34 the department of inspections and appeals, the decision is
35 final and benefits shall be paid or denied in accord with the

1 decision.

2 Sec. 14. Section 97B.26, Code 1987, is amended to read as
3 follows:

4 97B.26 ~~HEARING-OFFICER~~ ADMINISTRATIVE LAW JUDGE.

5 If an appeal is filed and is not withdrawn, ~~a-hearing~~
6 ~~officer~~ an administrative law judge in the department of
7 inspections and appeals, after affording the parties
8 reasonable opportunity for fair hearing, shall affirm, modify,
9 or reverse the findings of fact and decision of the benefits
10 deputy. The hearing shall be recorded by mechanical means and
11 a transcript of the hearing shall be made. The transcript
12 shall then be made available for use by the employment appeal
13 board and by the courts at subsequent judicial review
14 proceedings under the Iowa administrative procedure Act, if
15 any. The parties shall be duly notified of the ~~hearing~~
16 ~~officer's~~ administrative law judge's decision, together with
17 the ~~hearing-officer's~~ administrative law judge's reasons. The
18 decision is final unless, within thirty days after the date of
19 notification or mailing of the decision, review by the
20 employment appeal board is initiated pursuant to section
21 97B.27.

22 Sec. 15. Section 97B.27, Code 1987, is amended to read as
23 follows:

24 97B.27 REVIEW OF DECISION.

25 Anyone aggrieved by the decision of the ~~hearing-officer~~
26 administrative law judge may, at any time before the ~~hearing~~
27 ~~officer's~~ administrative law judge's decision becomes final,
28 petition the department of inspections and appeals for review
29 by the employment appeal board established in section 10A.601.
30 The appeal board shall review the record made before the
31 ~~hearing-officer~~ administrative law judge, but no additional
32 evidence shall be heard. On the basis of the record the
33 appeal board shall affirm, modify, or reverse the decision of
34 the ~~hearing-officer~~ administrative law judge and shall
35 determine the rights of the appellant. It shall promptly

1 notify the appellant and any other interested party by written
2 decision.

3 Sec. 16. Section 148.7, subsections 3 and 5, Code 1987,
4 are amended to read as follows:

5 3. The hearing shall be before a member or members
6 designated by the board or before ~~a hearing officer~~ an
7 administrative law judge appointed by the board. The
8 presiding board member or ~~hearing officer is empowered to~~
9 administrative law judge may issue subpoenas, administer oaths
10 and take or cause depositions to be taken in connection with
11 the hearing. The presiding board member or ~~hearing officer~~
12 administrative law judge shall issue subpoenas at the request
13 and on behalf of the licensee. The hearing shall be open to
14 the public.

15 The compensation of the ~~hearing officer~~ administrative law
16 judge shall be fixed by the medical examiners. The ~~hearing~~
17 ~~officer~~ administrative law judge shall be an attorney vested
18 with full authority of the board to schedule and conduct
19 hearings. The ~~hearing officer~~ administrative law judge shall
20 prepare and file with the medical examiners the ~~hearing~~
21 ~~officer's~~ administrative law judge's findings of fact and
22 conclusions of law, together with a complete written
23 transcript of all testimony and evidence introduced at the
24 hearing and all exhibits, pleas, motions, objections and
25 rulings of the ~~hearing officer~~ administrative law judge.

26 5. If a person refuses to obey a subpoena issued by the
27 presiding member or ~~hearing officer~~ administrative law judge
28 or to answer a proper question during the hearing, the
29 presiding member or ~~hearing officer~~ administrative law judge
30 may invoke the aid of a court of competent jurisdiction or
31 judge of this court in requiring the attendance and testimony
32 of such the person and the production of papers. A failure to
33 obey such the order of the court may be punished by the court
34 as a civil contempt may be punished.

35 Sec. 17. Section 169.5, subsection 9, paragraph e, Code

1 1987, is amended to read as follows:

2 e. Hold hearings on all matters properly brought before
3 the board and administer oaths, receive evidence, make the
4 necessary determinations, and enter orders consistent with the
5 findings. The board may require by subpoena the attendance
6 and testimony of witnesses and the production of papers,
7 records, or other documentary evidence and commission
8 depositions. An administrative hearing-officer law judge may
9 be appointed pursuant to section 17A.11, subsection 3 to
10 perform those functions which properly repose in an
11 administrative hearing-officer law judge.

12 Sec. 18. Section 169.14, subsections 3 and 5, Code 1987,
13 are amended to read as follows:

14 3. The hearing shall be before a member or members
15 designated by the board or before ~~a hearing-officer~~ an
16 administrative law judge appointed by the board. The
17 presiding board member or ~~hearing-officer~~ administrative law
18 judge may issue subpoenas, administer oaths, and take or cause
19 depositions to be taken in connection with the hearing. The
20 member or officer shall issue subpoenas at the request and on
21 behalf of the licensee.

22 5. If a person refuses to obey a subpoena issued by the
23 presiding member or ~~hearing-officer~~ administrative law judge
24 or to answer a proper question put to that person during the
25 hearing, the presiding member or ~~hearing-officer~~
26 administrative law judge may invoke the aid of a court of
27 competent jurisdiction in requiring the attendance and
28 testimony of that person and the production of papers. A
29 failure to obey the order of the court may be punished by the
30 court as a civil contempt may be punished.

31 Sec. 19. Section 191A.7, Code 1987, is amended to read as
32 follows:

33 191A.7 DISCIPLINARY ACTION.

34 A license issued under this chapter may be revoked by the
35 regulatory authority for violation by the licensee of a

1 provision of this chapter or an applicable rule of the
2 department. In lieu of license revocation, the regulatory
3 authority may require the immediate discontinuance of
4 operation of a vending machine or commissary if it finds
5 unsanitary conditions or other conditions which constitute a
6 substantial hazard to the public health. The order shall
7 apply only to the vending machines, commissary, or product
8 involved. A person whose license is revoked, or who is
9 ordered to discontinue the operation of a vending machine or
10 commissary, may appeal that decision to the director. The
11 director or the chief ~~hearing-officer~~ administrative law judge
12 of the department shall schedule and hold a hearing upon the
13 appeal not later than thirty days from the time of revocation
14 or the order of discontinuance. The director or the chief
15 ~~hearing-officer~~ administrative law judge shall issue a
16 decision immediately following the hearing. Judicial review
17 may be sought in accordance with the ~~terms-of-the~~ Iowa
18 administrative procedure Act.

19 Sec. 20. Section 272A.8, Code 1987, is amended to read as
20 follows:

21 272A.8 APPOINTMENT OF HEARING-OFFICERS ADMINISTRATIVE LAW
22 JUDGES.

23 The commission shall maintain a list of qualified persons
24 to serve as ~~hearing-officers~~ administrative law judges who are
25 experienced in the educational system of this state when a
26 hearing is requested under ~~the-provisions-of~~ section 279.24.
27 When requested under ~~the-provisions-of~~ section 279.24, the
28 commission shall submit a list of five qualified ~~hearing~~
29 ~~officers~~ administrative law judges to the parties. The
30 hearing shall be held pursuant to the provisions of chapter
31 17A relating to contested cases. The full costs of the
32 hearing shall be shared equally by the parties. A person who
33 is employed as a teacher or administrator by a school district
34 ~~shall~~ is not be eligible to serve as a ~~hearing-officer~~ an
35 administrative law judge.

1 Sec. 21. Section 279.24, unnumbered paragraphs 7, 8, 9,
2 and 10, Code 1987, are amended to read as follows:

3 Within five days after receipt of the written notice that
4 the board has voted to consider termination of the contract,
5 the administrator may request in writing to the secretary of
6 the board that the notification be forwarded to the
7 professional teaching practices commission along with a
8 request that the professional teaching practices commission
9 submit a list of five qualified ~~hearing-officers~~
10 administrative law judges to the parties. Within three days
11 from receipt of the list the parties shall select a hearing
12 officer by alternately removing a name from the list until
13 only one name remains. The person whose name remains shall be
14 the hearing officer. The parties shall determine by lot which
15 party shall remove the first name from the list. The hearing
16 shall be held no sooner than ten days and not later than
17 thirty days following the administrator's request unless the
18 parties otherwise agree. If the administrator does not
19 request a hearing, the board, not later than April 15, may
20 determine the continuance or discontinuance of the contract.
21 Board action shall be by majority roll call vote entered on
22 the minutes of the meeting. Notice of board action shall be
23 personally delivered or mailed to the administrator.

24 The ~~hearing-officer~~ administrative law judge selected shall
25 notify the secretary of the board and the administrator in
26 writing concerning the date, time, and location of the
27 hearing. The board may be represented by a legal
28 representative, if any, and the administrator shall appear and
29 may be represented by counsel or by representative, if any. A
30 transcript or recording shall be made of the proceedings at
31 the hearing. No A school board member or administrator shall
32 be is not liable for any damage to any an administrator or
33 board member if any a statement made at the hearing is
34 determined to be erroneous as long as the statement was made
35 in good faith.

1 The ~~hearing-officer~~ administrative law judge shall, within
2 ten days following the date of the hearing, make a proposed
3 decision as to whether or not the administrator should be
4 dismissed, and shall give a copy of the proposed decision to
5 the administrator and the school board. Findings of fact
6 shall be prepared by the ~~hearing-officer~~ administrative law
7 judge. The proposed decision of the ~~hearing-officer~~
8 administrative law judge shall become the final decision of
9 the board unless within ten days after the filing of the
10 decision the administrator files a written notice of appeal
11 with the board, or the board on its own motion determines to
12 review the decision.

13 If the administrator appeals to the board, or if the board
14 determines on its own motion to review the proposed decision
15 of the ~~hearing-officer~~ administrative law judge, a private
16 hearing shall be held before the board within five days after
17 the petition for review, or motion for review, has been made
18 or at such other time as the parties may agree. The private
19 hearing ~~shall~~ is not be subject to the ~~provisions of~~ chapter
20 21. The board may hear the case de novo upon the record as
21 submitted before the hearing officer. In cases where there is
22 an appeal from a proposed decision or where a proposed
23 decision is reviewed on motion of the board, an opportunity
24 shall be afforded to each party to file exceptions, present
25 briefs and present oral arguments to the board which is to
26 render the final decision. The secretary of the board shall
27 give the administrator written notice of the time, place, and
28 date of the hearing. The board shall meet within five days
29 after the hearing to determine the question of continuance or
30 discontinuance of the contract. The board shall make findings
31 of fact which shall be based solely on the evidence in the
32 record and on matters officially noticed in the record.

33 Sec. 22. Section 281.6, unnumbered paragraph 3, Code 1987,
34 is amended to read as follows:

35 Notwithstanding section 17A.11, the state board of

1 education shall adopt rules for the appointment of an
2 impartial administrative hearing-officer law judge for special
3 education appeals. The rules shall comply with federal
4 statutes and regulations.

5 Sec. 23. Section 321J.13, subsection 3, Code 1987, is
6 amended to read as follows:

7 3. After the hearing the department shall order that the
8 revocation be either rescinded or sustained. ~~In-the-event~~
9 ~~that~~ If the revocation is sustained, the administrative
10 hearing-officer law judge who conducted the hearing has
11 ~~authority-to~~ may issue a temporary restricted license to the
12 person whose motor vehicle license or operating privilege was
13 revoked. Upon receipt of the decision of the department to
14 sustain a revocation, the person contesting the revocation
15 ~~shall-have~~ has ten days to file a request for review of the
16 decision by the director. The director or the director's
17 designee shall review the decision within fifteen days and
18 shall either rescind or sustain the revocation or order a new
19 hearing. If the director orders a new hearing, the department
20 shall grant the person a new hearing within thirty days of the
21 director's order.

22 Sec. 24. Section 421.8A, Code 1987, is amended to read as
23 follows:

24 421.8A DISPUTED ASSESSMENTS.

25 For any a contested case, as defined in section 17A.2,
26 commenced on or after January 1, 1987, the person disputing
27 the assessment must pay all tax, interest and penalty
28 pertaining to the disputed assessment prior to the
29 commencement of the contested case. Upon a showing of good
30 cause, the hearing-officer administrative law judge shall
31 allow the person to post a bond in an amount established by
32 the hearing-officer administrative law judge, but not in
33 excess of all tax, interest, and penalty, in lieu of paying
34 all tax, interest and penalty.

35 The director shall adopt rules establishing procedures for

1 payment of taxes under protest. If it is finally determined
2 that the tax is not due in whole or in part, the department
3 shall refund the part of the tax payment which is determined
4 not to be due together with interest on the amount of the
5 refund at the rate as determined under section 421.7.

6 Sec. 25. Section 421.17, subsection 21, paragraph e, Code
7 1987, is amended to read as follows:

8 e. Upon notice of entitlement to a refund or rebate the
9 child support recovery unit, the foster care recovery unit, or
10 the office of investigations shall send written notification
11 to the debtor, and a copy of the notice to the department of
12 revenue and finance, of the unit's or office's assertion of
13 its rights or the rights of an individual not eligible as a
14 public assistance recipient to all or a portion of the
15 debtor's refund or rebate and the entitlement to recover the
16 debt through the setoff procedure, the basis of the assertion,
17 the opportunity to request that a joint income tax refund or
18 rebate be divided between spouses, the debtor's opportunity to
19 give written notice of intent to contest the claim, and the
20 fact that failure to contest the claim by written application
21 for a hearing will result in a waiver of the opportunity to
22 contest the claim, causing final setoff by default. Upon
23 application filed with the department within fifteen days from
24 the mailing of the notice of entitlement to a refund or
25 rebate, the child support recovery unit, the foster care
26 recovery unit, or the office of investigations shall grant a
27 hearing pursuant to chapter 17A. An appeal taken from the
28 decision of ~~a hearing officer~~ an administrative law judge and
29 subsequent appeals shall be taken pursuant to chapter 17A.

30 Sec. 26. Section 421.17, subsection 23, paragraph e, Code
31 1987, is amended to read as follows:

32 e. Upon notice of entitlement to a refund or rebate, the
33 college aid commission shall send written notification to the
34 defaulter, and a copy of the notice to the department of
35 revenue and finance, of the commission's assertion of its

1 rights to all or a portion of the defaulter's refund or rebate
2 and the entitlement to recover the amount of the default
3 through the setoff procedure, the basis of the assertion, the
4 defaulter's opportunity to request that a joint income tax
5 refund or rebate be divided between spouses, the defaulter's
6 opportunity to give written notice of intent to contest the
7 claim, and the fact that failure to contest the claim by
8 written application for a hearing before a specified date will
9 result in a waiver of the opportunity to contest the claim,
10 causing final setoff by default. Upon application, the
11 commission shall grant a hearing pursuant to chapter 17A. An
12 appeal taken from the decision of ~~a-hearing-officer~~ an
13 administrative law judge and any subsequent appeals shall be
14 taken pursuant to chapter 17A.

15 Sec. 27. Section 601A.15, subsection 3, paragraphs a, b,
16 and c, Code 1987, are amended to read as follows:

17 a. After the filing of a verified complaint, a true copy
18 shall be served within twenty days by certified mail on the
19 person against whom the complaint is filed. An authorized
20 member of the commission staff shall make a prompt
21 investigation and shall issue a recommendation to ~~a-hearing~~
22 ~~officer~~ an administrative law judge under the jurisdiction of
23 the commission, who shall then issue a determination of
24 probable cause or no probable cause.

25 b. For purposes of this chapter, ~~a-hearing-officer~~ an
26 administrative law judge issuing a determination of probable
27 cause or no probable cause under this section ~~shall be~~ is
28 exempt from ~~the-provisions-of~~ section 17A.17.

29 c. If the ~~hearing-officer~~ administrative law judge concurs
30 with the investigating official that probable cause exists
31 regarding the allegations of the complaint, the staff of the
32 commission shall promptly endeavor to eliminate the
33 discriminatory or unfair practice by conference, conciliation,
34 and persuasion. If the ~~hearing-officer~~ administrative law
35 judge finds that no probable cause exists, the ~~hearing-officer~~

1 administrative law judge shall issue a final order dismissing
2 the complaint and shall promptly mail a copy to the
3 complainant and to the respondent by certified mail. A
4 finding of probable cause shall not be introduced into
5 evidence in an action brought under section 601A.16.

6 Sec. 28. Section 601A.15, subsection 5, Code 1987, is
7 amended to read as follows:

8 5. When the director is satisfied that further endeavor to
9 settle a complaint by conference, conciliation, and persuasion
10 is unworkable and should be bypassed, and the thirty-day
11 period provided for in subsection 3 has expired without
12 agreement, the director with the approval of a commissioner,
13 shall issue and cause to be served a written notice specifying
14 the charges in the complaint as they may have been amended and
15 the reasons for bypassing conciliation, if the conciliation is
16 bypassed, and requiring the respondent to answer the charges
17 of the complaint at a hearing before the commission, a
18 commissioner, or a person designated by the commission to
19 conduct the hearing, hereafter referred to as the hearing
20 officer administrative law judge, and at a time and place to
21 be specified in the notice.

22 Sec. 29. Section 601A.16, subsection 2, Code 1987, is
23 amended to read as follows:

24 2. Upon a request by the complainant, and after the
25 expiration of one hundred twenty days from the timely filing
26 of a complaint with the commission, the commission shall issue
27 to the complainant a release stating that the complainant has
28 a right to commence an action in the district court. A
29 release under this subsection shall not be issued if a finding
30 of no probable cause has been made on the complaint by the
31 ~~hearing-officer~~ administrative law judge charged with that
32 duty under section 601A.15, subsection 3, or a conciliation
33 agreement has been executed under section 601A.15, or the
34 commission has served notice of hearing upon the respondent
35 pursuant to section 601A.15, subsection 5.

1 Sec. 30. Section 602.9206, unnumbered paragraph 2, Code
2 1987, is amended to read as follows:

3 A senior judge also shall be available to serve in the
4 capacity of administrative ~~hearing-officer~~ law judge under
5 chapter 17A upon the request of an agency, and the supreme
6 court may assign a senior judge for temporary duties as a
7 ~~hearing-officer~~ an administrative law judge. A senior judge
8 shall not be required to serve a period of time as a ~~hearing~~
9 ~~officer~~ an administrative law judge which, when added to the
10 period of time being served by the person as a judge, if any,
11 would exceed the maximum period of time the person agreed to
12 serve pursuant to section 602.9203, subsection 2.

13 Sec. 31. Section 903A.1, Code 1987, is amended to read as
14 follows:

15 903A.1 CONDUCT REVIEW.

16 The director of the Iowa department of corrections shall
17 appoint independent ~~hearing-officers~~ administrative law judges
18 whose duties shall include but are not be limited to review,
19 as provided in section 903A.3, of the conduct of inmates in
20 institutions under the department.

21 Sec. 32. Section 903A.3, subsections 1 and 2, Code 1987,
22 are amended to read as follows:

23 1. Upon finding that an inmate has violated an
24 institutional rule, the independent ~~hearing-officer~~
25 administrative law judge may order forfeiture of any or all
26 good conduct time earned and not forfeited up to the date of
27 the violation by the inmate. The independent ~~hearing-officer~~
28 administrative law judge has discretion within the guidelines
29 established pursuant to section 903A.4, to determine the
30 amount of time that should be forfeited based upon the
31 severity of the violation. Prior violations by the inmate may
32 be considered by the ~~hearing-officer~~ administrative law judge
33 in the decision.

34 2. The orders of the ~~hearing-officer~~ administrative law
35 judge are subject to appeal to the superintendent or warden of

1 the institution, or the superintendent's or warden's designee,
2 who may either affirm, modify, remand for correction of
3 procedural errors, or reverse an order. However, sanctions
4 shall not be increased on appeal. A decision of the
5 superintendent, warden, or designee is subject to review by
6 the director of the Iowa department of corrections who may
7 either affirm, modify, remand for correction of procedural
8 errors, or reverse the decision. However, sanctions shall not
9 be increased on review.

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EXPLANATION

11 The bill changes the title of "hearing officer" to
12 "administrative law judge".

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House File 2430

AN ACT
TO DESIGNATE HEARING OFFICERS AS ADMINISTRATIVE LAW JUDGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 10A.101, subsection 3, Code 1987, is amended to read as follows:

3. "Administrators" means the chief hearing-officer administrative law judge, chief inspector, chief investigator, and chief auditor.

Sec. 2. Section 10A.201, subsection 1, Code 1987, is amended to read as follows:

1. "Administrator" means the chief hearing-officer administrative law judge, who shall coordinate the administration of this division.

Sec. 3. Section 10A.601, subsection 4, Code 1987, is amended to read as follows:

4. The appeal board may on its own motion affirm, modify, or set aside a decision of a hearing-officer an administrative law judge on the basis of the evidence previously submitted in the contested case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before the appeal board. The appeal board shall permit further appeal by any of the parties interested in a decision of a hearing-officer an administrative law judge and by the representative whose decision has been overruled or modified by the hearing-officer administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Sec. 4. Section 17A.11, Code 1987, is amended to read as follows:

17A.11 PRESIDING OFFICER -- ADMINISTRATIVE HEARING OFFICERS LAW JUDGES.

1. The presiding officer in evidentiary hearings required to be conducted by an agency according to the provisions of this chapter governing contested cases shall be the agency, one or more members of a multimember agency, or an administrative hearing-officer law judge appointed according to the terms of this section. Each agency needing the services of one or more permanent full-time or part-time administrative hearing-officers law judges shall appoint as many of them to its staff as are necessary for this purpose. Agencies shall assign administrative hearing-officers law judges to cases in rotation unless it is not feasible. Administrative hearing-officers law judges shall not perform duties inconsistent with their duties and responsibilities as hearing-officers administrative law judges.

2. Administrative hearing-officers ~~shall be~~ law judges are covered by the merit system of personnel administration, chapter 19A. The department of personnel or other appropriate agency specified in section 19A.3 shall, insofar as practicable, provide for different classes of administrative hearing-officers law judges with different salary scales.

3. An agency whose work load is such that the appointment of a permanent full-time or part-time administrative hearing officer law judge is unwarranted, or an agency whose work load is such that one or more additional administrative hearing officers law judges are temporarily required, may use administrative hearing-officers law judges selected by the department of personnel from other agencies having hearing officers administrative law judges that are temporarily available and that are qualified to preside at the hearings held by the agency requesting the temporary use of a hearing

officer an administrative law judge. In cases where an agency borrows one or more administrative hearing-officers law judges from other agencies, the salaries and expenses of those administrative hearing-officers law judges shall be apportioned and charged to the several agencies according to their use.

Sec. 5. Section 20.6, subsection 4, Code 1987, is amended to read as follows:

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including hearing-officers administrative law judges for the performance of its functions. The board may petition the district court at the seat of government or of the county wherein-any where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

Sec. 6. Section 20.11, subsection 2, Code 1987, is amended to read as follows:

2. The board may designate a hearing-officer an administrative law judge to conduct the hearing. ~~The hearing officer shall have such administrative law judge has the~~ powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the hearing officer administrative law judge may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the hearing-officer administrative law judge, utilizing procedures governing appeals to the district court in this section so far as applicable.

Sec. 7. Section 89A.10, subsection 2, unnumbered paragraph 1, Code 1987, is amended to read as follows:

If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the facility. The commissioner shall notify the owner of any action to suspend, revoke, or refuse to issue an operating permit and the reason for the action by certified mail. An owner may appeal the commissioner's initial decision. The appeal shall be heard by a hearing-officer an administrative law judge of the department of inspections and appeals. An owner who, after a hearing before a hearing-officer an administrative law judge, is aggrieved by a suspension, revocation, or refusal to issue an operating permit may appeal to the employment appeal board created under section 10A.601. Notice of appeal shall be filed with the appeal board within thirty calendar days from receipt of the notice of the commissioner's action.

Sec. 8. Section 89A.10, subsection 2, unnumbered paragraph 3, Code 1987, is amended to read as follows:

No proceedings before the commissioner or the commissioner's agents, a hearing-officer an administrative law judge, the appeal board, or any district court of this state shall be deemed to deny any an owner an operating permit until there is a final adjudication of the matter. No An objection which has not been urged before the appeal board shall not be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the appeal board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are conclusive. The appeal board's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the appeal board's orders. Upon the filing of the record with it, the

jurisdiction of the court is exclusive and its judgment and decree is final, except that it is subject to review by the Iowa supreme court.

Sec. 9. Section 96.6, subsections 2 and 3, Code 1987, are amended to read as follows:

2. INITIAL DETERMINATION. A representative designated by the commissioner shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5. However, the claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "i", and subsection 10. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with it. If a hearing-officer an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the hearing-officer administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal

which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid.

3. APPEALS. Unless such the appeal is withdrawn, a hearing-officer an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the hearing-officer's administrative law judge's decision, together with the hearing-officer's administrative law judge's reasons therefor for the decision, which shall-be-deemed-to-be is the final decision of the division, unless within fifteen days after the date of notification or mailing of such the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by a hearing-officer an administrative law judge employed by the division of job service. A hearing-officer's An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Sec. 10. Section 96.7, subsection 3, paragraph a, subparagraph (6), Code Supplement 1987, is amended to read as follows:

(6) As soon as practicable after the close of each calendar quarter, and in any event within forty days after the close of such each quarter, the division shall notify each employer of the amount that has been charged to the employer's account for benefits paid during such that quarter. This statement to the employer shall show the name of each claimant to whom such the benefit payments were made, the claimant's social security number, and the amount of benefits paid to such the claimant. Any An employer who has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to such claimants may within thirty days after the receipt of such the statement appeal to the commissioner for a hearing to determine the eligibility of the claimant to receive such benefits. The commissioner shall refer the same to a hearing-officer an administrative law judge for hearing and both the employer and the claimant shall receive notice of the time and place of such the hearing.

Sec. 11. Section 96.7, subsection 4, paragraph d, unnumbered paragraph 3, Code Supplement 1987, is amended to read as follows:

A hearing on an appeal shall be conducted according to the regulations and rules promulgated adopted by the division. A copy of the decision of the hearing-officer administrative law judge shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

Sec. 12. Section 96.11, subsection 7, paragraph f, Code Supplement 1987, is amended to read as follows:

f. An employee of the division, a hearing-officer an administrative law judge, or a member of the appeal board who violates this section is guilty of a serious misdemeanor.

Sec. 13. Section 97B.25, Code 1987, is amended to read as follows:

97B.25 APPLICATIONS FOR BENEFITS.

A representative designated by the administrator and referred to in this chapter as a benefits deputy, shall promptly examine applications for retirement benefits and on the basis of facts found shall determine whether or not the claim is valid and if valid, the month with respect to which benefits shall commence, the monthly benefit amount payable, and the maximum duration. The deputy shall promptly notify the applicant and any other interested party of the decision and the reasons. Unless the applicant or other interested party, within thirty calendar days after the notification was mailed to the applicant's or party's last known address, files an appeal to a hearing-officer an administrative law judge in the department of inspections and appeals, the decision is final and benefits shall be paid or denied in accord with the decision.

Sec. 14. Section 97B.26, Code 1987, is amended to read as follows:

97B.26 HEARING-OFFICER ADMINISTRATIVE LAW JUDGE.

If an appeal is filed and is not withdrawn, a hearing officer an administrative law judge in the department of inspections and appeals, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the benefits deputy. The hearing shall be recorded by mechanical means and a transcript of the hearing shall be made. The transcript shall then be made available for use by the employment appeal board and by the courts at subsequent judicial review proceedings under the Iowa administrative procedure Act, if any. The parties shall be duly notified of the hearing officer's administrative law judge's decision, together with the hearing-officer's administrative law judge's reasons. The

decision is final unless, within thirty days after the date of notification or mailing of the decision, review by the employment appeal board is initiated pursuant to section 97B.27.

Sec. 15. Section 97B.27, Code 1987, is amended to read as follows:

97B.27 REVIEW OF DECISION.

Anyone aggrieved by the decision of the hearing-officer administrative law judge may, at any time before the hearing officer's administrative law judge's decision becomes final, petition the department of inspections and appeals for review by the employment appeal board established in section 10A.601. The appeal board shall review the record made before the hearing-officer administrative law judge, but no additional evidence shall be heard. On the basis of the record the appeal board shall affirm, modify, or reverse the decision of the hearing-officer administrative law judge and shall determine the rights of the appellant. It shall promptly notify the appellant and any other interested party by written decision.

Sec. 16. Section 148.7, subsections 3 and 5, Code 1987, are amended to read as follows:

3. The hearing shall be before a member or members designated by the board or before a hearing-officer an administrative law judge appointed by the board. The presiding board member or hearing-officer ~~is empowered to~~ administrative law judge may issue subpoenas, administer oaths and take or cause depositions to be taken in connection with the hearing. The presiding board member or hearing-officer administrative law judge shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

The compensation of the hearing-officer administrative law judge shall be fixed by the medical examiners. The hearing

officer administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The hearing-officer administrative law judge shall prepare and file with the medical examiners the hearing officer's administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections and rulings of the hearing-officer administrative law judge.

5. If a person refuses to obey a subpoena issued by the presiding member or hearing-officer administrative law judge or to answer a proper question during the hearing, the presiding member or hearing-officer administrative law judge may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of such the person and the production of papers. A failure to obey such the order of the court may be punished by the court as a civil contempt may be punished.

Sec. 17. Section 169.5, subsection 9, paragraph e, Code 1987, is amended to read as follows:

e. Hold hearings on all matters properly brought before the board and administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. An administrative hearing-officer law judge may be appointed pursuant to section 17A.11, subsection 3 to perform those functions which properly repose in an administrative hearing-officer law judge.

Sec. 18. Section 169.14, subsections 3 and 5, Code 1987, are amended to read as follows:

3. The hearing shall be before a member or members designated by the board or before a hearing-officer an

administrative law judge appointed by the board. The presiding board member or hearing-officer administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or hearing-officer administrative law judge or to answer a proper question put to that person during the hearing, the presiding member or hearing-officer administrative law judge may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of that person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

Sec. 19. Section 191A.7, Code 1987, is amended to read as follows:

191A.7 DISCIPLINARY ACTION.

A license issued under this chapter may be revoked by the regulatory authority for violation by the licensee of a provision of this chapter or an applicable rule of the department. In lieu of license revocation, the regulatory authority may require the immediate discontinuance of operation of a vending machine or commissary if it finds unsanitary conditions or other conditions which constitute a substantial hazard to the public health. The order shall apply only to the vending machines, commissary, or product involved. A person whose license is revoked, or who is ordered to discontinue the operation of a vending machine or commissary, may appeal that decision to the director. The director or the chief hearing-officer administrative law judge of the department shall schedule and hold a hearing upon the appeal not later than thirty days from the time of revocation or the order of discontinuance. The director or the chief

hearing-officer administrative law judge shall issue a decision immediately following the hearing. Judicial review may be sought in accordance with the terms-of-the Iowa administrative procedure Act.

Sec. 20. Section 272A.8, Code 1987, is amended to read as follows:

272A.8 APPOINTMENT OF HEARING-OFFICERS ADMINISTRATIVE LAW JUDGES.

The commission shall maintain a list of qualified persons to serve as hearing-officers administrative law judges who are experienced in the educational system of this state when a hearing is requested under the-provisions-of section 279.24. When requested under the-provisions-of section 279.24, the commission shall submit a list of five qualified hearing officers administrative law judges to the parties. The hearing shall be held pursuant to the provisions of chapter 17A relating to contested cases. The full costs of the hearing shall be shared equally by the parties. A person who is employed as a teacher or administrator by a school district shall is not be eligible to serve as a-hearing-officer an administrative law judge.

Sec. 21. Section 279.24, unnumbered paragraphs 7, 8, 9, and 10, Code Supplement 1987, are amended to read as follows:

Within five days after receipt of the written notice that the board has voted to consider termination of the contract, the administrator may request in writing to the secretary of the board that the notification be forwarded to the professional teaching practices commission along with a request that the professional teaching practices commission submit a list of five qualified hearing-officers administrative law judges to the parties. Within three days from receipt of the list the parties shall select a-hearing officer an administrative law judge by alternately removing a name from the list until only one name remains. The person

whose name remains shall be the hearing-officer administrative law judge. The parties shall determine by lot which party shall remove the first name from the list. The hearing shall be held no sooner than ten days and not later than thirty days following the administrator's request unless the parties otherwise agree. If the administrator does not request a hearing, the board, not later than April 15, may determine the continuance or discontinuance of the contract. Board action shall be by majority roll call vote entered on the minutes of the meeting. Notice of board action shall be personally delivered or mailed to the administrator.

The hearing-officer administrative law judge selected shall notify the secretary of the board and the administrator in writing concerning the date, time, and location of the hearing. The board may be represented by a legal representative, if any, and the administrator shall appear and may be represented by counsel or by representative, if any. A transcript or recording shall be made of the proceedings at the hearing. No A school board member or administrator shall be is not liable for any damage to any an administrator or board member if any a statement made at the hearing is determined to be erroneous as long as the statement was made in good faith.

The hearing-officer administrative law judge shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the administrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the school board. Findings of fact shall be prepared by the hearing-officer administrative law judge. The proposed decision of the hearing-officer administrative law judge shall become the final decision of the board unless within ten days after the filing of the decision the administrator files a written notice of appeal with the board, or the board on its own motion determines to review the decision.

If the administrator appeals to the board, or if the board determines on its own motion to review the proposed decision of the hearing-officer administrative law judge, a private hearing shall be held before the board within five days after the petition for review, or motion for review, has been made or at such other time as the parties may agree. The private hearing ~~shall~~ is not be subject to the provisions of chapter 21. The board may hear the case de novo upon the record as submitted before the hearing-officer administrative law judge. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the board, an opportunity shall be afforded to each party to file exceptions, present briefs and present oral arguments to the board which is to render the final decision. The secretary of the board shall give the administrator written notice of the time, place, and date of the hearing. The board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract. The board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

Sec. 22. Section 281.6, unnumbered paragraph 3, Code 1987, is amended to read as follows:

Notwithstanding section 17A.11, the state board of education shall adopt rules for the appointment of an impartial administrative hearing-officer law judge for special education appeals. The rules shall comply with federal statutes and regulations.

Sec. 23. Section 321J.13, subsection 3, Code Supplement 1987, is amended to read as follows:

3. After the hearing the department shall order that the revocation be either rescinded or sustained. ~~in-the-event~~ that if the revocation is sustained, the administrative hearing-officer law judge who conducted the hearing has

authority to may issue a temporary restricted license to the person whose motor vehicle license or operating privilege was revoked. Upon receipt of the decision of the department to sustain a revocation, the person contesting the revocation shall have has ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within fifteen days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within thirty days of the director's order.

Sec. 24. Section 421.8A, Code 1987, is amended to read as follows:

421.8A DISPUTED ASSESSMENTS.

For any a contested case, as defined in section 17A.2, commenced on or after January 1, 1987, the person disputing the assessment must pay all tax, interest and penalty pertaining to the disputed assessment prior to the commencement of the contested case. Upon a showing of good cause, the hearing-officer administrative law judge shall allow the person to post a bond in an amount established by the hearing-officer administrative law judge, but not in excess of all tax, interest, and penalty, in lieu of paying all tax, interest and penalty.

The director shall adopt rules establishing procedures for payment of taxes under protest. If it is finally determined that the tax is not due in whole or in part, the department shall refund the part of the tax payment which is determined not to be due together with interest on the amount of the refund at the rate as determined under section 421.7.

Sec. 25. Section 421.17, subsection 21, paragraph e, Code Supplement 1987, is amended to read as follows:

e. Upon notice of entitlement to a refund or rebate the child support recovery unit, the foster care recovery unit, or

the office of investigations shall send written notification to the debtor, and a copy of the notice to the department of revenue and finance, of the unit's or office's assertion of its rights or the rights of an individual not eligible as a public assistance recipient to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, the debtor's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application filed with the department within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the child support recovery unit, the foster care recovery unit, or the office of investigations shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of a hearing-officer an administrative law judge and subsequent appeals shall be taken pursuant to chapter 17A.

Sec. 26. Section 421.17, subsection 23, paragraph e, Code Supplement 1987, is amended to read as follows:

e. Upon notice of entitlement to a refund or rebate, the college aid commission shall send written notification to the defaulter, and a copy of the notice to the department of revenue and finance, of the commission's assertion of its rights to all or a portion of the defaulter's refund or rebate and the entitlement to recover the amount of the default through the setoff procedure, the basis of the assertion, the defaulter's opportunity to request that a joint income tax refund or rebate be divided between spouses, the defaulter's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing before a specified date will

result in a waiver of the opportunity to contest the claim, causing final seccoff by default. Upon application, the commission shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of a hearing-officer an administrative law judge and any subsequent appeals shall be taken pursuant to chapter 17A.

Sec. 27. Section 601A.15, subsection 3, paragraphs a, b, and c, Code 1987, are amended to read as follows:

a. After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to a hearing officer an administrative law judge under the jurisdiction of the commission, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, a hearing-officer an administrative law judge issuing a determination of probable cause or no probable cause under this section shall be ~~is~~ exempt from the provisions of section 17A.17.

c. If the hearing-officer administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the hearing-officer administrative law judge finds that no probable cause exists, the hearing-officer administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent by certified mail. A finding of probable cause shall not be introduced into evidence in an action brought under section 601A.16.

Sec. 28. Section 601A.15, subsection 5, Code 1987, is amended to read as follows:

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the hearing officer administrative law judge, and at a time and place to be specified in the notice.

Sec. 29. Section 601A.16, subsection 2, Code 1987, is amended to read as follows:

2. Upon a request by the complainant, and after the expiration of one hundred twenty days from the timely filing of a complaint with the commission, the commission shall issue to the complainant a release stating that the complainant has a right to commence an action in the district court. A release under this subsection shall not be issued if a finding of no probable cause has been made on the complaint by the hearing-officer administrative law judge charged with that duty under section 601A.15, subsection 3, or a conciliation agreement has been executed under section 601A.15, or the commission has served notice of hearing upon the respondent pursuant to section 601A.15, subsection 5.

Sec. 30. Section 602.9206, unnumbered paragraph 2, Code 1987, is amended to read as follows:

A senior judge also shall be available to serve in the capacity of administrative hearing-officer law judge under chapter 17A upon the request of an agency, and the supreme court may assign a senior judge for temporary duties as a

hearing-officer an administrative law judge. A senior judge shall not be required to serve a period of time as a hearing officer an administrative law judge which, when added to the period of time being served by the person as a judge, if any, would exceed the maximum period of time the person agreed to serve pursuant to section 602.9203, subsection 2.

Sec. 31. Section 903A.1, Code 1987, is amended to read as follows:

903A.1 CONDUCT REVIEW.

The director of the Iowa department of corrections shall appoint independent hearing-officers administrative law judges whose duties shall include but are not be limited to review, as provided in section 903A.3, of the conduct of inmates in institutions under the department.

Sec. 32. Section 903A.3, subsections 1 and 2, Code 1987, are amended to read as follows:

1. Upon finding that an inmate has violated an institutional rule, the independent hearing-officer administrative law judge may order forfeiture of any or all good conduct time earned and not forfeited up to the date of the violation by the inmate. The independent hearing-officer administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the hearing-officer administrative law judge in the decision.

2. The orders of the hearing-officer administrative law judge are subject to appeal to the superintendent or warden of the institution, or the superintendent's or warden's designee, who may either affirm, modify, remand for correction of procedural errors, or reverse an order. However, sanctions shall not be increased on appeal. A decision of the superintendent, warden, or designee is subject to review by

the director of the Iowa department of corrections who may either affirm, modify, remand for correction of procedural errors, or reverse the decision. However, sanctions shall not be increased on review.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2430, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 26, 1988

TERRY E. BRANSTAD
Governor