

JAN 31 1989

HOUSE FILE 163  
BY COMMITTEE ON TRANSPORTATION

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(SUCCESSOR TO HSB 117)

Passed House, Date 2-7-89 (p.373) Passed Senate, Date \_\_\_\_\_  
Vote: Ayes 96 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the duties of the department of inspections  
2 and appeals in the appeal and hearing processes of the state  
3 department of transportation.

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

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HR 163

1 Section 1. Section 321.211, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3 Upon suspending the license of any a person as authorized,  
4 the department shall immediately notify the licensee in  
5 writing and upon the licensee's request shall afford the  
6 licensee an opportunity for a hearing before the ~~director or~~  
7 ~~the director's authorized agent~~ department of inspections and  
8 appeals as early as practical within ~~not to exceed~~ thirty days  
9 after receipt of the request. The hearing shall be held in  
10 the county in which the licensee resides unless the department  
11 of inspections and appeals and the licensee agree that ~~such~~  
12 the hearing may be held in some other county or by telephone  
13 conference. Upon ~~such the~~ hearing the ~~director or the~~  
14 ~~director's authorized agent~~ department of inspections and  
15 appeals may administer oaths and ~~may~~ issue subpoenas for the  
16 attendance of witnesses and the production of relevant books  
17 and papers and may require a re-examination of the licensee.  
18 Upon ~~such the~~ hearing and issuance of a recommendation by the  
19 department of inspections and appeals, the state department of  
20 transportation shall either rescind its order of suspension or  
21 for good cause may extend the suspension of ~~such the~~ license  
22 or revoke ~~such the~~ license. There is appropriated each year  
23 from the road use tax fund to the department of transportation  
24 one hundred seven thousand dollars or ~~so~~ as much thereof as  
25 ~~may be~~ is necessary to be used to pay the cost of notice and  
26 personal delivery of service, if as necessary to meet the  
27 notice requirement of this section. The department shall  
28 ~~promulgate~~ adopt rules governing the payment of the cost of  
29 personal delivery of service. The reinstatement fees  
30 collected under section 321.191 shall be deposited in the road  
31 use tax fund in a manner provided in section 321.192, as  
32 reimbursement for the costs of notice under this section.  
33 This section does not preclude the director from attempting to  
34 effect an informal settlement under chapter 17A.

35 Sec. 2. Section 321E.19, Code 1989, is amended to read as

1 follows:

2 321E.19 PERMIT SUSPENDED, CHANGED, OR REVOKED.

3 Upon complaint by local authorities or on the department's  
4 own initiative and after notice and hearing before one or more  
5 members of the permit issuing body in the case of local  
6 authorities or the department of inspections and appeals for  
7 permits issued by the state department of transportation,  
8 permit privileges under this chapter may be suspended,  
9 changed, or revoked in whole or in part by the issuing  
10 authority for willful failure to comply with ~~any-provisions a~~  
11 provision of this chapter, ~~or-with-any a~~ rule adopted under  
12 ~~authority-of~~ this chapter, or ~~with-any~~ a term, condition, or  
13 limitation of the permit.

14 Sec. 3. Section 322.9, unnumbered paragraphs 1 and 2, Code  
15 1989, are amended to read as follows:

16 The department may revoke or suspend the license of any a  
17 retail motor vehicle dealer if, after notice and hearing by  
18 the department of inspections and appeals, it finds that the  
19 licensee has been guilty of any an act which would ~~have-been~~  
20 be a ground for the denial of a license under section 322.6.  
21 ~~Witnesses-shall-receive-the-same-compensation-provided-in~~  
22 ~~section-622-69-and-shall-be-compensated-from-funds~~  
23 ~~appropriated-to-the-department.~~

24 The department ~~is-further-authorized-to~~ may revoke or  
25 suspend the license of any a retail motor vehicle dealer if,  
26 after notice and hearing by the department of inspections and  
27 appeals, it finds that such the licensee has been convicted or  
28 has forfeited bail on three charges of:

29 Sec. 4. Section 322.24, Code 1989, is amended to read as  
30 follows:

31 322.24 HEARING.

32 ~~The director-of-transportation-shall-have-the-power-to~~  
33 state department of transportation and the department of  
34 inspections and appeals may issue subpoenas to compel the  
35 attendance of witnesses and the production of documents,

1 papers, books, records, and other evidence ~~before the director~~  
2 in any matter over which the director respective department  
3 has jurisdiction, control, or supervision pertaining to this  
4 chapter.

5 If ~~any~~ a person ~~shall refuse~~ refuses to obey ~~any such a~~  
6 subpoena, ~~or~~ to give testimony, or to produce evidence as  
7 required ~~thereby~~, any a judge of the district court of the  
8 state of Iowa in and for Polk county may, upon application and  
9 proof of ~~such~~ the refusal, make an order awarding process of  
10 subpoena, or subpoena duces tecum, out of the ~~said~~ court, for  
11 the witness to appear before the ~~director and~~ respective  
12 department, to give testimony, and to produce evidence as  
13 required ~~thereby~~. Upon filing ~~such~~ the order in the office of  
14 the clerk of ~~said~~ the district court, the clerk shall issue  
15 process of subpoena, as directed, under the seal of ~~said~~ the  
16 court, requiring the person to whom it is directed to appear  
17 at the time and place ~~therein~~ designated.

18 Sec. 5. Section 322A.6, unnumbered paragraph 2, Code 1989,  
19 is amended to read as follows:

20 An applicant seeking permission to enter into a franchise  
21 for additional representation of the same line-make in a  
22 community shall deposit with the department at the time the  
23 application is filed, an amount of money to be determined by  
24 the department of inspections and appeals to ~~secure the~~  
25 ~~payment of~~ pay the costs and expenses of the hearing. The  
26 ~~applicant shall pay the costs of the hearing.~~

27 Sec. 6. Section 322A.17, Code 1989, is amended to read as  
28 follows:

29 322A.17 JUDICIAL REVIEW.

30 A decision of the department of inspections and appeals is  
31 subject to review by the state department of transportation,  
32 whose decision is final agency action for the purpose of  
33 judicial review.

34 Judicial review of actions of the state department of  
35 ~~inspections and appeals~~ transportation may be sought in the

1 manner provided for in section 322.10.

2 Sec. 7. Section 322B.6, unnumbered paragraph 1, Code 1989,  
3 is amended to read as follows:

4 The department may revoke, suspend, or deny refuse the  
5 license of a mobile home dealer, mobile home manufacturer,  
6 mobile home distributor, manufacturer's representative, or  
7 distributor's representative, as applicable, ~~in accordance~~  
8 ~~with the provisions of chapter 17A~~ if the department finds  
9 that the mobile home dealer, manufacturer, distributor, or  
10 representative is guilty of any of the following acts or  
11 offenses:

12 Sec. 8. Section 322B.6, Code 1989, is amended by adding  
13 the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. In accordance with chapters 10A  
15 and 17A, each person whose license or application is revoked,  
16 suspended, or refused shall be provided an opportunity for a  
17 hearing before the department of inspections and appeals.

18 Sec. 9. Section 322C.6, unnumbered paragraph 1, Code 1989,  
19 is amended to read as follows:

20 The A license ~~of a person~~ issued under section 322C.4 or  
21 322C.9 may be denied, revoked, or suspended, after opportunity  
22 for a hearing before the department of inspections and appeals  
23 in accordance with chapters 10A and 17A, if ~~the department~~  
24 finds it is determined that the licensee or applicant has done  
25 any of the following:

26 Sec. 10. Section 325.11, Code 1989, is amended to read as  
27 follows:

28 325.11 RULES OF PROCEDURE.

29 The department shall adopt rules governing for the  
30 procedure to be followed in the filing of applications and ~~in~~  
31 the department of inspections and appeals shall adopt rules  
32 for the conduct of hearings.

33 Sec. 11. Section 325.13, subsection 5, Code 1989, is  
34 amended to read as follows:

35 5. Upon receipt of ~~any protests~~ a protest complying with

1 subsection 3, the department shall request the department of  
2 inspections and appeals to set the matter for hearing not less  
3 than ten days following the expiration of the time in which  
4 protests may be made ~~and~~. The department of inspections and  
5 appeals shall give notice to all persons who have filed  
6 protests of the time and place of the hearing.

7 Sec. 12. Section 325.17, Code 1989, is amended to read as  
8 follows:

9 325.17 ~~TESTIMONY-RECEIVABLE UNCONTESTED CASE PROCEDURE.~~

10 ~~The~~ If no protest is filed, the department shall consider  
11 the application and any ~~objections-filed-thereto-and-may-hear~~  
12 ~~testimony-to-aid-it~~ relevant evidence in determining the  
13 propriety of granting the application.

14 Sec. 13. Section 325.19, Code 1989, is amended to read as  
15 follows:

16 325.19 EXPENSE OF HEARING.

17 The applicant shall pay all the costs and ~~expenses~~ of the  
18 hearing ~~and-necessary-preliminary-investigation-in-connection~~  
19 ~~therewith~~ before the application ~~shall-be~~ is granted. The  
20 department of inspections and appeals shall establish  
21 appropriate fees which shall be paid to the department ~~at-the~~  
22 ~~time-the-application-is-filed~~ of inspections and appeals.

23 Sec. 14. Section 325.21, Code 1989, is amended to read as  
24 follows:

25 325.21 JUDICIAL REVIEW.

26 A decision of the department of inspections and appeals is  
27 subject to review by the state department of transportation.  
28 Judicial review of the decisions and actions of the department  
29 of transportation may be sought in accordance with ~~the-terms~~  
30 ~~of-the-iowa-administrative-procedure-Act~~ chapter 17A. Such  
31 The petitioners must file with the clerk of the district court  
32 a bond for costs in the sum of not less than five hundred  
33 dollars.

34 Sec. 15. Section 325.25, unnumbered paragraph 1, Code  
35 1989, is amended to read as follows:

1 A certificate of convenience and necessity shall not be  
2 sold, transferred, leased, or assigned, nor shall any a  
3 contract or agreement with reference to or affecting any a  
4 certificate be made without the written approval of the  
5 department. The department may request the department of  
6 inspections and appeals to hold a hearing at-its-discretion  
7 and. The department of transportation shall approve the sale,  
8 transfer, lease, or assignment upon a finding by the  
9 department of inspections and appeals that there has been  
10 continuous service under the certificate for at least ninety  
11 days prior to the transfer, and that the transferee is fit,  
12 willing, and able to perform the operations authorized by the  
13 certificate, and that the transfer is consistent with the  
14 public interest. Pending determination of an application  
15 filed with the department for approval of a sale, transfer,  
16 lease, or assignment, the department may grant temporary  
17 approval of the proposed operation upon a finding of good  
18 cause.

19 Sec. 16. Section 327.16, Code 1989, is amended to read as  
20 follows:

21 327.16 REVOCATION OF PERMIT.

22 For just cause, after due hearing conducted by the  
23 department of inspections and appeals, the state department of  
24 transportation may at any time alter, amend, or revoke any a  
25 permit issued. If the holder of the permit or the holder's  
26 agent persists in a violation of any a prescribed safety  
27 regulation-prescribed-by-the-department rule, the department  
28 may recommend-revocation-of-said revoke the permit and-such  
29 violation-shall-be-grounds-for-such-revocation.

30 Sec. 17. Section 327A.4, Code 1989, is amended to read as  
31 follows:

32 327A.4 DISPOSAL OF CERTIFICATE.

33 ~~Whenever-any~~ If a person shall-file files an application  
34 with the department an-application for authority to sell,  
35 transfer, lease, or assign a certificate of convenience and

1 necessity issued under ~~the provisions of~~ this chapter, the  
2 department shall request the department of inspections and  
3 appeals to fix a date for hearing ~~thereon and~~. The state  
4 department of transportation shall cause a notice addressed to  
5 the citizens of each county through or in which the proposed  
6 service will be rendered to be published in ~~some~~ a newspaper  
7 of general circulation in each such county, once each week for  
8 two consecutive weeks, ~~and~~. The department shall notify each  
9 liquid transport carrier holding a certificate, issued by the  
10 department, to transport over, in, or through the area  
11 described in the application, by mailing notice of the hearing  
12 to each such carrier at least ten days before the date fixed  
13 for hearing, ~~and the provisions of chapter~~. Chapter 325  
14 ~~inclusive of~~ and this chapter shall, insofar as appropriate  
15 ~~be~~, are applicable to the ~~said~~ hearing.

16 Sec. 18. Section 327A.14, Code 1989, is amended to read as  
17 follows:

18 327A.14 PRIOR SERVICE -- RIGHTS TRANSFERRED OR ASSIGNED.

19 Any A liquid transport carrier actively and continuously  
20 engaged in business as such between the first day of December,  
21 1956, and the fourteenth day of January, 1957, shall be issued  
22 a certificate of convenience and necessity covering all points  
23 in this state to all other points in this state, and all  
24 routes and areas in this state, ~~provided that if the~~  
25 application ~~therefor shall be~~ is made within sixty days after  
26 May 17, 1957. ~~No rights~~ Rights so granted ~~may~~ shall not be  
27 sold, leased, transferred, or assigned to ~~any~~ a person engaged  
28 directly or indirectly in the transportation for hire of  
29 liquid products in bulk or freight in interstate commerce or  
30 in intrastate commerce, in this or any other state, or the  
31 District of Columbia, or to any person engaged in the leasing  
32 of equipment for such purposes, except ~~such rights as~~ which  
33 are actively being exercised at the time of sale, lease,  
34 transfer, or assignment; ~~provided~~, however, rights so granted  
35 may be sold, leased, transferred, or assigned to ~~any~~ a person

1 who has not engaged directly or indirectly in the  
2 transportation for hire of liquid products in bulk or freight  
3 in interstate or intrastate commerce prior to the date of such  
4 the transfer, or to any a person who has not prior to such  
5 that date engaged in the leasing of equipment for such that  
6 purpose, and ~~on-hearing it shall~~ is not be necessary for the  
7 department ~~of-inspections-and-appeals~~ to find that such the  
8 sale, lease, transfer, or assignment is necessary in the  
9 public interest. Before any rights may be sold, leased,  
10 transferred, or assigned, application therefor shall be filed  
11 with the department of transportation, which shall ~~fix request~~  
12 the department of inspections and appeals to set a date for  
13 hearing thereon on the application, and ~~the-provisions-of~~  
14 section 327A.4 ~~shall-be~~ is applicable thereto. Rights  
15 actively being exercised may be sold, leased, transferred, or  
16 assigned to any a person engaged in the transportation for  
17 hire of liquid products in bulk or freight under the  
18 conditions hereinafter set forth in this section:

19 1. ~~Whenever~~ When an application for a sale, lease,  
20 transfer, assignment, consolidation, merger, or acquisition of  
21 control is filed with the department, if ~~on after a hearing by~~  
22 the department of inspections and appeals, the department of  
23 transportation finds that ~~(a)~~ the proposed purchaser, lessee,  
24 transferee, or assignee is fit, willing and able, ~~and-(b)~~ that  
25 the proposed seller, lessor, transferor, or assignor has not  
26 abandoned, suspended, or discontinued operations, ~~and-(c)~~ that  
27 the transaction proposed will be consistent with the public  
28 interest, and that the conditions of this section have been or  
29 will be fulfilled, the department of transportation may enter  
30 an order approving and authorizing such the sale, lease,  
31 transfer, assignment, consolidation, merger, or acquisition of  
32 control, upon ~~such~~ terms and conditions ~~as it shall-find~~ finds  
33 to be just and reasonable and with such modifications as it  
34 may prescribe.

35 2. Except as otherwise provided in subsection 1, it shall

1 be ~~is~~ unlawful for any a person to accomplish or effectuate,  
2 or to participate in accomplishing or effectuating, the  
3 control or management in a common interest of any two or more  
4 persons engaged in the transportation for hire of liquid  
5 products in bulk or freight or of one or more persons so  
6 engaged, however such result is attained, whether directly or  
7 indirectly, by use of common directors, officers, or  
8 stockholders, a holding or investment company or companies, a  
9 voting trust or trusts, or in any other manner ~~whatsoever~~.

10 3. The department ~~is hereby authorized~~ may, upon  
11 complaint, or upon its own initiative without complaint, ~~but~~  
12 ~~after notice, and hearing, to~~ investigate and determine  
13 whether any a person is violating ~~the provisions of~~ this  
14 section. If the department finds upon investigation that any  
15 a person is violating ~~the provisions of~~ this section, it  
16 shall, ~~by order~~ after a hearing conducted by the department of  
17 inspections and appeals, require ~~such the~~ person to take ~~such~~  
18 action consistent with ~~the provisions of~~ this chapter ~~as may~~  
19 ~~be necessary, in the opinion of the department,~~ to prevent  
20 continued violation of ~~such provisions~~ this section.

21 Sec. 19. Section 327C.8, Code 1989, is amended to read as  
22 follows:

23 327C.8 OBJECTIONS -- HEARING.

24 Any A person directly affected by the proposed  
25 discontinuance of any an agency, may file written objections  
26 with the department, stating the grounds for ~~such the~~  
27 objections, within fifteen days from the time of the  
28 publication of the notice as provided in section 327C.7. Upon  
29 the filing of ~~such~~ objections the department shall request the  
30 department of inspections and appeals ~~shall fix the time and~~  
31 ~~place for~~ to hold a hearing, which shall be held within sixty  
32 days from the filing of ~~such the~~ objections. Written notice  
33 of the time and place of ~~such the~~ hearing shall be mailed by  
34 the department of inspections and appeals to the railroad  
35 corporation and the person filing objections at least ten days

1 prior to the date fixed for ~~such~~ the hearing.

2 Sec. 20. Section 327C.12, Code 1989, is amended to read as  
3 follows:

4 327C.12 AID FROM COURTS.

5 The department or the department of inspections and appeals  
6 may invoke the aid of any court of record in the state in  
7 requiring the attendance and testimony of witnesses and the  
8 production of books, papers, tariff schedules, agreements, and  
9 other documents. ~~Any court having jurisdiction of the inquiry~~  
10 ~~shall, in case of the refusal of any~~ If a person refuses to  
11 obey a subpoena or other process, a court having jurisdiction  
12 of the inquiry shall issue an order requiring any of the  
13 officers, agents, or employees of any a carrier or other  
14 person to appear before the either department and produce all  
15 books and papers required by ~~such~~ the order and testify in  
16 relation to any matter under investigation.

7 Sec. 21. Section 327C.17, Code 1989, is amended to read as  
18 follows:

19 327C.17 WHEN ORDER EFFECTIVE -- VIOLATION.

20 If any a railroad fails, ~~neglects,~~ or refuses to comply  
21 with any a rule or order made by the state department of  
22 transportation or the department of inspections and appeals  
23 within the time specified, ~~it shall~~ the railroad is, for each  
24 day of such failure, be subject to a schedule "two" penalty.

25 Sec. 22. Section 327C.19, Code 1989, is amended to read as  
26 follows:

27 327C.19 JUDICIAL REVIEW.

28 A decision of the department of inspections and appeals is  
29 subject to review by the state department of transportation.

30 Judicial review of the actions of the state department of  
31 transportation may be sought in accordance with ~~the terms of~~  
32 the Iowa administrative procedure Act chapter 17A.

33 Sec. 23. Section 327C.20, Code 1989, is amended to read as  
34 follows:

35 327C.20 REMITTING PENALTY.

1 If a common carrier fails in a judicial review proceeding  
2 to secure a vacation of the order objected to, it may apply to  
3 the court in which the review proceeding is finally  
4 adjudicated for an order remitting the penalty which has  
5 accrued during the review proceeding. Upon a satisfactory  
6 showing that the petition for judicial review was filed in  
7 good faith and not for the purpose of delay, and that there  
8 were reasonable grounds to believe that the order was  
9 unreasonable or unjust or that the power of the department of  
10 transportation or the department of inspections and appeals to  
11 make the same order was doubtful, such the court may remit the  
12 penalty that has accrued during the review proceeding.

13 Sec. 24. Section 327C.25, Code 1989, is amended to read as  
14 follows:

15 327C.25 COMPLAINTS.

16 Any A person, city or county may file with the department a  
17 petition setting forth any particular in which any a common  
18 carrier has violated the law to which it is subject and the  
19 amount of damages sustained by reason thereof of the  
20 violation. The department shall furnish a copy of the  
21 complaint to the carrier against which a complaint is filed, a  
22 copy thereof, and a reasonable time. The department shall be  
23 fixed by request the department of inspections and appeals  
24 within to schedule a hearing in which such the carrier shall  
25 answer the petition or satisfy the demand therein made demands  
26 of the complaint. If such the carrier fails to satisfy the  
27 complaint within the time fixed or there appears to be  
28 reasonable grounds for investigating the matters set forth in  
29 said the petition, the department of inspections and appeals  
30 shall hear and determine the questions involved and make such  
31 orders as it shall find to be finds proper. When if the  
32 department of transportation has reason to believe that any a  
33 carrier is violating any of the laws to which it is subject,  
34 it the department may institute an investigation and cause  
35 request the department of inspections and appeals to conduct a

1 hearing ~~to be held before the department of inspections and~~  
2 appeals in relation to such the matters in all respects as  
3 fully as if a petition had been filed.

4 Sec. 25. Section 327C.26, Code 1989, is amended to read as  
5 follows:

6 327C.26 INVESTIGATION -- REPORT.

7 When a hearing has been held before the department of  
8 inspections and appeals after notice, it shall make a report  
9 in writing setting forth the findings of fact and its  
10 conclusions together with its recommendations ~~or orders~~ as to  
11 what reparation, if any, the offending carrier shall make to  
12 any a party who has suffered damage. ~~Such finding~~ The  
13 findings of fact shall thereafter in all legal proceedings be  
14 prima facie ~~are prima facie~~ evidence in all further legal  
15 proceedings of every fact found. All reports of hearings and  
16 investigations made by ~~the department of transportation and~~  
17 the department of inspections and appeals shall be entered of  
18 record and a copy furnished to the carrier against which the  
19 complaint was filed, to the party complaining, and to any  
20 other person having a direct interest in the matter. A  
21 reasonable fee not to exceed the actual duplication costs may  
22 be charged for the copies.

23 Sec. 26. Section 327C.28, Code 1989, is amended to read as  
24 follows:

25 327C.28 VIOLATION OF ORDER -- PETITION -- NOTICE.

26 ~~When any~~ If a person violates or fails to obey any a lawful  
27 order or requirement of the department of transportation or  
28 the department of inspections and appeals, the department of  
29 transportation or the department of inspections and appeals  
30 shall apply by petition in the name of the state, against ~~such~~  
31 the person, to the district court, alleging ~~such the~~ violation  
32 or failure to obey, ~~the.~~ The court shall hear and determine  
33 the matter set forth in the petition on reasonable notice to  
34 the person, to be fixed by the court and to be served in the  
35 same manner as an original notices notice for the commencement

1 of action.

2 Sec. 27. Section 327C.29, Code 1989, is amended to read as  
3 follows:

4 327C.29 INTERESTED PARTY MAY BEGIN PROCEEDINGS.

5 Any ~~A~~ person or city or county interested in ~~the matter of~~  
6 enforcing any an order or requirement of the department of  
7 transportation or the department of inspections and appeals,  
8 may file a petition against ~~such person~~ the violator, alleging  
9 the failure to comply with ~~such the~~ order or requirement and  
10 praying asking for summary relief to the same extent and in  
11 the same manner as the department of transportation or the  
12 department of inspections and appeals may do under section  
13 327C.28, and the proceedings after the filing of ~~such the~~  
14 petition shall be the same as in section 327C.28.

15 Sec. 28. Section 327D.53, Code 1989, is amended to read as  
16 follows:

17 327D.53 DIVISION OF JOINT RATES.

18 Before the ~~promulgation~~ adoption of ~~such the~~ rates, the  
19 department shall notify the railroad corporations interested  
20 in the schedule of joint rates fixed, and give them a  
21 reasonable time to agree upon a division of the charges  
22 provided. If ~~such the~~ corporations fail to agree upon a  
23 division, and to notify the department ~~thereof of their~~  
24 agreement, the department shall, after a hearing ~~of the~~  
25 corporations interested conducted by the department of  
26 inspections and appeals, decide the ~~same rates~~, taking into  
27 consideration the value of terminal facilities and all the  
28 circumstances of the haul, and the division so determined by  
29 it ~~shall is~~, in all controversies or actions between the  
30 railroad corporations interested, be prima-facie prima facie  
31 evidence of a just and reasonable division ~~thereof~~.

32 Sec. 29. Section 327D.83, Code 1989, is amended to read as  
33 follows:

34 327D.83 POWER TO REVISE RATES.

35 ~~Whenever there shall be~~ If a schedule is filed with the

1 department ~~any-schedule~~ stating a rate, the department may,  
2 either upon complaint or upon its own motion, immediately,  
3 ~~and, if it so orders, without answer or formal pleadings by~~  
4 ~~the interested common carrier, enter upon~~ request the  
5 department of inspections and appeals to conduct a hearing  
6 concerning the propriety of such the rate.

7 Sec. 30. Section 327D.85, Code 1989, is amended to read as  
8 follows:

9 327D.85 DECISION.

10 ~~On such~~ At the hearing the department of inspections and  
11 appeals shall establish propose the rates on the schedule, in  
12 whole or in part, or others in lieu thereof, which ~~it shall~~  
13 ~~find to be~~ the department of inspections and appeals finds are  
14 just and reasonable rates. The action of the department of  
15 inspections and appeals is subject to review by the state  
16 department of transportation. The decision of the state  
17 department of transportation is the final agency action.

18 Sec. 31. Section 327D.89, Code 1989, is amended to read as  
19 follows:

20 327D.89 COMPLAINT OF VIOLATION.

21 When ~~any a person, city or county shall make complaint~~  
22 complains to the department that the rate charged or published  
23 by ~~any a~~ railway corporation, or the maximum rate fixed by  
24 law, is unreasonably high or discriminating, the department  
25 may investigate the matter, and ~~hold~~ request the department  
26 of inspections and appeals to conduct a hearing, giving. The  
27 department of inspections and appeals shall give the parties  
28 notice of the time and place of the hearing.

29 Sec. 32. Section 327D.90, Code 1989, is amended to read as  
30 follows:

31 327D.90 HEARING -- EVIDENCE.

32 At the time of the hearing the department of inspections  
33 and appeals shall receive any evidence and listen to any  
34 arguments presented by either party relevant to the matter  
35 under investigation, and the burden of proof ~~shall~~ is not be

1 upon the person making the complaint. The complainant shall  
2 add to the showing made at such the hearing whatever  
3 information the complainant may then have has, or can obtain  
4 from any source, ~~including schedules of rates actually charged~~  
5 ~~by any railway corporation for substantially the same kind of~~  
6 ~~service, in this or any other state. The lowest rates~~  
7 ~~published or charged by any railway corporation for~~  
8 ~~substantially the same kind of service whether in this or~~  
9 ~~another state, shall, at the instance of the person~~  
10 ~~complaining, be accepted as prima facie evidence of a~~  
11 ~~reasonable rate for the services under investigation, and if~~  
12 ~~the railway corporation complained of is operating a line of~~  
13 ~~railroad beyond the state, or has a traffic arrangement with~~  
14 ~~any such railway corporation, the same shall be taken into~~  
15 ~~consideration in determining what is a reasonable rate, if it~~  
16 ~~be operating a line of railway beyond the state, the rate~~  
17 ~~charged or established for substantially a similar or greater~~  
18 ~~service by it in another state shall also be considered. The~~  
19 department of transportation inspections and appeals shall  
20 establish propose just and reasonable rates, which may be  
21 adopted in whole or in part or modified as the state  
22 department ~~shall determine~~ of transportation determines.

23 Sec. 33. Section 327D.128, Code 1989, is amended to read  
24 as follows:

25 327D.128 WEIGHING -- DISAGREEMENT.

26 If a railroad corporation and the owner, consignor, or  
27 consignee of car lots of bulk commodities cannot reach  
28 agreement relative to the weighing of the commodities, appeal  
29 may be made to the state department of ~~inspections and appeals~~  
30 transportation. The state department of transportation, after  
31 a hearing by the department of inspections and appeals, shall  
32 issue an order equitable to all parties including but not  
33 limited to allocation of costs and specification of the place  
34 and manner of weighing.

35 Sec. 34. Section 327G.12, Code 1989, is amended to read as

1 follows:

2 327G.12 OVERHEAD, UNDERGROUND, OR MORE THAN ONE CROSSING.

3 ~~Such~~ The owner of land may serve upon ~~such~~ the railroad  
4 corporation a request in writing for more than one ~~such~~  
5 private crossing, or for an overhead or underground crossing,  
6 accompanied by a plat of the owner's land designating ~~thereon~~  
7 the location and character of crossing desired. If the  
8 railroad corporation refuses or neglects to comply within  
9 thirty days of ~~such~~ a written request, the owner of the land  
10 may make written application to the department to ~~hear-and~~  
11 determine the owner's rights ~~in-said-respect~~. The department  
12 of inspections and appeals, after notice to the railroad  
13 corporation, shall hear ~~said~~ the application and all  
14 objections ~~thereto~~ to the application, and make ~~such~~ an order  
15 ~~as-shall-be~~ which is reasonable and just, and if it requires  
16 the railroad company to construct any crossing or roadway, fix  
17 the time for compliance with the order and apportion the costs  
18 as appropriate. ~~The-matter-of-costs-shall-be-in-the~~  
19 ~~discretion-of-the-department-of-inspections-and-appeals~~. The  
20 order of the department of inspections and appeals is subject  
21 to review by the state department of transportation. The  
22 decision of the state department of transportation is the  
23 final agency action.

24 Sec. 35. Section 327G.16, Code 1989, is amended to read as  
25 follows:

26 327G.16 DISAGREEMENT -- APPLICATION -- NOTICE.

27 If the persons specified in section 327G.15 cannot reach an  
28 agreement, either party may make written application to the  
29 authority department requesting resolution of the  
30 disagreement. The authority department shall fix request the  
31 department of inspections and appeals to set a date for  
32 hearing and. The department of inspections and appeals shall  
33 give the-other-party ten days' written notice by-mail of the  
34 hearing date. ~~The-authority-shall-promulgate-rules-subject-to~~  
35 ~~department-approval-for-processing-applications-which-are~~

~~1 filed with the authority prior to a written disagreement. -- The  
2 authority may set a hearing date after the disagreement has  
3 been filed.~~

4 Sec. 36. Section 327G.17, Code 1989, is amended to read as  
5 follows:

6 327G.17 HEARING -- ORDER.

7 The department of inspections and appeals shall hear the  
8 evidence of each party to the controversy and shall make an  
9 order, which may include, pursuant to the provisions of  
10 chapters 471 and 472, authority to condemn, resolving the  
11 controversy including what. The order shall include the  
12 portion of the expense shall to be paid by each party to such  
13 the controversy. In determining what portion of the expense  
14 shall be paid by each party the department of inspections and  
15 appeals may consider the ratio of the benefits accruing to the  
16 railroad or the governmental unit or both, as it bears to the  
17 general public use and benefit and such benefits may in the  
18 case of construction be consistent with the standards adopted  
19 for similar purposes by the federal highway administration  
20 under the federal aid highway Act of 1973 as amended to July  
21 17, 1976, (23 U.S.C. § 101 et seq.).

22 The order of the department of inspections and appeals is  
23 subject to review by the state department of transportation.  
24 The decision of the state department of transportation is the  
25 final agency action.

26 Sec. 37. Section 327G.32, Code 1989, is amended to read as  
27 follows:

28 327G.32 BLOCKING HIGHWAY CROSSING.

29 A railroad corporation or its employees shall not operate  
30 any a train in such a manner as to prevent vehicular use of  
31 any a highway, street, or alley for a period of time in excess  
32 of ten minutes except in any of the following circumstances:

33 1. When necessary to comply with signals affecting the  
34 safety of the movement of trains.

35 2. When necessary to avoid striking any an object or

1 person on the track.

2 3. When the train is disabled.

3 4. When necessary to comply with governmental safety  
4 regulations including, but not limited to, speed ordinances  
5 and speed regulations.

6 Any An officer or employee of a railroad corporation  
7 violating any a provision of this section ~~shall is~~, upon  
8 conviction, be subject to the penalty provided in section  
9 327G.14. An employee ~~shall is~~ not be guilty of such a  
10 violation if the employee's action was necessary to comply  
11 with the direct order or instructions of a railroad  
12 corporation or its supervisors. ~~Such-guilt-shall~~ Guilt is  
13 then be with the railroad corporation.

14 ~~This~~ Other provisions of this section notwithstanding, a  
15 political subdivision may pass a resolution or ordinance  
16 regulating the length of time a specific crossing may be  
17 blocked if the political subdivision demonstrates that a  
18 resolution or ordinance is necessary for public safety or  
19 convenience. If a resolution or ordinance is passed, the  
20 political subdivision shall, within thirty days of the  
21 effective date of the resolution or ordinance, notify the  
22 department and the railroad corporation using the crossing  
23 affected by the resolution or ordinance. The resolution or  
24 ordinance ~~shall does~~ does not become effective unless the  
25 department and the railroad corporation are notified within  
26 thirty days. The resolution or ordinance ~~shall-become~~ becomes  
27 effective thirty days after notification unless a person files  
28 an objection to the resolution or ordinance with the  
29 department. If an objection is filed the department shall  
30 notify the department of inspections and appeals which shall  
31 hold a hearing. ~~The~~ After a hearing by the department of  
32 inspections and appeals, the state department of  
33 transportation may disapprove the resolution or ordinance if  
34 public safety or convenience does not require a resolution or  
35 ordinance. The decision of the state department of

1 transportation is final agency action. The resolution or  
2 ordinance approved by the political subdivision is prima-facite  
3 prima facie evidence that the resolution or ordinance is  
4 adopted to preserve public safety or convenience.

5 The department of inspections and appeals when considering  
6 rebuttal evidence shall weigh the benefits accruing to the  
7 political subdivision as ~~it bears to~~ they affect the general  
8 public use compared to the burden placed on the railroad  
9 operation. Public safety or convenience may include, but  
10 ~~shall~~ is not be limited to, high traffic density at a specific  
11 crossing of a main artery or interference with the flow of  
12 authorized emergency vehicles.

13 ~~Political subdivisions shall notify the authority within~~  
14 ~~sixty days of July 17, 1976, of each existing resolution or~~  
15 ~~ordinance which does not conform with the provisions of this~~  
16 ~~section:--Political subdivisions not notifying the authority~~  
17 ~~of an existing resolution or ordinance during the calendar~~  
18 ~~year beginning January 1, 1976 shall have an additional sixty~~  
19 ~~days after July 17, 1977 to notify the authority:--Failure to do~~  
20 ~~so shall render the resolution or ordinance void.~~

21 ~~Such ordinances or resolutions may remain in effect until~~  
22 ~~the department of inspections and appeals has acted upon each~~  
23 ~~ordinance or resolution under the procedures specified in this~~  
24 ~~section:~~

25 Sec. 38. Section 327C.62, Code 1989, is amended to read as  
26 follows:

27 327G.62 CONTROVERSIES.

28 When a disagreement arises between a railroad corporation,  
29 its grantee, or its successor in interest, and the owner,  
30 lessee, or licensee of a building or other improvement,  
31 including trackage, used for receiving, storing, transporting,  
32 or manufacturing an article of commerce transported or to be  
33 transported, situated on a present or former railroad right-  
34 of-way or any on land owned or controlled by the railroad  
35 corporation, its grantee, or its successor in interest, as to

1 the terms and conditions on which the article is to be  
2 continued or removed, the railway corporation, its grantee, or  
3 its successor in interest, or the owner, lessee, or licensee  
4 may make written application to the department ~~and the~~. The  
5 department shall notify the department of inspections and  
6 appeals which shall hear and determine the controversy and  
7 make an order as which is just and equitable between the  
8 parties, which. ~~That order shall be enforced in the same~~  
9 ~~manner as other orders of~~ is subject to review by the state  
10 department of transportation. The decision of the state  
11 department of transportation is final agency action.

12 Sec. 39. Section 327G.65, Code 1989, is amended to read as  
13 follows:

14 327G.65 COST OF CONSTRUCTION.

15 ~~Such~~ The railroad corporation may require the person  
16 primarily to be served ~~thereby~~ to pay the legitimate cost and  
expense of acquiring, by condemnation or purchase, the  
18 necessary right of way for ~~such~~ the spur track and of  
19 constructing ~~the same~~ it, as ~~shall be~~ determined in separate  
20 items by the department. Except as provided in section  
21 327G.66, the total cost ~~thereof~~ as ascertained by ~~said~~ the  
22 department shall be deposited with the railroad corporation  
23 before it ~~shall be~~ is required to incur any expense. If an  
24 agreement cannot be reached, the question shall be referred to  
25 the department which may, after a hearing conducted by the  
26 department of inspections and appeals, issue an order.

27 Sec. 40. Section 601J.5, subsection 3, paragraph d, Code  
28 1989, is amended to read as follows:

29 d. The department of inspections and appeals shall  
30 establish an appeal process ~~under chapter~~ pursuant to chapters  
31 10A and 17A which allows those agencies or organizations  
32 determined to not be in compliance with this chapter an  
33 opportunity for a timely hearing before the department of  
inspections and appeals. A decision by the department of  
35 inspections and appeals is subject to review by the state

1 department of transportation. The state department of  
2 transportation's decision is the final agency action.  
3 Judicial review of the action of the department may be sought  
4 in accordance with chapter 17A.

5 EXPLANATION

6 This bill revises provisions relating to the duties of the  
7 appeals and fair hearings division of the department of  
8 inspections and appeals in the appeal and hearing processes of  
9 the state department of transportation.

10  
11  
12

HOUSE FILE 163

H-3083

1 Amend House File 163 as follows:

2 1. Page 1, by striking lines 9 through 13 and  
3 inserting the following: "after receipt of the  
4 request. The hearing shall be held by telephone  
5 conference unless the licensee and the department of  
6 inspections and appeals agree to hold the hearing in  
7 the county in which the licensee resides unless the  
8 department and the licensee agree that such hearing  
9 may be held or in some other county. Upon such the  
10 hearing the director or the".

11 2. Page 1, line 22, by inserting after the word  
12 "license." the following: "This section does not  
13 preclude the director from attempting to effect an  
14 informal settlement under chapter 17A."

15 PARAGRAPH DIVIDED."

16 3. Page 1, by striking lines 33 and 34.

By GRUHN of Dickinson

H-3083 FILED FEBRUARY 2, 1989

*Adopted - 2-7-89 (p-342)*

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Sen. Trans.  
DO pass 4-6-89 (p. 1224)

HOUSE FILE 163  
BY COMMITTEE ON TRANSPORTATION

(SUCCESSOR TO HSB 117)

(As Amended and Passed by the House February 7, 1989)

Re Passed House, Date 4-25-89 (p. 186) Passed Senate, Date 4-11-89 (p. 333)  
Vote: Ayes 99 Nays 0 Vote: Ayes 48 Nays 0  
Approved June 1, 1989

A BILL FOR

1 An Act relating to the duties of the department of inspections  
2 and appeals in the appeal and hearing processes of the state  
3 department of transportation.

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

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House Amendments \_\_\_\_\_  
Deleted Language \*

1 Section 1. Section 321.211, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3 Upon suspending the license of any a person as authorized,  
4 the department shall immediately notify the licensee in  
5 writing and upon the licensee's request shall afford the  
6 licensee an opportunity for a hearing before the ~~director-or~~  
7 ~~the-director's-authorized-agent~~ department of inspections and  
8 appeals as early as practical within ~~not-to-exceed~~ thirty days  
9 after receipt of the request. The hearing shall be held by  
10 telephone conference unless the licensee and the department of  
11 inspections and appeals agree to hold the hearing in the  
12 county in which the licensee resides unless-the-department-and  
13 the-licensee-agree-that-such-hearing-may-be-held or in some  
14 other county. Upon such the hearing the ~~director-or-the~~  
15 ~~director's-authorized-agent~~ department of inspections and  
16 appeals may administer oaths and may issue subpoenas for the  
17 attendance of witnesses and the production of relevant books  
18 and papers and may require a re-examination of the licensee.  
19 Upon such the hearing and issuance of a recommendation by the  
20 department of inspections and appeals, the state department of  
21 transportation shall either rescind its order of suspension or  
22 for good cause may extend the suspension of ~~such~~ the license  
23 or revoke such the license. This section does not preclude  
24 the director from attempting to effect an informal settlement  
25 under chapter 17A.

26 PARAGRAPH DIVIDED. There is appropriated each year from  
27 the road use tax fund to the department of transportation one  
28 hundred seven thousand dollars or ~~so~~ as much thereof as may-be  
29 is necessary to be used to pay the cost of notice and personal  
30 delivery of service, if as necessary to meet the notice  
31 requirement of this section. The department shall ~~promulgate~~  
32 adopt rules governing the payment of the cost of personal  
33 delivery of service. The reinstatement fees collected under  
34 section 321.191 shall be deposited in the road use tax fund in  
35 a manner provided in section 321.192, as reimbursement for the

1 costs of notice under this section.

\*2 Sec. 2. Section 321E.19, Code 1989, is amended to read as  
3 follows:

4 321E.19 PERMIT SUSPENDED, CHANGED, OR REVOKED.

5 Upon complaint by local authorities or on the department's  
6 own initiative and after notice and hearing before one or more  
7 members of the permit issuing body in the case of local  
8 authorities or the department of inspections and appeals for  
9 permits issued by the state department of transportation,  
10 permit privileges under this chapter may be suspended,  
11 changed, or revoked in whole or in part by the issuing  
12 authority for willful failure to comply with ~~any provisions a~~  
13 provision of this chapter, ~~or with any a~~ rule adopted under  
14 ~~authority of this chapter, or with any a~~ term, condition, or  
15 limitation of the permit.

16 Sec. 3. Section 322.9, unnumbered paragraphs 1 and 2, Code  
17 1989, are amended to read as follows:

18 The department may revoke or suspend the license of any a  
19 retail motor vehicle dealer if, after notice and hearing by  
20 the department of inspections and appeals, it finds that the  
21 licensee has been guilty of any an act which would ~~have been~~  
22 be a ground for the denial of a license under section 322.6.  
23 ~~Witnesses shall receive the same compensation provided in~~  
24 ~~section 622.69 and shall be compensated from funds~~  
25 ~~appropriated to the department.~~

26 The department ~~is further authorized to~~ may revoke or  
27 suspend the license of any a retail motor vehicle dealer if,  
28 after notice and hearing by the department of inspections and  
29 appeals, it finds that such the licensee has been convicted or  
30 has forfeited bail on three charges of:

31 Sec. 4. Section 322.24, Code 1989, is amended to read as  
32 follows:

33 322.24 HEARING.

34 ~~The director of transportation shall have the power to~~  
35 state department of transportation and the department of

1 inspections and appeals may issue subpoenas to compel the  
2 attendance of witnesses and the production of documents,  
3 papers, books, records, and other evidence ~~before-the-director~~  
4 in any matter over which the ~~director~~ respective department  
5 has jurisdiction, control, or supervision pertaining to this  
6 chapter.

7 If any ~~a~~ person shall-refuse refuses to obey any-such ~~a~~  
8 subpoena, ~~or~~ to give testimony, or to produce evidence as  
9 required ~~thereby~~, any ~~a~~ judge of the district court of the  
10 state of Iowa in and for Polk county may, upon application and  
11 proof of ~~such~~ the refusal, make an order awarding process of  
12 subpoena, or subpoena duces tecum, out of the ~~said~~ court, for  
13 the witness to appear before the ~~director-and~~ respective  
14 department, to give testimony, and to produce evidence as  
15 required ~~thereby~~. Upon filing ~~such~~ the order in the office of  
16 the clerk of ~~said~~ the district court, the clerk shall issue  
17 process of subpoena, as directed, under the seal of ~~said~~ the  
18 court, requiring the person to whom it is directed to appear  
19 at the time and place ~~therein~~ designated.

20 Sec. 5. Section 322A.6, unnumbered paragraph 2, Code 1989,  
21 is amended to read as follows:

22 An applicant seeking permission to enter into a franchise  
23 for additional representation of the same line-make in a  
24 community shall deposit with the department at the time the  
25 application is filed, an amount of money to be determined by  
26 the department of inspections and appeals to ~~secure-the~~  
27 ~~payment-of~~ pay the costs and-expenses of the hearing. The  
28 ~~applicant-shall-pay-the-costs-of-the-hearing-~~

29 Sec. 6. Section 322A.17, Code 1989, is amended to read as  
30 follows:

31 322A.17 JUDICIAL REVIEW.

32 A decision of the department of inspections and appeals is  
33 subject to review by the state department of transportation,  
34 whose decision is final agency action for the purpose of  
35 judicial review.

1 Judicial review of actions of the state department of  
2 ~~inspections-and-appeals~~ transportation may be sought in the  
3 manner provided for in section 322.10.

4 Sec. 7. Section 322B.6, unnumbered paragraph 1, Code 1989,  
5 is amended to read as follows:

6 The department may revoke, suspend, or deny refuse the  
7 license of a mobile home dealer, mobile home manufacturer,  
8 mobile home distributor, manufacturer's representative, or  
9 distributor's representative, as applicable, ~~in-accordance~~  
10 ~~with-the-provisions-of-chapter-17A~~ if the department finds  
11 that the mobile home dealer, manufacturer, distributor, or  
12 representative is guilty of any of the following acts or  
13 offenses:

14 Sec. 8. Section 322B.6, Code 1989, is amended by adding  
15 the following new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. In accordance with chapters 10A  
17 and 17A, each person whose license or application is revoked,  
18 suspended, or refused shall be provided an opportunity for a  
19 hearing before the department of inspections and appeals.

20 Sec. 9. Section 322C.6, unnumbered paragraph 1, Code 1989,  
21 is amended to read as follows:

22 The A license ~~of-a-person~~ issued under section 322C.4 or  
23 322C.9 may be denied, revoked, or suspended, after opportunity  
24 for a hearing before the department of inspections and appeals  
25 in accordance with chapters 10A and 17A, if ~~the-department~~  
26 ~~finds it is determined~~ that the licensee or applicant has done  
27 any of the following:

28 Sec. 10. Section 325.11, Code 1989, is amended to read as  
29 follows:

30 325.11 RULES OF PROCEDURE.

31 The department shall adopt rules governing for the  
32 procedure to be followed in the filing of applications and in  
33 the department of inspections and appeals shall adopt rules  
34 for the conduct of hearings.

35 Sec. 11. Section 325.13, subsection 5, Code 1989, is

1 amended to read as follows:

2 5. Upon receipt of ~~any protests~~ a protest complying with  
3 subsection 3, the department shall request the department of  
4 inspections and appeals to set the matter for hearing not less  
5 than ten days following the expiration of the time in which  
6 protests may be made ~~and~~. The department of inspections and  
7 appeals shall give notice to all persons who have filed  
8 protests of the time and place of the hearing.

9 Sec. 12. Section 325.17, Code 1989, is amended to read as  
10 follows:

11 325.17 ~~TESTIMONY-RECEIVABLE~~ UNCONTESTED CASE PROCEDURE.

12 ~~The~~ If no protest is filed, the department shall consider  
13 the application and any ~~objections-filed-thereto-and-may-hear~~  
14 ~~testimony-to-aid-it~~ relevant evidence in determining the  
15 propriety of granting the application.

16 Sec. 13. Section 325.19, Code 1989, is amended to read as  
17 follows:

18 325.19 EXPENSE OF HEARING.

19 The applicant shall pay all the costs ~~and-expenses~~ of the  
20 hearing ~~and-necessary-preliminary-investigation-in-connection~~  
21 ~~therewith~~ before the application ~~shall-be~~ is granted. The  
22 department of inspections and appeals shall establish  
23 appropriate fees which shall be paid to the department ~~at-the~~  
24 ~~time-the-application-is-filed~~ of inspections and appeals.

25 Sec. 14. Section 325.21, Code 1989, is amended to read as  
26 follows:

27 325.21 ~~JUDICIAL~~ REVIEW.

28 A decision of the department of inspections and appeals is  
29 subject to review by the state department of transportation.  
30 Judicial review of the decisions and actions of the department  
31 of transportation may be sought in accordance with ~~the-terms~~  
32 ~~of-the-Iowa-administrative-procedure-Act~~ chapter 17A. Such  
33 The petitioners must file with the clerk of the district court  
34 a bond for costs in the sum of not less than five hundred  
35 dollars.

1 Sec. 15. Section 325.25, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3 A certificate of convenience and necessity shall not be  
4 sold, transferred, leased, or assigned, nor shall any a  
5 contract or agreement with reference to or affecting any a  
6 certificate be made without the written approval of the  
7 department. The department may request the department of  
8 inspections and appeals to hold a hearing at-its-discretion  
9 and. The department of transportation shall approve the sale,  
10 transfer, lease, or assignment upon a finding by the  
11 department of inspections and appeals that there has been  
12 continuous service under the certificate for at least ninety  
13 days prior to the transfer, and that the transferee is fit,  
14 willing, and able to perform the operations authorized by the  
15 certificate, and that the transfer is consistent with the  
16 public interest. Pending determination of an application  
17 filed with the department for approval of a sale, transfer,  
18 lease, or assignment, the department may grant temporary  
19 approval of the proposed operation upon a finding of good  
20 cause.

21 Sec. 16. Section 327.16, Code 1989, is amended to read as  
22 follows:

23 327.16 REVOCATION OF PERMIT.

24 For just cause, after due hearing conducted by the  
25 department of inspections and appeals, the state department of  
26 transportation may at any time alter, amend, or revoke any a  
27 permit issued. If the holder of the permit or the holder's  
28 agent persists in a violation of any a prescribed safety  
29 regulation-prescribed-by-the-department rule, the department  
30 may ~~recommend-revocation-of-said~~ revoke the permit and-such  
31 violation-shall-be-grounds-for-such-revocation.

32 Sec. 17. Section 327A.4, Code 1989, is amended to read as  
33 follows:

34 327A.4 DISPOSAL OF CERTIFICATE.

35 ~~Whenever-any~~ If a person shall-file files an application

1 with the department ~~an application~~ for authority to sell,  
2 transfer, lease, or assign a certificate of convenience and  
3 necessity issued under ~~the provisions of~~ this chapter, the  
4 department shall request the department of inspections and  
5 appeals to fix a date for hearing thereon and. The state  
6 department of transportation shall cause a notice addressed to  
7 the citizens of each county through or in which the proposed  
8 service will be rendered to be published in ~~some~~ a newspaper  
9 of general circulation in each such county, once each week for  
10 two consecutive weeks, ~~and.~~ The department shall notify each  
11 liquid transport carrier holding a certificate, issued by the  
12 department, to transport over, in, or through the area  
13 described in the application, by mailing notice of the hearing  
14 to each such carrier at least ten days before the date fixed  
15 for hearing, ~~and the provisions of chapter.~~ Chapter 325,  
16 ~~inclusive of~~ and this chapter shall, insofar as appropriate  
17 be, are applicable to the said hearing.

18 Sec. 18. Section 327A.14, Code 1989, is amended to read as  
19 follows:

20 327A.14 PRIOR SERVICE -- RIGHTS TRANSFERRED OR ASSIGNED.  
21 Any A liquid transport carrier actively and continuously  
22 engaged in business as such between the first day of December,  
23 1956, and the fourteenth day of January, 1957, shall be issued  
24 a certificate of convenience and necessity covering all points  
25 in this state to all other points in this state, and all  
26 routes and areas in this state, ~~provided that~~ if the  
27 application ~~therefor shall be~~ is made within sixty days after  
28 May 17, 1957. ~~No rights~~ Rights so granted ~~may~~ shall not be  
29 sold, leased, transferred, or assigned to ~~any~~ a person engaged  
30 directly or indirectly in the transportation for hire of  
31 liquid products in bulk or freight in interstate commerce or  
32 in intrastate commerce, in this or any other state, or the  
33 District of Columbia, or to any person engaged in the leasing  
34 of equipment for such purposes, except ~~such rights as~~ which  
35 are actively being exercised at the time of sale, lease,

1 transfer, or assignment; ~~provided,~~ however, rights so granted  
2 may be sold, leased, transferred, or assigned to any a person  
3 who has not engaged directly or indirectly in the  
4 transportation for hire of liquid products in bulk or freight  
5 in interstate or intrastate commerce prior to the date of such  
6 the transfer, or to any a person who has not prior to such  
7 that date engaged in the leasing of equipment for such that  
8 purpose, and ~~on-hearing it shall~~ is not be necessary for the  
9 department ~~of-inspections-and-appeals~~ to find that such the  
10 sale, lease, transfer, or assignment is necessary in the  
11 public interest. Before any rights may be sold, leased,  
12 transferred, or assigned, application ~~therefor~~ shall be filed  
13 with the department of transportation, which shall ~~fix request~~  
14 the department of inspections and appeals to set a date for  
15 hearing thereon on the application, and ~~the-provisions-of~~  
16 section 327A.4 ~~shall-be~~ is applicable thereto. Rights  
17 actively being exercised may be sold, leased, transferred, or  
18 assigned to any a person engaged in the transportation for  
19 hire of liquid products in bulk or freight under the  
20 conditions hereinafter set forth in this section:

21 1. ~~Whenever~~ When an application for a sale, lease,  
22 transfer, assignment, consolidation, merger, or acquisition of  
23 control is filed with the department, if ~~on~~ after a hearing by  
24 the department of inspections and appeals, the department of  
25 transportation finds that ~~(a)~~ the proposed purchaser, lessee,  
26 transferee, or assignee is fit, willing and able, and ~~(b)~~ that  
27 the proposed seller, lessor, transferor, or assignor has not  
28 abandoned, suspended, or discontinued operations, and ~~(c)~~ that  
29 the transaction proposed will be consistent with the public  
30 interest, and that the conditions of this section have been or  
31 will be fulfilled, the department of transportation may enter  
32 an order approving and authorizing such the sale, lease,  
33 transfer, assignment, consolidation, merger, or acquisition of  
34 control, upon such terms and conditions as it shall-find finds  
35 to be just and reasonable and with such modifications as it

1 may prescribe.

2 2. Except as otherwise provided in subsection 1, it ~~shall~~  
3 ~~be is~~ unlawful for any a person to accomplish or effectuate,  
4 or to participate in accomplishing or effectuating, the  
5 control or management in a common interest of any two or more  
6 persons engaged in the transportation for hire of liquid  
7 products in bulk or freight or of one or more persons so  
8 engaged, however such result is attained, whether directly or  
9 indirectly, by use of common directors, officers, or  
10 stockholders, a holding or investment company or companies, a  
11 voting trust or trusts, or in any other manner ~~whatsoever~~.

12 3. The department ~~is hereby authorized~~ may, upon  
13 complaint, or upon its own initiative without complaint, ~~but~~  
14 ~~after notice, and hearing, to~~ investigate and determine  
15 whether any a person is violating ~~the provisions of~~ this  
16 section. If the department finds upon investigation that any  
17 a person is violating ~~the provisions of~~ this section, it  
18 shall, ~~by order after a hearing conducted by the department of~~  
19 ~~inspections and appeals,~~ require such the person to take such  
20 action consistent with ~~the provisions of~~ this chapter ~~as may~~  
21 ~~be necessary, in the opinion of the department,~~ to prevent  
22 continued violation of ~~such provisions~~ this section.

23 Sec. 19. Section 327C.8, Code 1989, is amended to read as  
24 follows:

25 327C.8 OBJECTIONS -- HEARING.

26 Any A person directly affected by the proposed  
27 discontinuance of ~~any an~~ agency, may file written objections  
28 with the department, stating the grounds for ~~such the~~  
29 objections, within fifteen days from the time of the  
30 publication of the notice as provided in section 327C.7. Upon  
31 the filing of ~~such~~ objections the department shall request the  
32 department of inspections and appeals ~~shall fix the time and~~  
33 ~~place for~~ to hold a hearing, which shall be held within sixty  
34 days from the filing of ~~such the~~ objections. Written notice  
35 of the time and place of ~~such the~~ hearing shall be mailed by

1 the department of inspections and appeals to the railroad  
2 corporation and the person filing objections at least ten days  
3 prior to the date fixed for ~~such~~ the hearing.

4 Sec. 20. Section 327C.12, Code 1989, is amended to read as  
5 follows:

6 327C.12 AID FROM COURTS.

7 The department or the department of inspections and appeals  
8 may invoke the aid of any court of record in the state in  
9 requiring the attendance and testimony of witnesses and the  
10 production of books, papers, tariff schedules, agreements, and  
11 other documents. ~~Any court having jurisdiction of the inquiry~~  
12 ~~shall, in case of the refusal of any~~ If a person refuses to  
13 obey a subpoena or other process, a court having jurisdiction  
14 of the inquiry shall issue an order requiring any of the  
15 officers, agents, or employees of any a carrier or other  
16 person to appear before the either department and produce all  
17 books and papers required by such the order and testify in  
18 relation to any matter under investigation.

19 Sec. 21. Section 327C.17, Code 1989, is amended to read as  
20 follows:

21 327C.17 WHEN ORDER EFFECTIVE -- VIOLATION.

22 If any a railroad fails, ~~neglects,~~ or refuses to comply  
23 with any a rule or order made by the state department of  
24 transportation or the department of inspections and appeals  
25 within the time specified, ~~it shall~~ the railroad is, for each  
26 day of such failure, be subject to a schedule "two" penalty.

27 Sec. 22. Section 327C.19, Code 1989, is amended to read as  
28 follows:

29 327C.19 JUDICIAL REVIEW.

30 A decision of the department of inspections and appeals is  
31 subject to review by the state department of transportation.

32 Judicial review of the actions of the state department of  
33 transportation may be sought in accordance with ~~the terms of~~  
34 ~~the Iowa administrative procedure Act~~ chapter 17A.

35 Sec. 23. Section 327C.20, Code 1989, is amended to read as

1 follows:

2 327C.20 REMITTING PENALTY.

3 If a common carrier fails in a judicial review proceeding  
4 to secure a vacation of the order objected to, it may apply to  
5 the court in which the review proceeding is finally  
6 adjudicated for an order remitting the penalty which has  
7 accrued during the review proceeding. Upon a satisfactory  
8 showing that the petition for judicial review was filed in  
9 good faith and not for the purpose of delay, and that there  
10 were reasonable grounds to believe that the order was  
11 unreasonable or unjust or that the power of the department of  
12 transportation or the department of inspections and appeals to  
13 make the same order was doubtful, such the court may remit the  
14 penalty that has accrued during the review proceeding.

15 Sec. 24. Section 327C.25, Code 1989, is amended to read as  
16 follows:

17 327C.25 COMPLAINTS.

18 Any A person, city or county may file with the department a  
19 petition setting forth any particular in which any a common  
20 carrier has violated the law to which it is subject and the  
21 amount of damages sustained by reason thereof of the  
22 violation. The department shall furnish a copy of the  
23 complaint to the carrier against which a complaint is filed, ~~a~~  
24 ~~copy thereof, and a reasonable time.~~ The department shall be  
25 fixed by request the department of inspections and appeals  
26 within to schedule a hearing in which such the carrier shall  
27 answer the petition or satisfy the ~~demand therein made~~ demands  
28 of the complaint. If such the carrier fails to satisfy the  
29 complaint within the time fixed or there appears to be  
30 reasonable grounds for investigating the matters set forth in  
31 ~~said the~~ the petition, the department of inspections and appeals  
32 shall hear and determine the questions involved and make such  
33 orders as it ~~shall find to be~~ finds proper. When If the  
34 department of transportation has reason to believe that any a  
35 carrier is violating any of the laws to which it is subject,

1 ~~it~~ the department may institute an investigation and cause  
2 request the department of inspections and appeals to conduct a  
3 ~~hearing to-be-held-before-the-department-of-inspections-and~~  
4 ~~appeals~~ in relation to such the matters ~~in-all-respects-as~~  
5 ~~fully~~ as if a petition had been filed.

6 Sec. 25. Section 327C.26, Code 1989, is amended to read as  
7 follows:

8 327C.26 INVESTIGATION -- REPORT.

9 When a hearing has been held before the department of  
10 inspections and appeals after notice, it shall make a report  
11 in writing setting forth the findings of fact and its  
12 conclusions together with its recommendations ~~or-orders~~ as to  
13 what reparation, if any, the offending carrier shall make to  
14 any a party who has suffered damage. ~~Such-finding~~ The  
15 findings of fact ~~shall-thereafter-in-all-legal-proceedings-be~~  
16 ~~prima-facie~~ are prima facie evidence in all further legal  
17 proceedings of every fact found. All reports of hearings and  
18 investigations made by ~~the-department-of-transportation-and~~  
19 the department of inspections and appeals shall be entered of  
20 record and a copy furnished to the carrier against which the  
21 complaint was filed, to the party complaining, and to any  
22 other person having a direct interest in the matter. A  
23 reasonable fee not to exceed the actual duplication costs may  
24 be charged for the copies.

25 Sec. 26. Section 327C.28, Code 1989, is amended to read as  
26 follows:

27 327C.28 VIOLATION OF ORDER -- PETITION -- NOTICE.

28 ~~When-any~~ If a person violates or fails to obey any a lawful  
29 order or requirement of the department of transportation or  
30 the department of inspections and appeals, the department of  
31 transportation or the department of inspections and appeals  
32 shall apply by petition in the name of the state, against such  
33 the person, to the district court, alleging such the violation  
34 or failure to obey, ~~the.~~ The court shall hear and determine  
35 the matter set forth in the petition on reasonable notice to

1 the person, to be fixed by the court and to be served in the  
2 same manner as an original notices notice for the commencement  
3 of action.

4 Sec. 27. Section 327C.29, Code 1989, is amended to read as  
5 follows:

6 327C.29 INTERESTED PARTY MAY BEGIN PROCEEDINGS.

7 Any A person or-city-or-county interested in ~~the-matter-of~~  
8 enforcing any an order or requirement of the department of  
9 transportation or the department of inspections and appeals,  
10 may file a petition against ~~such-person~~ the violator, alleging  
11 the failure to comply with ~~such~~ the order or requirement and  
12 praying asking for summary relief to the same extent and in  
13 the same manner as the department of transportation or the  
14 department of inspections and appeals may ~~do~~ under section  
15 327C.28, and the proceedings after the filing of ~~such~~ the  
16 petition shall be the same as in section 327C.28.

17 Sec. 28. Section 327D.53, Code 1989, is amended to read as  
18 follows:

19 327D.53 DIVISION OF JOINT RATES.

20 Before the ~~promulgation~~ adoption of ~~such~~ the rates, the  
21 department shall notify the railroad corporations interested  
22 in the schedule of joint rates fixed, and give them a  
23 reasonable time to agree upon a division of the charges  
24 provided. If ~~such~~ the corporations fail to agree upon a  
25 division, and to notify the department ~~thereof~~ of their  
26 agreement, the department shall, after a hearing ~~of-the~~  
27 corporations-interested conducted by the department of  
28 inspections and appeals, decide the ~~same~~ rates, taking into  
29 consideration the value of terminal facilities and all the  
30 circumstances of the haul, and the division so determined by  
31 it ~~shall~~ is, in all controversies or actions between the  
32 railroad corporations interested, be ~~prima-facie~~ prima facie  
33 evidence of a just and reasonable division ~~thereof~~.

34 Sec. 29. Section 327D.83, Code 1989, is amended to read as  
35 follows:

1 327D.83 POWER TO REVISE RATES.

2 ~~Whenever there shall be~~ If a schedule is filed with the  
3 department ~~any schedule~~ stating a rate, the department may,  
4 either upon complaint or upon its own motion, ~~immediately,~~  
5 ~~and, if it so orders, without answer or formal pleadings by~~  
6 ~~the interested common carrier, enter upon~~ request the  
7 department of inspections and appeals to conduct a hearing  
8 concerning the propriety of ~~such~~ the rate.

9 Sec. 30. Section 327D.85, Code 1989, is amended to read as  
10 follows:

11 327D.85 DECISION.

12 ~~On such~~ At the hearing the department of inspections and  
13 appeals shall establish propose the rates on the schedule, in  
14 whole or in part, or others in lieu thereof, which ~~it shall~~  
15 ~~find to be~~ the department of inspections and appeals finds are  
16 just and reasonable rates. The action of the department of  
17 inspections and appeals is subject to review by the state  
18 department of transportation. The decision of the state  
19 department of transportation is the final agency action.

20 Sec. 31. Section 327D.89, Code 1989, is amended to read as  
21 follows:

22 327D.89 COMPLAINT OF VIOLATION.

23 When any a person, ~~city or county shall make complaint~~  
24 complains to the department that the rate charged or published  
25 by any a railway corporation, or the maximum rate fixed by  
26 law, is unreasonably high or discriminating, the department  
27 may investigate the matter, and, ~~held~~ request the department  
28 of inspections and appeals to conduct a hearing, ~~giving~~. The  
29 department of inspections and appeals shall give the parties  
30 notice of the time and place of the hearing.

31 Sec. 32. Section 327D.90, Code 1989, is amended to read as  
32 follows:

33 327D.90 HEARING -- EVIDENCE.

34 At the time of the hearing the department of inspections  
35 and appeals shall receive any evidence and listen to any

1 arguments presented by either party relevant to the matter  
2 under investigation, and the burden of proof shall is not be  
3 upon the person making the complaint. The complainant shall  
4 add to the showing made at such the hearing whatever  
5 information the complainant may then have has, or can obtain  
6 from any source, ~~including schedules of rates actually charged~~  
7 ~~by any railway corporation for substantially the same kind of~~  
8 ~~service, in this or any other state, -- the lowest rates~~  
9 ~~published or charged by any railway corporation for~~  
10 ~~substantially the same kind of service whether in this or~~  
11 ~~another state, shall, at the instance of the person~~  
12 ~~complaining, be accepted as prima facie evidence of a~~  
13 ~~reasonable rate for the services under investigation, and if~~  
14 ~~the railway corporation complained of is operating a line of~~  
15 ~~railroad beyond the state, or has a traffic arrangement with~~  
16 ~~any such railway corporation, the same shall be taken into~~  
17 ~~consideration in determining what is a reasonable rate, if it~~  
18 ~~be operating a line of railway beyond the state, the rate~~  
19 ~~charged or established for substantially a similar or greater~~  
20 ~~service by it in another state shall also be considered. The~~  
21 department of transportation inspections and appeals shall  
22 ~~establish~~ propose just and reasonable rates, which may be  
23 adopted in whole or in part or modified as the state  
24 department shall ~~determine~~ of transportation determines.

25 Sec. 33. Section 327D.128, Code 1989, is amended to read  
26 as follows:

27 327D.128 WEIGHING -- DISAGREEMENT.

28 If a railroad corporation and the owner, consignor, or  
29 consignee of car lots of bulk commodities cannot reach  
30 agreement relative to the weighing of the commodities, appeal  
31 may be made to the state department of ~~inspections and appeals~~  
32 transportation. The state department of transportation, after  
33 a hearing by the department of inspections and appeals, shall  
34 issue an order equitable to all parties including but not  
35 limited to allocation of costs and specification of the place

1 and manner of weighing.

2 Sec. 34. Section 327G.12, Code 1989, is amended to read as  
3 follows:

4 327G.12 OVERHEAD, UNDERGROUND, OR MORE THAN ONE CROSSING.

5 ~~Such~~ The owner of land may serve upon ~~such~~ the railroad  
6 corporation a request in writing for more than one ~~such~~  
7 private crossing, or for an overhead or underground crossing,  
8 accompanied by a plat of the owner's land designating thereon  
9 the location and character of crossing desired. If the  
10 railroad corporation refuses or neglects to comply within  
11 thirty days of ~~such~~ a written request, the owner of the land  
12 may make written application to the department to ~~hear-and~~  
13 determine the owner's rights ~~in-said-respect~~. The department  
14 of inspections and appeals, after notice to the railroad  
15 corporation, shall hear ~~said~~ the application and all  
16 objections ~~thereto~~ to the application, and make ~~such~~ an order  
17 ~~as-shall-be~~ which is reasonable and just, and if it requires  
18 the railroad company to construct any crossing or roadway, fix  
19 the time for compliance with the order and apportion the costs  
20 as appropriate. The-matter-of-costs-shall-be-in-the  
21 discretion-of-the-department-of-inspections-and-appeals: The  
22 order of the department of inspections and appeals is subject  
23 to review by the state department of transportation. The  
24 decision of the state department of transportation is the  
25 final agency action.

26 Sec. 35. Section 327G.16, Code 1989, is amended to read as  
27 follows:

28 327G.16 DISAGREEMENT -- APPLICATION -- NOTICE.

29 If the persons specified in section 327G.15 cannot reach an  
30 agreement, either party may make written application to the  
31 authority department requesting resolution of the  
32 disagreement. The authority department shall ~~fix~~ request the  
33 department of inspections and appeals to set a date for  
34 hearing and. The department of inspections and appeals shall  
35 ~~give the-other-party~~ ten days' written notice by-mail of the

1 ~~hearing date. The authority shall promulgate rules subject to~~  
2 ~~department approval for processing applications which are~~  
3 ~~filed with the authority prior to a written disagreement. The~~  
4 ~~authority may set a hearing date after the disagreement has~~  
5 ~~been filed.~~

6 Sec. 36. Section 327G.17, Code 1989, is amended to read as  
7 follows:

8 327G.17 HEARING -- ORDER.

9 The department of inspections and appeals shall hear the  
10 evidence of each party to the controversy and shall make an  
11 order, which may include, pursuant to the provisions of  
12 chapters 471 and 472, authority to condemn, resolving the  
13 controversy ~~including what.~~ The order shall include the  
14 portion of the expense shall to be paid by each party to such  
15 the controversy. In determining what portion of the expense  
16 shall be paid by each party the department of inspections and  
17 appeals may consider the ratio of the benefits accruing to the  
18 railroad or the governmental unit or both, ~~as it bears to the~~  
19 ~~general public use and benefit and such benefits may in the~~  
20 ~~case of construction be consistent with the standards adopted~~  
21 ~~for similar purposes by the federal highway administration~~  
22 ~~under the federal aid highway Act of 1973 as amended to July~~  
23 ~~1, 1976, (23 U.S.C. § 101 et seq.).~~

24 The order of the department of inspections and appeals is  
25 subject to review by the state department of transportation.  
26 The decision of the state department of transportation is the  
27 final agency action.

28 Sec. 37. Section 327G.32, Code 1989, is amended to read as  
29 follows:

30 327G.32 BLOCKING HIGHWAY CROSSING.

31 A railroad corporation or its employees shall not operate  
32 any a train in such a manner as to prevent vehicular use of  
33 any a highway, street, or alley for a period of time in excess  
34 of ten minutes except in any of the following circumstances:

- 35 1. When necessary to comply with signals affecting the

1 safety of the movement of trains.

2 2. When necessary to avoid striking any an object or  
3 person on the track.

4 3. When the train is disabled.

5 4. When necessary to comply with governmental safety  
6 regulations including, but not limited to, speed ordinances  
7 and speed regulations.

8 Any An officer or employee of a railroad corporation  
9 violating any a provision of this section ~~shall is~~, upon  
10 conviction, be subject to the penalty provided in section  
11 327G.14. An employee ~~shall is~~ not be guilty of such a  
12 violation if the employee's action was necessary to comply  
13 with the direct order or instructions of a railroad  
14 corporation or its supervisors. ~~Such-guilt-shall~~ Guilt is  
15 then ~~be~~ with the railroad corporation.

4013, 3616

16 This Other provisions of this section notwithstanding, a  
17 political subdivision may pass a resolution or ordinance  
18 regulating the length of time a specific crossing may be  
19 blocked if the political subdivision demonstrates that a  
20 resolution or ordinance is necessary for public safety or  
21 convenience. If a resolution or ordinance is passed, the  
22 political subdivision shall, within thirty days of the  
23 effective date of the resolution or ordinance, notify the  
24 department and the railroad corporation using the crossing  
25 affected by the resolution or ordinance. The resolution or  
26 ordinance ~~shall does~~ not become effective unless the  
27 department and the railroad corporation are notified within  
28 thirty days. The resolution or ordinance ~~shall-become~~ becomes  
29 effective thirty days after notification unless a person files  
30 an objection to the resolution or ordinance with the  
31 department. If an objection is filed the department shall  
32 notify the department of inspections and appeals which shall  
33 hold a hearing. The After a hearing by the department of  
34 inspections and appeals, the state department of  
35 transportation may disapprove the resolution or ordinance if

4013-1 public safety or convenience does not require a resolution or  
2 ordinance. The decision of the state department of  
3 transportation is final agency action. The resolution or  
4 ordinance approved by the political subdivision is prima-facie  
5 prima facie evidence that the resolution or ordinance is  
6 adopted to preserve public safety or convenience.

7 The department of inspections and appeals when considering  
8 rebuttal evidence shall weigh the benefits accruing to the  
9 political subdivision as ~~it bears to~~ they affect the general  
10 public use compared to the burden placed on the railroad  
11 operation. Public safety or convenience may include, but  
12 shall is not be limited to, high traffic density at a specific  
13 crossing of a main artery or interference with the flow of  
14 authorized emergency vehicles.

15 ~~Political subdivisions shall notify the authority within~~  
16 ~~sixty days of July 1, 1976, of each existing resolution or~~  
17 ~~ordinance which does not conform with the provisions of this~~  
18 ~~section.--Political subdivisions not notifying the authority~~  
19 ~~of an existing resolution or ordinance during the calendar~~  
20 ~~year beginning January 1, 1976 shall have an additional sixty~~  
21 ~~days after July 1, 1977 to notify the authority.--Failure to do~~  
22 ~~so shall render the resolution or ordinance void.~~

23 ~~Such ordinances or resolutions may remain in effect until~~  
24 ~~the department of inspections and appeals has acted upon each~~  
25 ~~ordinance or resolution under the procedures specified in this~~  
26 ~~section.~~

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27 Sec. 38. Section 327G.62, Code 1989, is amended to read as  
28 follows:

29 327G.62 CONTROVERSIES.

30 When a disagreement arises between a railroad corporation,  
31 its grantee, or its successor in interest, and the owner,  
32 lessee, or licensee of a building or other improvement,  
33 including trackage, used for receiving, storing, transporting,  
34 or manufacturing an article of commerce transported or to be  
35 transported, situated on a present or former railroad right-

1 of-way or any on land owned or controlled by the railroad  
2 corporation, its grantee, or its successor in interest, as to  
3 the terms and conditions on which the article is to be  
4 continued or removed, the railway corporation, its grantee, or  
5 its successor in interest, or the owner, lessee, or licensee  
6 may make written application to the department ~~and the~~. The  
7 department shall notify the department of inspections and  
8 appeals which shall hear and determine the controversy and  
9 make an order ~~as~~ which is just and equitable between the  
10 parties, ~~which~~. ~~That order shall be enforced in the same~~  
11 ~~manner as other orders of~~ is subject to review by the state  
12 department of transportation. The decision of the state  
13 department of transportation is final agency action.

14 Sec. 39. Section 327G.65, Code 1989, is amended to read as  
15 follows:

16 327G.65 COST OF CONSTRUCTION.

17 ~~Such~~ The railroad corporation may require the person  
18 primarily to be served ~~thereby~~ to pay the legitimate cost and  
19 expense of acquiring, by condemnation or purchase, the  
20 necessary right of way for ~~such~~ the spur track and of  
21 constructing ~~the same~~ it, as ~~shall be~~ determined in separate  
22 items by the department. Except as provided in section  
23 327G.66, the total cost ~~thereof~~ as ascertained by ~~said~~ the  
24 department shall be deposited with the railroad corporation  
25 before it ~~shall be~~ is required to incur ~~any~~ expense. If an  
26 agreement cannot be reached, the question shall be referred to  
27 the department which may, after a hearing conducted by the  
28 department of inspections and appeals, issue an order.

29 Sec. 40. Section 601J.5, subsection 3, paragraph d, Code  
30 1989, is amended to read as follows:

31 d. The department of inspections and appeals shall  
32 establish an appeal process ~~under chapter~~ pursuant to chapters  
33 10A and 17A which allows those agencies or organizations  
34 determined to not be in compliance with this chapter an  
35 opportunity for a timely hearing before the department of

1 inspections and appeals. A decision by the department of  
2 inspections and appeals is subject to review by the state  
3 department of transportation. The state department of  
4 transportation's decision is the final agency action.  
5 Judicial review of the action of the department may be sought  
6 in accordance with chapter 17A.

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## HOUSE FILE 163

S-3618

Amend House File 163 as amended, passed, and reprinted by the House, as follows:

1. Page 18, line 16, by striking the word "provisions" and inserting the following: "portions".
2. Page 18, line 17, by striking the words "a resolution or" and inserting the following: "a resolution-or an".
3. Page 18, lines 19 and 20, by striking the words "a resolution or" and inserting the following: "a-resolution-or an".
4. Page 18, line 21, by striking the words "a resolution or" and inserting the following: "a resolution-or an".
5. Page 18, line 23, by striking the words "resolution or" and inserting the following: "resolution-or".
6. Page 18, by striking line 25, and inserting the following: "affected by the resolution-or ordinance. The resolution-or".
7. Page 18, line 28, by striking the words "resolution or" and inserting the following: "resolution-or".
8. Page 18, line 30, by striking the words "resolution or" and inserting the following: "resolution-or".
9. Page 18, line 35, by striking the words "resolution or" and inserting the following: "resolution-or".
10. Page 19, line 1, by striking the words "a resolution or" and inserting the following: "a resolution-or the".
11. Page 19, line 3, by striking the words "resolution or" and inserting the following: "resolution-or".
12. Page 19, line 5, by striking the words "resolution or" and inserting the following: "resolution-or".
13. Page 19, by inserting after line 26 the following:  
"A resolution regulating the length of time a specific crossing may be blocked, which was adopted before the effective date of Senate File 500 of the Seventy-third General Assembly, is an ordinance for the purposes of this section."

By DONALD V. DOYLE

S-3618 FILED APRIL 10, 1989

Adopted 4-11-89 (p.1333)

## SENATE AMENDMENT TO HOUSE FILE 163

4013

Amend House File 163 as amended, passed, and reprinted by the House, as follows:

1. Page 18, line 16, by striking the word "provisions" and inserting the following: "portions".
2. Page 18, line 17, by striking the words "a resolution or" and inserting the following: "a ~~resolution-or~~ an".
3. Page 18, lines 19 and 20, by striking the words "a resolution or" and inserting the following: "a ~~resolution-or~~ an".
4. Page 18, line 21, by striking the words "a resolution or" and inserting the following: "a ~~resolution-or~~ an".
5. Page 18, line 23, by striking the words "resolution or" and inserting the following: "resolution-or".
6. Page 18, by striking line 25, and inserting the following: "affected by the ~~resolution-or~~ ordinance. The ~~resolution-or~~".
7. Page 18, line 28, by striking the words "resolution or" and inserting the following: "resolution-or".
8. Page 18, line 30, by striking the words "resolution or" and inserting the following: "resolution-or".
9. Page 18, line 35, by striking the words "resolution or" and inserting the following: "resolution-or".
10. Page 19, line 1, by striking the words "a resolution or" and inserting the following: "a ~~resolution-or~~ the".
11. Page 19, line 3, by striking the words "resolution or" and inserting the following: "resolution-or".
12. Page 19, line 5, by striking the words "resolution or" and inserting the following: "resolution-or".
13. Page 19, by inserting after line 26 the following:  
"A resolution regulating the length of time a specific crossing may be blocked, which was adopted before the effective date of Senate File 500 of the Seventy-third General Assembly, is an ordinance for the purposes of this section."

RECEIVED FROM THE SENATE

H-4013 FILED APRIL 13, 1989

House Concurred 4-25-89 (p1865)

TRANSPORTATION

*W. H. H.*

HOUSE FILE 163

BY (PROPOSED DEPARTMENT OF  
INSPECTIONS AND APPEALS  
BILL)

*Gruber, Chair*

*Shearer  
Schreckloth*

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the duties of the department of inspections  
2 and appeals in the appeal and hearing processes of the state  
3 department of transportation.

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

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1 Section 1. Section 321.211, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3 Upon suspending the license of any a person as authorized,  
4 the department shall immediately notify the licensee in  
5 writing and upon the licensee's request shall afford the  
6 licensee an opportunity for a hearing before the ~~director-or~~  
7 ~~the-director's-authorized-agent~~ department of inspections and  
8 appeals as early as practical within ~~not-to-exceed~~ thirty days  
9 after receipt of the request. The hearing shall be held in  
10 the county in which the licensee resides unless the department  
11 of inspections and appeals and the licensee agree that such  
12 the hearing may be held in some other county; or the hearing  
13 may be held by telephone conference at the discretion of the  
14 department of inspections and appeals. Upon such the hearing  
15 ~~the director-or-the-director's-authorized-agent~~ department of  
16 inspections and appeals may administer oaths and may issue  
17 subpoenas for the attendance of witnesses and the production  
18 of relevant books and papers and may require a re-examination  
19 of the licensee. Upon such the hearing and issuance of a  
20 recommendation by the department of inspections and appeals,  
21 the state department of transportation shall either rescind  
22 its order of suspension or for good cause may extend the  
23 suspension of such the license or revoke such the license.  
24 There is appropriated each year from the road use tax fund to  
25 the department of transportation one hundred seven thousand  
26 dollars or ~~so~~ as much thereof as ~~may-be~~ is necessary to be  
27 used to pay the cost of notice and personal delivery of  
28 service, if as necessary to meet the notice requirement of  
29 this section. The department shall ~~promulgate~~ adopt rules  
30 governing the payment of the cost of personal delivery of  
31 service. The reinstatement fees collected under section  
32 321.191 shall be deposited in the road use tax fund in a  
33 manner provided in section 321.192, as reimbursement for the  
34 costs of notice under this section. This section does not  
35 preclude the director from attempting to effect an informal

1 settlement under chapter 17A.

2 Sec. 2. Section 321E.19, Code 1989, is amended to read as  
3 follows:

4 321E.19 PERMIT SUSPENDED, CHANGED, OR REVOKED.

5 Upon complaint by local authorities or on the department's  
6 own initiative and after notice and hearing before one or more  
7 members of the permit issuing body in the case of local  
8 authorities or the department of inspections and appeals for  
9 permits issued by the state department of transportation,  
10 permit privileges under this chapter may be suspended,  
11 changed, or revoked in whole or in part by the issuing  
12 authority for willful failure to comply with ~~any-provisions a~~  
13 provision of this chapter, ~~or-with-any a~~ rule adopted under  
14 ~~authority-of~~ this chapter, ~~or with-any a~~ term, condition, or  
15 limitation of the permit.

16 Sec. 3. Section 322.9, unnumbered paragraphs 1 and 2, Code  
17 1989, are amended to read as follows:

18 The department may revoke or suspend the license of any a  
19 retail motor vehicle dealer if, after notice and hearing by  
20 the department of inspections and appeals, it finds that the  
21 licensee has been guilty of any an act which would ~~have-been~~  
22 be a ground for the denial of a license under section 322.6.  
23 ~~Witnesses-shall-receive-the-same-compensation-provided-in~~  
24 ~~section-622-69-and-shall-be-compensated-from-funds~~  
25 ~~appropriated-to-the-department.~~

26 The department ~~is-further-authorized-to~~ may revoke or  
27 suspend the license of any a retail motor vehicle dealer if,  
28 after notice and hearing by the department of inspections and  
29 appeals, it finds that such the licensee has been convicted or  
30 has forfeited bail on three charges of:

31 Sec. 4. Section 322.24, Code 1989, is amended to read as  
32 follows:

33 322.24 HEARING.

34 The ~~director-of-transportation-shall-have-the-power-to~~  
35 state department of transportation and the department of

1 inspections and appeals may issue subpoenas to compel the  
2 attendance of witnesses and the production of documents,  
3 papers, books, records, and other evidence ~~before the director~~  
4 in any matter over which the director respective department  
5 has jurisdiction, control, or supervision pertaining to this  
6 chapter.

7 If ~~any a person shall refuse~~ refuses to obey ~~any such a~~  
8 subpoena, or to give testimony, or to produce evidence as  
9 required ~~thereby, any a~~ judge of the district court of the  
10 state of Iowa in and for Polk county may, upon application and  
11 proof of ~~such the~~ refusal, make an order awarding process of  
12 subpoena, or subpoena duces tecum, out of the ~~said~~ court, for  
13 the witness to appear before the ~~director and~~ respective  
14 department, to give testimony, and to produce evidence as  
15 required ~~thereby~~. Upon filing ~~such the~~ order in the office of  
16 the clerk of ~~said the~~ district court, the clerk shall issue  
17 process of subpoena, as directed, under the seal of ~~said the~~  
18 court, requiring the person to whom it is directed to appear  
19 at the time and place ~~therein~~ designated.

20 Sec. 5. Section 322A.6, unnumbered paragraph 2, Code 1989,  
21 is amended to read as follows:

22 An applicant seeking permission to enter into a franchise  
23 for additional representation of the same line-make in a  
24 community shall deposit with the department at the time the  
25 application is filed, an amount of money to be determined by  
26 the department of inspections and appeals to ~~secure the~~  
27 ~~payment of~~ pay the costs and expenses of the hearing. The  
28 ~~applicant shall pay the costs of the hearing.~~

29 Sec. 6. Section 322A.17, Code 1989, is amended to read as  
30 follows:

31 322A.17 JUDICIAL REVIEW.

32 A decision of the department of inspections and appeals is  
33 subject to review by the state department of transportation,  
34 whose decision is final agency action for the purpose of  
35 judicial review.

1 Judicial review of actions of the state department of  
2 ~~inspections-and-appeals~~ transportation may be sought in the  
3 manner provided for in section 322.10.

4 Sec. 7. Section 322B.6, unnumbered paragraph 1, Code 1989,  
5 is amended to read as follows:

6 The department may revoke, suspend, or deny refuse the  
7 license of a mobile home dealer, mobile home manufacturer,  
8 mobile home distributor, manufacturer's representative, or  
9 distributor's representative, as applicable, ~~in-accordance~~  
10 ~~with-the-provisions-of-chapter-17A~~ if the department finds  
11 that the mobile home dealer, manufacturer, distributor, or  
12 representative is guilty of any of the following acts or  
13 offenses:

14 Sec. 8. Section 322B.6, Code 1989, is amended by adding  
15 the following new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. In accordance with chapters 10A  
17 and 17A, each person whose license or application is revoked,  
18 suspended, or refused shall be provided an opportunity for a  
19 hearing before the department of inspections and appeals.

20 Sec. 9. Section 322C.6, unnumbered paragraph 1, Code 1989,  
21 is amended to read as follows:

22 ~~The A~~ license of ~~a-person~~ issued under section 322C.4 or  
23 322C.9 may be denied, revoked, or suspended, after opportunity  
24 for a hearing before the department of inspections and appeals  
25 in accordance with chapters 10A and 17A, if the-department  
26 finds it is determined that the licensee or applicant has done  
27 any of the following:

28 Sec. 10. Section 325.11, Code 1989, is amended to read as  
29 follows:

30 325.11 RULES OF PROCEDURE.

31 The department shall adopt rules governing for the  
32 procedure to be followed in the filing of applications and ~~in~~  
33 the department of inspections and appeals shall adopt rules  
34 for the conduct of hearings.

35 Sec. 11. Section 325.13, subsection 5, Code 1989, is

1 amended to read as follows:

2 5. Upon receipt of ~~any-protests~~ a protest complying with  
3 subsection 3, the department shall request the department of  
4 inspections and appeals to set the matter for hearing not less  
5 than ten days following the expiration of the time in which  
6 protests may be made ~~and~~. The department of inspections and  
7 appeals shall give notice to all persons who have filed  
8 protests of the time and place of the hearing.

9 Sec. 12. Section 325.17, Code 1989, is amended to read as  
10 follows:

11 325.17 ~~TESTIMONY-RECEIVABLE~~ UNCONTESTED CASE PROCEDURE.  
12 ~~The~~ If no protest is filed, the department shall consider  
13 the application and any ~~objections-filed-thereto-and-may-hear~~  
14 ~~testimony-to-aid-it~~ relevant evidence in determining the  
15 propriety of granting the application.

16 Sec. 13. Section 325.19, Code 1989, is amended to read as  
17 follows:

18 325.19 EXPENSE OF HEARING.

19 The applicant shall pay all the costs ~~and-expenses~~ of the  
20 hearing ~~and-necessary-preliminary-investigation-in-connection~~  
21 ~~therewith~~ before the application ~~shall-be~~ is granted. The  
22 department of inspections and appeals shall establish  
23 appropriate fees which shall be paid to the department ~~at-the~~  
24 ~~time-the-application-is-filed~~ of inspections and appeals.

25 Sec. 14. Section 325.21, Code 1989, is amended to read as  
26 follows:

27 325.21 JUDICIAL REVIEW.

28 A decision of the department of inspections and appeals is  
29 subject to review by the state department of transportation.  
30 Judicial review of the decisions and actions of the department  
31 of transportation may be sought in accordance with ~~the-terms~~  
32 ~~of-the-Iowa-administrative-procedure-Act~~ chapter 17A. Such  
33 The petitioners must file with the clerk of the district court  
34 a bond for costs in the sum of not less than five hundred  
35 dollars.

1     Sec. 15. Section 325.25, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3     A certificate of convenience and necessity shall not be  
4 sold, transferred, leased, or assigned, nor shall any a  
5 contract or agreement with reference to or affecting any a  
6 certificate be made without the written approval of the  
7 department. The department may request the department of  
8 inspections and appeals to hold a hearing at-its-discretion  
9 and. The department of transportation shall approve the sale,  
10 transfer, lease, or assignment upon a finding by the  
11 department of inspections and appeals that there has been  
12 continuous service under the certificate for at least ninety  
13 days prior to the transfer, and that the transferee is fit,  
14 willing, and able to perform the operations authorized by the  
15 certificate, and that the transfer is consistent with the  
16 public interest. Pending determination of an application  
17 filed with the department for approval of a sale, transfer,  
18 lease, or assignment, the department may grant temporary  
19 approval of the proposed operation upon a finding of good  
20 cause.

21     Sec. 16. Section 327.16, Code 1989, is amended to read as  
22 follows:

23     327.16 REVOCATION OF PERMIT.

24     For just cause, after due hearing conducted by the  
25 department of inspections and appeals, the state department of  
26 transportation may at any time alter, amend, or revoke any a  
27 permit issued. If the holder of the permit or the holder's  
28 agent persists in a violation of any a prescribed safety  
29 regulation-prescribed-by-the-department rule, the department  
30 may recommend-revocation-of-said revoke the permit and-such  
31 violation-shall-be-grounds-for-such-revocation.

32     Sec. 17. Section 327A.4, Code 1989, is amended to read as  
33 follows:

34     327A.4 DISPOSAL OF CERTIFICATE.

35     ~~Whenever-any~~ If a person shall-file files an application

1 with the department ~~an-application~~ for authority to sell,  
2 transfer, lease, or assign a certificate of convenience and  
3 necessity issued under ~~the-provisions-of~~ this chapter, the  
4 department shall request the department of inspections and  
5 appeals to fix a date for hearing thereon-and. The state  
6 department of transportation shall cause a notice addressed to  
7 the citizens of each county through or in which the proposed  
8 service will be rendered to be published in ~~some~~ a newspaper  
9 of general circulation in each such county, once each week for  
10 two consecutive weeks~~,-and.~~ The department shall notify each  
11 liquid transport carrier holding a certificate, issued by the  
12 department, to transport over, in, or through the area  
13 described in the application, by mailing notice of the hearing  
14 to each such carrier at least ten days before the date fixed  
15 for hearing~~,-and-the-provisions-of-chapter.~~ Chapter 325,  
16 ~~inclusive-of~~ and this chapter shall, insofar as appropriate  
17 ~~be,~~ are applicable to the ~~said~~ hearing.

18 Sec. 18. Section 327A.14, Code 1989, is amended to read as  
19 follows:

20 327A.14 PRIOR SERVICE -- RIGHTS TRANSFERRED OR ASSIGNED.

21 Any A liquid transport carrier actively and continuously  
22 engaged in business as such between the first day of December,  
23 1956, and the fourteenth day of January, 1957, shall be issued  
24 a certificate of convenience and necessity covering all points  
25 in this state to all other points in this state, and all  
26 routes and areas in this state, ~~provided-that if the~~  
27 ~~application therefor-shall-be~~ is made within sixty days after  
28 May 17, 1957. ~~No-rights~~ Rights so granted ~~may~~ shall not be  
29 sold, leased, transferred, or assigned to ~~any~~ a person engaged  
30 directly or indirectly in the transportation for hire of  
31 liquid products in bulk or freight in interstate commerce or  
32 in intrastate commerce, in this or any other state, or the  
33 District of Columbia, or to any person engaged in the leasing  
34 of equipment for such purposes, except ~~such rights as~~ which  
35 are actively being exercised at the time of sale, lease,

1 transfer, or assignment; ~~provided~~, however, rights so granted  
2 may be sold, leased, transferred, or assigned to any a person  
3 who has not engaged directly or indirectly in the  
4 transportation for hire of liquid products in bulk or freight  
5 in interstate or intrastate commerce prior to the date of such  
6 the transfer, or to any a person who has not prior to such  
7 that date engaged in the leasing of equipment for such that  
8 purpose, and ~~on-hearing it shall~~ is not be necessary for the  
9 department ~~of-inspections-and-appeals~~ to find that such the  
10 sale, lease, transfer, or assignment is necessary in the  
11 public interest. Before any rights may be sold, leased,  
12 transferred, or assigned, application ~~therefor~~ shall be filed  
13 with the department of transportation, which shall ~~fix~~ request  
14 the department of inspections and appeals to set a date for  
15 hearing thereon on the application, and ~~the-provisions-of~~  
16 section 327A.4 ~~shall-be~~ is applicable thereto. Rights  
17 actively being exercised may be sold, leased, transferred, or  
18 assigned to any a person engaged in the transportation for  
19 hire of liquid products in bulk or freight under the  
20 conditions ~~hereinafter~~ set forth in this section:

21 1. ~~Whenever~~ When an application for a sale, lease,  
22 transfer, assignment, consolidation, merger, or acquisition of  
23 control is filed with the department, if ~~on~~ after a hearing by  
24 the department of inspections and appeals, the department of  
25 transportation finds that ~~(a)~~ the proposed purchaser, lessee,  
26 transferee, or assignee is fit, willing and able, and ~~(b)~~ that  
27 the proposed seller, lessor, transferor, or assignor has not  
28 abandoned, suspended, or discontinued operations, and ~~(c)~~ that  
29 the transaction proposed will be consistent with the public  
30 interest, and that the conditions of this section have been or  
31 will be fulfilled, the department of transportation may enter  
32 an order approving and authorizing such the sale, lease,  
33 transfer, assignment, consolidation, merger, or acquisition of  
34 control, upon such terms and conditions as it ~~shall-find~~ finds  
35 to be just and reasonable and with such modifications as it

1 may prescribe.

2 2. Except as otherwise provided in subsection 1, it ~~shall~~  
3 ~~be~~ is unlawful for any a person to accomplish or effectuate,  
4 or to participate in accomplishing or effectuating, the  
5 control or management in a common interest of any two or more  
6 persons engaged in the transportation for hire of liquid  
7 products in bulk or freight or of one or more persons so  
8 engaged, however such result is attained, whether directly or  
9 indirectly, by use of common directors, officers, or  
10 stockholders, a holding or investment company or companies, a  
11 voting trust or trusts, or in any other manner ~~whatsoever~~.

12 3. The department ~~is hereby authorized~~ may, upon  
13 complaint, or upon its own initiative without complaint, but  
14 ~~after notice, and hearing, to~~ investigate and determine  
15 whether any a person is violating ~~the provisions of~~ this  
16 section. If the department finds upon investigation that any  
17 a person is violating ~~the provisions of~~ this section, it  
18 shall, ~~by order~~ after a hearing conducted by the department of  
19 inspections and appeals, require ~~such the~~ person to take ~~such~~  
20 action consistent with ~~the provisions of~~ this chapter ~~as may~~  
21 ~~be necessary, in the opinion of the department,~~ to prevent  
22 continued violation of ~~such provisions~~ this section.

23 Sec. 19. Section 327C.8, Code 1989, is amended to read as  
24 follows:

25 327C.8 OBJECTIONS -- HEARING.

26 Any A person directly affected by the proposed  
27 discontinuance of any an agency, may file written objections  
28 with the department, stating the grounds for ~~such the~~  
29 objections, within fifteen days from the time of the  
30 publication of the notice as provided in section 327C.7. Upon  
31 the filing of ~~such~~ objections the department shall request the  
32 department of inspections and appeals shall fix the time and  
33 place for to hold a hearing, which shall be held within sixty  
34 days from the filing of ~~such the~~ objections. Written notice  
35 of the time and place of ~~such the~~ hearing shall be mailed by

1 the department of inspections and appeals to the railroad  
2 corporation and the person filing objections at least ten days  
3 prior to the date fixed for ~~such~~ the hearing.

4 Sec. 20. Section 327C.12, Code 1989, is amended to read as  
5 follows:

6 327C.12 AID FROM COURTS.

7 The department ~~or the department of inspections and appeals~~  
8 may invoke the aid of any court of record in the state in  
9 requiring the attendance and testimony of witnesses and the  
10 production of books, papers, tariff schedules, agreements, and  
11 other documents. ~~Any court having jurisdiction of the inquiry~~  
12 ~~shall in case of the refusal of any~~ If a person refuses to  
13 obey a subpoena or other process, a court having jurisdiction  
14 of the inquiry shall issue an order requiring any of the  
15 officers, agents, or employees of any a carrier or other  
16 person to appear before the either department and produce all  
17 books and papers required by ~~such~~ the order and testify in  
18 relation to any matter under investigation.

19 Sec. 21. Section 327C.17, Code 1989, is amended to read as  
20 follows:

21 327C.17 WHEN ORDER EFFECTIVE -- VIOLATION.

22 If any a railroad fails, ~~neglects,~~ or refuses to comply  
23 with any a rule or order made by the state department of  
24 transportation or the department of inspections and appeals  
25 within the time specified, ~~it shall~~ the railroad is, for each  
26 day of such failure, be subject to a schedule "two" penalty.

27 Sec. 22. Section 327C.19, Code 1989, is amended to read as  
28 follows:

29 327C.19 JUDICIAL REVIEW.

30 A decision of the department of inspections and appeals is  
31 subject to review by the state department of transportation.

32 Judicial review of the actions of the state department of  
33 transportation may be sought in accordance with ~~the terms of~~  
34 ~~the Iowa administrative procedure Act~~ chapter 17A.

35 Sec. 23. Section 327C.20, Code 1989, is amended to read as

1 follows:

2 327C.20 REMITTING PENALTY.

3 If a common carrier fails in a judicial review proceeding  
4 to secure a vacation of the order objected to, it may apply to  
5 the court in which the review proceeding is finally  
6 adjudicated for an order remitting the penalty which has  
7 accrued during the review proceeding. Upon a satisfactory  
8 showing that the petition for judicial review was filed in  
9 good faith and not for the purpose of delay, and that there  
10 were reasonable grounds to believe that the order was  
11 unreasonable or unjust or that the power of the department of  
12 transportation or the department of inspections and appeals to  
13 make the same order was doubtful, such the court may remit the  
14 penalty that has accrued during the review proceeding.

15 Sec. 24. Section 327C.25, Code 1989, is amended to read as  
16 follows:

17 327C.25 COMPLAINTS.

18 Any A person, city or county may file with the department a  
19 petition setting forth any particular in which any a common  
20 carrier has violated the law to which it is subject and the  
21 amount of damages sustained by reason thereof of the  
22 violation. The department shall furnish a copy of the  
23 complaint to the carrier against which a complaint is filed, a  
24 copy thereof, and a reasonable time. The department shall be  
25 fixed by request the department of inspections and appeals  
26 within to schedule a hearing in which such the carrier shall  
27 answer the petition or satisfy the demand therein made demands  
28 of the complaint. If such the carrier fails to satisfy the  
29 complaint within the time fixed or there appears to be  
30 reasonable grounds for investigating the matters set forth in  
31 said the petition, the department of inspections and appeals  
32 shall hear and determine the questions involved and make such  
33 orders as it shall find to be finds proper. When If the  
34 department of transportation has reason to believe that any a  
35 carrier is violating any of the laws to which it is subject,

1 ~~it~~ the department may institute an investigation and ~~cause~~  
2 request the department of inspections and appeals to conduct a  
3 ~~hearing to-be-held-before-the-department-of-inspections-and~~  
4 ~~appeals~~ in relation to ~~such~~ the matters ~~in-all-respects-as~~  
5 ~~fully~~ as if a petition had been filed.

6 Sec. 25. Section 327C.26, Code 1989, is amended to read as  
7 follows:

8 327C.26 INVESTIGATION -- REPORT.

9 When a hearing has been held before the department of  
10 inspections and appeals after notice, it shall make a report  
11 in writing setting forth the findings of fact and its  
12 conclusions together with its recommendations ~~or-orders~~ as to  
13 what reparation, if any, the offending carrier shall make to  
14 ~~any~~ a party who has suffered damage. ~~Such-finding~~ The  
15 findings of fact ~~shall-thereafter-in-all-legal-proceedings-be~~  
16 ~~prima-facie~~ are prima facie evidence in all further legal  
17 proceedings of every fact found. All reports of hearings and  
18 investigations made by ~~the-department-of-transportation-and~~  
19 the department of inspections and appeals shall be entered of  
20 record and a copy furnished to the carrier against which the  
21 complaint was filed, to the party complaining, and to any  
22 other person having a direct interest in the matter. A  
23 reasonable fee not to exceed the actual duplication costs may  
24 be charged for the copies.

25 Sec. 26. Section 327C.28, Code 1989, is amended to read as  
26 follows:

27 327C.28 VIOLATION OF ORDER -- PETITION -- NOTICE.

28 ~~When-any~~ If a person violates or fails to obey ~~any~~ a lawful  
29 order or requirement of the department of transportation or  
30 the department of inspections and appeals, the department of  
31 transportation or the department of inspections and appeals  
32 shall apply by petition in the name of the state, against ~~such~~  
33 the person, to the district court, alleging ~~such~~ the violation  
34 or failure to obey, ~~the~~. The court shall hear and determine  
35 the matter set forth in the petition on reasonable notice to

1 the person, to be fixed by the court and to be served in the  
2 same manner as an original notices notice for the commencement  
3 of action.

4 Sec. 27. Section 327C.29, Code 1989, is amended to read as  
5 follows:

6 327C.29 INTERESTED PARTY MAY BEGIN PROCEEDINGS.

7 Any ~~A~~ person or-city-or-county interested in the-matter-of  
8 enforcing any an order or requirement of the department of  
9 transportation or the department of inspections and appeals,  
10 may file a petition against ~~such-person~~ the violator, alleging  
11 the failure to comply with such the order or requirement and  
12 ~~praying~~ asking for summary relief to the same extent and in  
13 the same manner as the department of transportation or the  
14 department of inspections and appeals may ~~do~~ under section  
15 327C.28, and the proceedings after the filing of such the  
16 petition shall be the same as in section 327C.28.

17 Sec. 28. Section 327D.53, Code 1989, is amended to read as  
18 follows:

19 327D.53 DIVISION OF JOINT RATES.

20 Before the ~~promulgation~~ adoption of such the rates, the  
21 department shall notify the railroad corporations interested  
22 in the schedule of joint rates fixed, and give them a  
23 reasonable time to agree upon a division of the charges  
24 provided. If such the corporations fail to agree upon a  
25 division, and to notify the department ~~thereof~~ of their  
26 agreement, the department shall, after a hearing ~~of-the~~  
27 corporations-interested conducted by the department of  
28 inspections and appeals, decide the same rates, taking into  
29 consideration the value of terminal facilities and all the  
30 circumstances of the haul, and the division so determined by  
31 it ~~shall~~ is, in all controversies or actions between the  
32 railroad corporations interested, be prima-facie prima facie  
33 evidence of a just and reasonable division thereof.

34 Sec. 29. Section 327D.83, Code 1989, is amended to read as  
35 follows:

1 327D.83 POWER TO REVISE RATES.

2 ~~Whenever there shall be~~ If a schedule is filed with the  
3 department ~~any schedule~~ stating a rate, the department may,  
4 either upon complaint or upon its own motion, ~~immediately;~~  
5 ~~and, if it so orders, without answer or formal pleadings by~~  
6 ~~the interested common carrier, enter upon~~ request the  
7 department of inspections and appeals to conduct a hearing  
8 concerning the propriety of ~~such~~ the rate.

9 Sec. 30. Section 327D.85, Code 1989, is amended to read as  
10 follows:

11 327D.85 DECISION.

12 ~~On such~~ At the hearing the department of inspections and  
13 appeals shall establish propose the rates on the schedule, in  
14 whole or in part, or others in lieu thereof, which ~~it shall~~  
15 ~~find to be~~ the department of inspections and appeals finds are  
16 just and reasonable rates. The action of the department of  
17 inspections and appeals is subject to review by the state  
18 department of transportation. The decision of the state  
19 department of transportation is the final agency action.

20 Sec. 31. Section 327D.89, Code 1989, is amended to read as  
21 follows:

22 327D.89 COMPLAINT OF VIOLATION.

23 When any a ~~person, city or county shall make complaint~~  
24 complains to the department that the rate charged or published  
25 by any a railway corporation, or the maximum rate fixed by  
26 law, is unreasonably high or discriminating, the department  
27 may investigate the matter, and ~~hold~~ request the department  
28 of inspections and appeals to conduct a hearing ~~giving.~~ The  
29 department of inspections and appeals shall give the parties  
30 notice of the time and place of the hearing.

31 Sec. 32. Section 327D.90, Code 1989, is amended to read as  
32 follows:

33 327D.90 HEARING -- EVIDENCE.

34 At the time of the hearing the department of inspections  
35 and appeals shall receive any evidence and listen to any

1 arguments presented by either party relevant to the matter  
2 under investigation, and the burden of proof ~~shall~~ is not be  
3 upon the person making the complaint. The complainant shall  
4 add to the showing made at such the hearing whatever  
5 information the complainant may then have has, or can obtain  
6 from any source, ~~including schedules of rates actually charged~~  
7 ~~by any railway corporation for substantially the same kind of~~  
8 ~~service, in this or any other state. The lowest rates~~  
9 ~~published or charged by any railway corporation for~~  
10 ~~substantially the same kind of service whether in this or~~  
11 ~~another state, shall, at the instance of the person~~  
12 ~~complaining, be accepted as prima facie evidence of a~~  
13 ~~reasonable rate for the services under investigation, and if~~  
14 ~~the railway corporation complained of is operating a line of~~  
15 ~~railroad beyond the state, or has a traffic arrangement with~~  
16 ~~any such railway corporation, the same shall be taken into~~  
17 ~~consideration in determining what is a reasonable rate, if it~~  
18 ~~be operating a line of railway beyond the state, the rate~~  
19 ~~charged or established for substantially a similar or greater~~  
20 ~~service by it in another state shall also be considered. The~~  
21 department of transportation inspections and appeals shall  
22 establish propose just and reasonable rates, which may be  
23 adopted in whole or in part or modified as the state  
24 department ~~shall determine~~ of transportation determines.

25 Sec. 33. Section 327D.128, Code 1989, is amended to read  
26 as follows:

27 327D.128 WEIGHING -- DISAGREEMENT.

28 If a railroad corporation and the owner, consignor, or  
29 consignee of car lots of bulk commodities cannot reach  
30 agreement relative to the weighing of the commodities, appeal  
31 may be made to the state department of ~~inspections and appeals~~  
32 transportation. The state department of transportation, after  
33 a hearing by the department of inspections and appeals, shall  
34 issue an order equitable to all parties including but not  
35 limited to allocation of costs and specification of the place

1 and manner of weighing.

2 Sec. 34. Section 327G.12, Code 1989, is amended to read as  
3 follows:

4 327G.12 OVERHEAD, UNDERGROUND, OR MORE THAN ONE CROSSING.

5 ~~Such~~ The owner of land may serve upon ~~such~~ the railroad  
6 corporation a request in writing for more than one ~~such~~  
7 private crossing, or for an overhead or underground crossing,  
8 accompanied by a plat of the owner's land designating ~~thereon~~  
9 the location and character of crossing desired. If the  
10 railroad corporation refuses or neglects to comply within  
11 thirty days of ~~such a~~ a written request, the owner of the land  
12 may make written application to the department to ~~hear-and~~  
13 determine the owner's rights ~~in-said-respect~~. The department  
14 of inspections and appeals, after notice to the railroad  
15 corporation, shall hear ~~said~~ the application and all  
16 objections ~~thereto to the application~~, and make ~~such an~~ an order  
17 ~~as-shall-be~~ which is reasonable and just, and if it requires  
18 the railroad company to construct any crossing or roadway, fix  
19 the time for compliance with the order and apportion the costs  
20 as appropriate. The-matter-of-costs-shall-be-in-the  
21 discretion-of-the-department-of-inspections-and-appeals. The  
22 order of the department of inspections and appeals is subject  
23 to review by the state department of transportation. The  
24 decision of the state department of transportation is the  
25 final agency action.

26 Sec. 35. Section 327G.16, Code 1989, is amended to read as  
27 follows:

28 327G.16 DISAGREEMENT -- APPLICATION -- NOTICE.

29 If the persons specified in section 327G.15 cannot reach an  
30 agreement, either party may make written application to the  
31 authority department requesting resolution of the  
32 disagreement. The authority department shall ~~fix~~ request the  
33 department of inspections and appeals to set a date for  
34 hearing and. The department of inspections and appeals shall  
35 give the-other-party ten days' written notice by-mail of the

1 ~~hearing~~ date. ~~The authority shall promulgate rules subject to~~  
2 ~~department approval for processing applications which are~~  
3 ~~filed with the authority prior to a written disagreement. The~~  
4 ~~authority may set a hearing date after the disagreement has~~  
5 ~~been filed.~~

6 Sec. 36. Section 327G.17, Code 1989, is amended to read as  
7 follows:

8 327G.17 HEARING -- ORDER.

9 The department of inspections and appeals shall hear the  
10 evidence of each party to the controversy and shall make an  
11 order, which may include, pursuant to ~~the provisions of~~  
12 ~~chapters 471 and 472,~~ authority to condemn, resolving the  
13 controversy including what. The order shall include the  
14 portion of the expense shall to be paid by each party to such  
15 the controversy. In determining what portion of the expense  
16 shall be paid by each party the department of inspections and  
17 appeals may consider the ratio of the benefits accruing to the  
18 railroad or the governmental unit or both, ~~as it bears~~ to the  
19 general public use and benefit ~~and such benefits may in the~~  
20 ~~case of construction be consistent with the standards adopted~~  
21 ~~for similar purposes by the federal highway administration~~  
22 ~~under the federal aid highway Act of 1973 as amended to July~~  
23 ~~17, 1976, (23 U.S.C. § 101 et seq.).~~

24 The order of the department of inspections and appeals is  
25 subject to review by the state department of transportation.  
26 The decision of the state department of transportation is the  
27 final agency action.

28 Sec. 37. Section 327G.32, Code 1989, is amended to read as  
29 follows:

30 327G.32 BLOCKING HIGHWAY CROSSING.

31 A railroad corporation or its employees shall not operate  
32 any a train in such a manner as to prevent vehicular use of  
33 any a highway, street, or alley for a period of time in excess  
34 of ten minutes except in any of the following circumstances:

35 1. When necessary to comply with signals affecting the

1 safety of the movement of trains.

2 2. When necessary to avoid striking any an object or  
3 person on the track.

4 3. When the train is disabled.

5 4. When necessary to comply with governmental safety  
6 regulations including, but not limited to, speed ordinances  
7 and speed regulations.

8 Any An officer or employee of a railroad corporation  
9 violating any a provision of this section ~~shall~~ is, upon  
10 conviction, be subject to the penalty provided in section  
11 327G.14. An employee ~~shall~~ is not be guilty of such a  
12 violation if the employee's action was necessary to comply  
13 with the direct order or instructions of a railroad  
14 corporation or its supervisors. ~~Such-guilt-shall~~ Guilt is  
15 then be with the railroad corporation.

16 This Other provisions of this section notwithstanding, a  
17 political subdivision may pass a resolution or ordinance  
18 regulating the length of time a specific crossing may be  
19 blocked if the political subdivision demonstrates that a  
20 resolution or ordinance is necessary for public safety or  
21 convenience. If a resolution or ordinance is passed, the  
22 political subdivision shall, within thirty days of the  
23 effective date of the resolution or ordinance, notify the  
24 department and the railroad corporation using the crossing  
25 affected by the resolution or ordinance. The resolution or  
26 ordinance ~~shall~~ does not become effective unless the  
27 department and the railroad corporation are notified within  
28 thirty days. The resolution or ordinance ~~shall-become~~ becomes  
29 effective thirty days after notification unless a person files  
30 an objection to the resolution or ordinance with the  
31 department. If an objection is filed the department shall  
32 notify the department of inspections and appeals which shall  
33 hold a hearing. The After a hearing by the department of  
34 inspections and appeals, the state department of  
35 transportation may disapprove the resolution or ordinance if

1 public safety or convenience does not require a resolution or  
2 ordinance. The decision of the state department of  
3 transportation is final agency action. The resolution or  
4 ordinance approved by the political subdivision is *prima-facie*  
5 *prima facie* evidence that the resolution or ordinance is  
6 adopted to preserve public safety or convenience.

7 The department of inspections and appeals when considering  
8 rebuttal evidence shall weigh the benefits accruing to the  
9 political subdivision as ~~it-bears-to~~ they affect the general  
10 public use compared to the burden placed on the railroad  
11 operation. Public safety or convenience may include, but  
12 ~~shall~~ is not be limited to, high traffic density at a specific  
13 crossing of a main artery or interference with the flow of  
14 authorized emergency vehicles.

15 ~~Political-subdivisions-shall-notify-the-authority-within~~  
16 ~~sixty-days-of-July-17-1976,-of-each-existing-resolution-or~~  
17 ~~ordinance-which-does-not-conform-with-the-provisions-of-this~~  
18 ~~section.--Political-subdivisions-not-notifying-the-authority~~  
19 ~~of-an-existing-resolution-or-ordinance-during-the-calendar~~  
20 ~~year-beginning-January-17-1976-shall-have-an-additional-sixty~~  
21 ~~days-after-July-17-1977-to-notify-the-authority.-Failure-to-do~~  
22 ~~so-shall-render-the-resolution-or-ordinance-void.~~

23 ~~Such-ordinances-or-resolutions-may-remain-in-effect-until~~  
24 ~~the-department-of-inspections-and-appeals-has-acted-upon-each~~  
25 ~~ordinance-or-resolution-under-the-procedures-specified-in-this~~  
26 ~~section.~~

27 Sec. 38. Section 327G.62, Code 1989, is amended to read as  
28 follows:

29 327G.62 CONTROVERSIES.

30 When a disagreement arises between a railroad corporation,  
31 its grantee, or its successor in interest, and the owner,  
32 lessee, or licensee of a building or other improvement,  
33 including trackage, used for receiving, storing, transporting,  
34 or manufacturing an article of commerce transported or to be  
35 transported, situated on a present or former railroad right-

1 of-way or any on land owned or controlled by the railroad  
2 corporation, its grantee, or its successor in interest, as to  
3 the terms and conditions on which the article is to be  
4 continued or removed, the railway corporation, its grantee, or  
5 its successor in interest, or the owner, lessee, or licensee  
6 may make written application to the department ~~and the~~. The  
7 department shall notify the department of inspections and  
8 appeals which shall hear and determine the controversy and  
9 make an order as which is just and equitable between the  
10 parties, which. ~~That order shall be enforced in the same~~  
11 ~~manner as other orders of~~ is subject to review by the state  
12 department of transportation. The decision of the state  
13 department of transportation is final agency action.

14 Sec. 39. Section 327G.65, Code 1989, is amended to read as  
15 follows:

16 327G.65 COST OF CONSTRUCTION.

17 ~~Such~~ The railroad corporation may require the person  
18 primarily to be served ~~thereby~~ to pay the legitimate cost and  
19 expense of acquiring, by condemnation or purchase, the  
20 necessary right of way for ~~such the~~ spur track and of  
21 constructing ~~the same it~~, as shall be determined in separate  
22 items by the department. Except as provided in section  
23 327G.66, the total cost ~~thereof~~ as ascertained by ~~said the~~  
24 department shall be deposited with the railroad corporation  
25 before it ~~shall be~~ is required to incur any expense. If an  
26 agreement cannot be reached, the question shall be referred to  
27 the department which may, after a hearing conducted by the  
28 department of inspections and appeals, issue an order.

29 Sec. 40. Section 601J.5, subsection 3, paragraph d, Code  
30 1989, is amended to read as follows:

31 d. The department of inspections and appeals shall  
32 establish an appeal process ~~under chapter~~ pursuant to chapters  
33 10A and 17A which allows those agencies or organizations  
34 determined to not be in compliance with this chapter an  
35 opportunity for a timely hearing before the department of

1 inspections and appeals. A decision by the department of  
2 inspections and appeals is subject to review by the state  
3 department of transportation. The state department of  
4 transportation's decision is the final agency action.  
5 Judicial review of the action of the department may be sought  
6 in accordance with chapter 17A.

7 EXPLANATION

8 This bill revises provisions relating to the duties of the  
9 appeals and fair hearings division of the department of  
10 inspections and appeals in the appeal and hearing processes of  
11 the state department of transportation.

12 BACKGROUND STATEMENT

13 SUBMITTED BY THE AGENCY

14 This bill is intended to clarify the responsibilities of  
15 the Department of Inspections and Appeals regarding  
16 transportation appeals and hearings.

17 Although the department's Code chapter states the  
18 responsibilities in general for hearing transportation-related  
19 appeals, the specific Code chapters do not reference this  
20 responsibility. In order for clearer understanding for the  
21 public, these changes need to be made.

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HOUSE FILE 163

AN ACT

RELATING TO THE DUTIES OF THE DEPARTMENT OF INSPECTIONS AND  
APPEALS IN THE APPEAL AND HEARING PROCESSES OF THE STATE  
DEPARTMENT OF TRANSPORTATION.

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

Section 1. Section 321.211, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Upon suspending the license of any a person as authorized, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing before the ~~director-or~~ the-director's-authorized-agent department of inspections and

appeals as early as practical within ~~not-to-exceed~~ thirty days after receipt of the request. The hearing shall be held by telephone conference unless the licensee and the department of inspections and appeals agree to hold the hearing in the county in which the licensee resides unless-the-department-and the-licensee-agree-that-such-hearing-may-be-held or in some other county. Upon ~~such~~ the hearing the ~~director-or-the director's-authorized-agent~~ department of inspections and appeals may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon ~~such~~ the hearing and issuance of a recommendation by the department of inspections and appeals, the state department of transportation shall either rescind its order of suspension or for good cause may extend the suspension of ~~such the~~ license or revoke ~~such the~~ license. This section does not preclude the director from attempting to effect an informal settlement under chapter 17A.

PARAGRAPH DIVIDED. There is appropriated each year from the road use tax fund to the department of transportation one hundred seven thousand dollars or ~~so~~ as much thereof as ~~may-be~~ is necessary to be used to pay the cost of notice and personal delivery of service, ~~if~~ as necessary to meet the notice requirement of this section. The department shall ~~promulgate~~ adopt rules governing the payment of the cost of personal delivery of service. The reinstatement fees collected under section 321.191 shall be deposited in the road use tax fund in a manner provided in section 321.192, as reimbursement for the costs of notice under this section.

Sec. 2. Section 321E.19, Code 1989, is amended to read as follows:

321E.19 PERMIT SUSPENDED, CHANGED, OR REVOKED.

Upon complaint by local authorities or on the department's own initiative and after notice and hearing before one or more members of the permit issuing body in the case of local

authorities or the department of inspections and appeals for permits issued by the state department of transportation, permit privileges under this chapter may be suspended, changed, or revoked in whole or in part by the issuing authority for willful failure to comply with any-provisions a provision of this chapter, or-with-any a rule adopted under authority-of this chapter, or with-any a term, condition, or limitation of the permit.

Sec. 3. Section 322.9, unnumbered paragraphs 1 and 2, Code 1989, are amended to read as follows:

The department may revoke or suspend the license of any a retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that the licensee has been guilty of any an act which would ~~have-been~~ be a ground for the denial of a license under section 322.6. ~~Witnesses-shall-receive-the-same-compensation-provided-in section-622-69-and-shall-be-compensated-from-funds appropriated-to-the-department.~~

The department ~~is-further-authorized-to~~ may revoke or suspend the license of any a retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that such the licensee has been convicted or has forfeited bail on three charges of:

Sec. 4. Section 322.24, Code 1989, is amended to read as follows:

322.24 HEARING.

The ~~director-of-transportation-shall-have-the-power-to~~ state department of transportation and the department of inspections and appeals may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, ~~and other evidence before-the-director~~ in any matter over which the director respective department has jurisdiction, control, or supervision pertaining to this chapter.

If ~~any a~~ person shall-refuse ~~refuses~~ to obey ~~any-such a~~ subpoena, or to give testimony, or to produce evidence as required ~~thereby~~, any a judge of the district court of the state of Iowa in and for Polk county may, upon application and proof of such the refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the ~~said~~ court, for the witness to appear before the ~~director-and~~ respective department, to give testimony, and to produce evidence as required ~~thereby~~. Upon filing such the order in the office of the clerk of ~~said the~~ district court, the clerk shall issue process of subpoena, as directed, under the seal of ~~said the~~ court, requiring the person to whom it is directed to appear at the time and place ~~therein~~ designated.

Sec. 5. Section 322A.6, unnumbered paragraph 2, Code 1989, is amended to read as follows:

An applicant seeking permission to enter into a franchise for additional representation of the same line-make in a community shall deposit with the department at the time the application is filed, an amount of money to be determined by the department of inspections and appeals to ~~secure-the~~ payment-of pay the costs and-expenses of the hearing. ~~The applicant-shall-pay-the-costs-of-the-hearing.~~

Sec. 6. Section 322A.17, Code 1989, is amended to read as follows:

322A.17 JUDICIAL REVIEW.

A decision of the department of inspections and appeals is subject to review by the state department of transportation, whose decision is final agency action for the purpose of judicial review.

Judicial review of actions of the state department of ~~inspections-and-appeals~~ transportation may be sought in the manner provided for in section 322.10.

Sec. 7. Section 322B.6, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The department may revoke, suspend, or deny refuse the license of a mobile home dealer, mobile home manufacturer, mobile home distributor, manufacturer's representative, or distributor's representative, as applicable, ~~in accordance with the provisions of chapter 17A~~ if the department finds that the mobile home dealer, manufacturer, distributor, or representative is guilty of any of the following acts or offenses:

Sec. 8. Section 322B.6, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. In accordance with chapters 10A and 17A, each person whose license or application is revoked, suspended, or refused shall be provided an opportunity for a hearing before the department of inspections and appeals.

Sec. 9. Section 322C.6, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The A license of a person issued under section 322C.4 or 322C.9 may be denied, revoked, or suspended, after opportunity for a hearing before the department of inspections and appeals in accordance with chapters 10A and 17A, if the department finds it is determined that the licensee or applicant has done any of the following:

Sec. 10. Section 325.11, Code 1989, is amended to read as follows:

325.11 RULES OF PROCEDURE.

The department shall adopt rules governing for the procedure to be followed in the filing of applications and in the department of inspections and appeals shall adopt rules for the conduct of hearings.

Sec. 11. Section 325.13, subsection 5, Code 1989, is amended to read as follows:

5. Upon receipt of ~~any protests~~ a protest complying with subsection 3, the department shall request the department of inspections and appeals to set the matter for hearing not less than ten days following the expiration of the time in which

protests may be made ~~and~~. The department of inspections and appeals shall give notice to all persons who have filed protests of the time and place of the hearing.

Sec. 12. Section 325.17, Code 1989, is amended to read as follows:

325.17 TESTIMONY-RECEIVABLE UNCONTESTED CASE PROCEDURE.

The ~~If no protest is filed, the~~ department shall consider the application and any ~~objections filed thereto and may hear testimony to aid it~~ relevant evidence in determining the propriety of granting the application.

Sec. 13. Section 325.19, Code 1989, is amended to read as follows:

325.19 EXPENSE OF HEARING.

The applicant shall pay all the costs ~~and expenses~~ of the hearing ~~and necessary preliminary investigation in connection therewith~~ before the application ~~shall be~~ is granted. The department of inspections and appeals shall establish appropriate fees which shall be paid to the department ~~at the time the application is filed~~ of inspections and appeals.

Sec. 14. Section 325.21, Code 1989, is amended to read as follows:

325.21 JUDICIAL REVIEW.

A decision of the department of inspections and appeals is subject to review by the state department of transportation. Judicial review of the decisions and actions of the department of transportation may be sought in accordance with the terms of the Iowa administrative procedure Act chapter 17A. Such ~~The~~ petitioners must file with the clerk of the district court a bond for costs in the sum of not less than five hundred dollars.

Sec. 15. Section 325.25, unnumbered paragraph 1, Code 1989, is amended to read as follows:

A certificate of convenience and necessity shall not be sold, transferred, leased, or assigned, nor shall any a contract or agreement with reference to or affecting any a

certificate be made without the written approval of the department. The department may request the department of inspections and appeals to hold a hearing at-its-discretion and. The department of transportation shall approve the sale, transfer, lease, or assignment upon a finding by the department of inspections and appeals that there has been continuous service under the certificate for at least ninety days prior to the transfer, and that the transferee is fit, willing, and able to perform the operations authorized by the certificate, and that the transfer is consistent with the public interest. Pending determination of an application filed with the department for approval of a sale, transfer, lease, or assignment, the department may grant temporary approval of the proposed operation upon a finding of good cause.

Sec. 16. Section 327.16, Code 1989, is amended to read as follows:

327.16 REVOCATION OF PERMIT.

For just cause, after due hearing conducted by the department of inspections and appeals, the state department of transportation may at any time alter, amend, or revoke any a permit issued. If the holder of the permit or the holder's agent persists in a violation of any a prescribed safety regulation-prescribed-by-the-department rule, the department may recommend-revocation-of-said revoke the permit and-such violation-shall-be-grounds-for-such-revocation.

Sec. 17. Section 327A.4, Code 1989, is amended to read as follows:

327A.4 DISPOSAL OF CERTIFICATE.

Whenever-any If a person shall-file files an application with the department an-application for authority to sell, transfer, lease, or assign a certificate of convenience and necessity issued under the-provisions-of this chapter, the department shall request the department of inspections and appeals to fix a date for hearing thereon-and. The state

department of transportation shall cause a notice addressed to the citizens of each county through or in which the proposed service will be rendered to be published in some a newspaper of general circulation in each such county, once each week for two consecutive weeks, and. The department shall notify each liquid transport carrier holding a certificate, issued by the department, to transport over, in, or through the area described in the application, by mailing notice of the hearing to each such carrier at least ten days before the date fixed for hearing, and-the-provisions-of-chapter. Chapter 325, inclusive-of and this chapter shall, insofar as appropriate be, are applicable to the said hearing.

Sec. 18. Section 327A.14, Code 1989, is amended to read as follows:

327A.14 PRIOR SERVICE -- RIGHTS TRANSFERRED OR ASSIGNED.

Any A liquid transport carrier actively and continuously engaged in business as such between the first day of December, 1956, and the fourteenth day of January, 1957, shall be issued a certificate of convenience and necessity covering all points in this state to all other points in this state, and all routes and areas in this state, provided-that if the application therefor-shall-be is made within sixty days after May 17, 1957. No-rights Rights so granted may shall not be sold, leased, transferred, or assigned to any a person engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate commerce or in intrastate commerce, in this or any other state, or the District of Columbia, or to any person engaged in the leasing of equipment for such purposes, except such rights as which are actively being exercised at the time of sale, lease, transfer, or assignment; provided, however, rights so granted may be sold, leased, transferred, or assigned to any a person who has not engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate or intrastate commerce prior to the date of such

~~the~~ transfer, or to ~~any a~~ person who has not prior to ~~such~~ that date engaged in the leasing of equipment for ~~such that~~ purpose, and ~~on-hearing it shall is~~ not be necessary for the department of ~~inspections-and-appeals~~ to find that ~~such the~~ sale, lease, transfer, or assignment is necessary in the public interest. Before any rights may be sold, leased, transferred, or assigned, application therefor shall be filed with the department of transportation, which shall ~~fix request~~ the department of inspections and appeals to set a date for hearing thereon on the application, and the provisions of section 327A.4 ~~shall-be is~~ applicable thereto. Rights actively being exercised may be sold, leased, transferred, or assigned to ~~any a~~ person engaged in the transportation for hire of liquid products in bulk or freight under the conditions hereinafter set forth in this section:

1. ~~Whenever~~ When an application for a sale, lease, transfer, assignment, consolidation, merger, or acquisition of control is filed with the department, if ~~on after a hearing by~~ the department of inspections and appeals, the department of transportation finds that (a) the proposed purchaser, lessee, transferee, or assignee is fit, willing and able, and (b) that the proposed seller, lessor, transferor, or assignor has not abandoned, suspended, or discontinued operations, and (c) that the transaction proposed will be consistent with the public interest, and that the conditions of this section have been or will be fulfilled, the department of transportation may enter an order approving and authorizing such the sale, lease, transfer, assignment, consolidation, merger, or acquisition of control, upon such terms and conditions as it shall find finds to be just and reasonable and with such modifications as it may prescribe.

2. Except as otherwise provided in subsection 1, it ~~shall be is~~ unlawful for ~~any a~~ person to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more

persons engaged in the transportation for hire of liquid products in bulk or freight or of one or more persons so engaged, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever.

3. ~~The department is hereby authorized may,~~ upon complaint, or upon its own initiative without complaint, ~~but after notice and hearing to~~ investigate and determine whether ~~any a~~ person is violating ~~the provisions of~~ this section. If the department finds upon investigation that ~~any a~~ person is violating ~~the provisions of~~ this section, it shall, by order after a hearing conducted by the department of inspections and appeals, require such the person to take such action consistent with the provisions of this chapter as may be necessary, in the opinion of the department, to prevent continued violation of such provisions this section.

Sec. 19. Section 327C.8, Code 1989, is amended to read as follows:

#### 327C.8 OBJECTIONS -- HEARING.

~~Any a~~ person directly affected by the proposed discontinuance of ~~any an~~ agency, may file written objections with the department, stating the grounds for ~~such the~~ objections, within fifteen days from the time of the publication of the notice as provided in section 327C.7. Upon the filing of ~~such the~~ objections the department shall request the department of inspections and appeals shall fix the time and place for to hold a hearing, which shall be held within sixty days from the filing of such the objections. Written notice of the time and place of such the hearing shall be mailed by the department of inspections and appeals to the railroad corporation and the person filing objections at least ten days prior to the date fixed for such the hearing.

Sec. 20. Section 327C.12, Code 1989, is amended to read as follows:

#### 327C.12 AID FROM COURTS.

The department or the department of inspections and appeals may invoke the aid of any court of record in the state in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. ~~Any court having jurisdiction of the inquiry shall, in case of the refusal of any~~ If a person refuses to obey a subpoena or other process, a court having jurisdiction of the inquiry shall issue an order requiring any of the officers, agents, or employees of any a carrier or other person to appear before the either department and produce all books and papers required by such the order and testify in relation to any matter under investigation.

Sec. 21. Section 327C.17, Code 1989, is amended to read as follows:

327C.17 WHEN ORDER EFFECTIVE -- VIOLATION.

If any a railroad fails, ~~neglects,~~ or refuses to comply with any a rule or order made by the state department of transportation or the department of inspections and appeals within the time specified, ~~it shall the railroad is,~~ for each day of such failure, be subject to a schedule "two" penalty.

Sec. 22. Section 327C.19, Code 1989, is amended to read as follows:

327C.19 JUDICIAL REVIEW.

A decision of the department of inspections and appeals is subject to review by the state department of transportation.

Judicial review of the actions of the state department of transportation may be sought in accordance with the terms of the Iowa administrative procedure Act chapter 17A.

Sec. 23. Section 327C.20, Code 1989, is amended to read as follows:

327C.20 REMITTING PENALTY.

If a common carrier fails in a judicial review proceeding to secure a vacation of the order objected to, it may apply to the court in which the review proceeding is finally adjudicated for an order remitting the penalty which has

accrued during the review proceeding. Upon a satisfactory showing that the petition for judicial review was filed in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order was unreasonable or unjust or that the power of the department of transportation or the department of inspections and appeals to make the same order was doubtful, such the court may remit the penalty that has accrued during the review proceeding.

Sec. 24. Section 327C.25, Code 1989, is amended to read as follows:

327C.25 COMPLAINTS.

Any A person, ~~city or county~~ may file with the department a petition setting forth any particular in which any a common carrier has violated the law to which it is subject and the amount of damages sustained by reason thereof of the violation. The department shall furnish a copy of the complaint to the carrier against which a complaint is filed, a copy thereof, and a reasonable time. The department shall be fixed by request the department of inspections and appeals within to schedule a hearing in which such the carrier shall answer the petition or satisfy the demand therein made demands of the complaint. If such the carrier fails to satisfy the complaint within the time fixed or there appears to be reasonable grounds for investigating the matters set forth in said the petition, the department of inspections and appeals shall hear and determine the questions involved and make such orders as it shall find to be finds proper. When If the department of transportation has reason to believe that any a carrier is violating any of the laws to which it is subject, it the department may institute an investigation and cause request the department of inspections and appeals to conduct a hearing to be held before the department of inspections and appeals in relation to such the matters in all respects as fully as if a petition had been filed.

Sec. 25. Section 327C.26, Code 1989, is amended to read as follows:

327C.26 INVESTIGATION -- REPORT.

When a hearing has been held before the department of inspections and appeals after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations ~~or orders~~ as to what reparation, if any, the offending carrier shall make to ~~any~~ a party who has suffered damage. ~~Such finding~~ The findings of fact shall thereafter in all legal proceedings be prima facie ~~are prima facie~~ evidence in all further legal proceedings of every fact found. All reports of hearings and investigations made by ~~the department of transportation and~~ the department of inspections and appeals shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. A reasonable fee not to exceed the actual duplication costs may be charged for the copies.

Sec. 26. Section 327C.28, Code 1989, is amended to read as follows:

327C.28 VIOLATION OF ORDER -- PETITION -- NOTICE.

~~When any~~ If a person violates or fails to obey any a lawful order or requirement of the department of transportation or the department of inspections and appeals, the department of transportation or the department of inspections and appeals shall apply by petition in the name of the state, against such the person, to the district court, alleging such the violation or failure to obey, ~~the~~. The court shall hear and determine the matter set forth in the petition on reasonable notice to the person, to be fixed by the court and to be served in the same manner as an original notices notice for the commencement of action.

Sec. 27. Section 327C.29, Code 1989, is amended to read as follows:

327C.29 INTERESTED PARTY MAY BEGIN PROCEEDINGS.

~~Any A person or city or county interested in the matter of enforcing any an~~ order or requirement of the department of transportation or the department of inspections and appeals, may file a petition against such person the violator, alleging the failure to comply with such the order or requirement and praying asking for summary relief to the same extent and in the same manner as the department of transportation or the department of inspections and appeals may ~~do~~ under section 327C.28, and the proceedings after the filing of such the petition shall be the same as in section 327C.28.

Sec. 28. Section 327D.53, Code 1989, is amended to read as follows:

327D.53 DIVISION OF JOINT RATES.

Before the ~~promulgation~~ adoption of such the rates, the department shall notify the railroad corporations interested in the schedule of joint rates fixed, and give them a reasonable time to agree upon a division of the charges provided. If such the corporations fail to agree upon a division, and to notify the department ~~thereof~~ of their agreement, the department shall, after a hearing ~~of the corporations interested~~ conducted by the department of inspections and appeals, decide the same rates, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it ~~shall is~~, in all controversies or actions between the railroad corporations interested, be prima facie prima facie evidence of a just and reasonable division ~~thereof~~.

Sec. 29. Section 327D.83, Code 1989, is amended to read as follows:

327D.83 POWER TO REVISE RATES.

~~Whenever there shall be~~ If a schedule is filed with the department ~~any schedule~~ stating a rate, the department may, either upon complaint or upon its own motion, ~~immediately~~, ~~and if it so orders~~, ~~without answer or formal pleadings~~ by ~~the interested common carrier~~, enter upon request the

department of inspections and appeals to conduct a hearing concerning the propriety of such the rate.

Sec. 30. Section 327D.85, Code 1989, is amended to read as follows:

327D.85 DECISION.

On such At the hearing the department of inspections and appeals shall establish propose the rates on the schedule, in whole or in part, or others in lieu thereof, which it shall find to be the department of inspections and appeals finds are just and reasonable rates. The action of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

Sec. 31. Section 327D.89, Code 1989, is amended to read as follows:

327D.89 COMPLAINT OF VIOLATION.

When any a person, city or county shall make complaint complains to the department that the rate charged or published by any a railway corporation, or the maximum rate fixed by law, is unreasonably high or discriminating, the department may investigate the matter, and, hold request the department of inspections and appeals to conduct a hearing, giving. The department of inspections and appeals shall give the parties notice of the time and place of the hearing.

Sec. 32. Section 327D.90, Code 1989, is amended to read as follows:

327D.90 HEARING -- EVIDENCE.

At the time of the hearing the department of inspections and appeals shall receive any evidence and listen to any arguments presented by either party relevant to the matter under investigation, and the burden of proof shall is not be upon the person making the complaint. The complainant shall add to the showing made at such the hearing whatever information the complainant may then have has, or can obtain from any source, including schedules of rates actually charged

by any railway corporation for substantially the same kind of service, in this or any other state. The lowest rates published or charged by any railway corporation for substantially the same kind of service whether in this or another state, shall, at the instance of the person complaining, be accepted as prima facie evidence of a reasonable rate for the services under investigation, and if the railway corporation complained of is operating a line of railroad beyond the state, or has a traffic arrangement with any such railway corporation, the same shall be taken into consideration in determining what is a reasonable rate, if it be operating a line of railway beyond the state, the rate charged or established for substantially a similar or greater service by it in another state shall also be considered. The department of transportation inspections and appeals shall establish propose just and reasonable rates, which may be adopted in whole or in part or modified as the state department shall determine of transportation determines.

Sec. 33. Section 327D.128, Code 1989, is amended to read as follows:

327D.128 WEIGHING -- DISAGREEMENT.

If a railroad corporation and the owner, consignor, or consignee of car lots of bulk commodities cannot reach agreement relative to the weighing of the commodities, appeal may be made to the state department of inspections and appeals transportation. The state department of transportation, after a hearing by the department of inspections and appeals, shall issue an order equitable to all parties including but not limited to allocation of costs and specification of the place and manner of weighing.

Sec. 34. Section 327G.12, Code 1989, is amended to read as follows:

327G.12 OVERHEAD, UNDERGROUND, OR MORE THAN ONE CROSSING.

Such The owner of land may serve upon such the railroad corporation a request in writing for more than one such

private crossing, or for an overhead or underground crossing, accompanied by a plat of the owner's land designating thereon the location and character of crossing desired. If the railroad corporation refuses or neglects to comply within thirty days of such a written request, the owner of the land may make written application to the department to hear and determine the owner's rights in said respect. The department of inspections and appeals, after notice to the railroad corporation, shall hear said the application and all objections thereto to the application, and make such an order as shall be which is reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with the order and apportion the costs as appropriate. ~~The matter of costs shall be in the discretion of the department of inspections and appeals.~~ The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

Sec. 35. Section 327G.16, Code 1989, is amended to read as follows:

327G.16 DISAGREEMENT -- APPLICATION -- NOTICE.

If the persons specified in section 327G.15 cannot reach an agreement, either party may make written application to the authority department requesting resolution of the disagreement. The authority department shall fix request the department of inspections and appeals to set a date for hearing and. The department of inspections and appeals shall give the other party ten days' written notice by mail of the hearing date. ~~The authority shall promulgate rules subject to department approval for processing applications which are filed with the authority prior to a written disagreement. The authority may set a hearing date after the disagreement has been filed.~~

Sec. 36. Section 327G.17, Code 1989, is amended to read as follows:

327G.17 HEARING -- ORDER.

The department of inspections and appeals shall hear the evidence of each party to the controversy and shall make an order, which may include, pursuant to the provisions of chapters 471 and 472, authority to condemn, resolving the controversy including what. The order shall include the portion of the expense shall to be paid by each party to such the controversy. In determining what portion of the expense shall be paid by each party the department of inspections and appeals may consider the ratio of the benefits accruing to the railroad or the governmental unit or both, as it bears to the general public use and benefit and such benefits may in the case of construction be consistent with the standards adopted for similar purposes by the federal highway administration under the federal aid highway Act of 1973 as amended to July 17, 1976, (23 U.S.C. § 101 et seq.).

The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

Sec. 37. Section 327G.32, Code 1989, is amended to read as follows:

327G.32 BLOCKING HIGHWAY CROSSING.

A railroad corporation or its employees shall not operate any a train in such a manner as to prevent vehicular use of any a highway, street, or alley for a period of time in excess of ten minutes except in any of the following circumstances:

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking any an object or person on the track.
3. When the train is disabled.

4. When necessary to comply with governmental safety regulations including, but not limited to, speed ordinances and speed regulations.

Any ~~An~~ officer or employee of a railroad corporation violating ~~any a~~ provision of this section ~~shall is~~, upon conviction, be subject to the penalty provided in section 327G.14. An employee ~~shall is~~ not be guilty of such a violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. ~~Such-guilt-shall~~ Guilt is then be with the railroad corporation.

~~This~~ Other portions of this section notwithstanding, a political subdivision may pass ~~a-resolution-or~~ an ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates that ~~a-resolution-or~~ an ordinance is necessary for public safety or convenience. If ~~a-resolution-or~~ an ordinance is passed, the political subdivision shall, within thirty days of the effective date of the ~~resolution-or~~ ordinance, notify the department and the railroad corporation using the crossing affected by the ~~resolution-or~~ ordinance. The ~~resolution-or~~ ordinance ~~shall does~~ not become effective unless the department and the railroad corporation are notified within thirty days. The ~~resolution-or~~ ordinance ~~shall-become~~ becomes effective thirty days after notification unless a person files an objection to the ~~resolution-or~~ ordinance with the department. If an objection is filed the department shall notify the department of inspections and appeals which shall hold a hearing. ~~The~~ After a hearing by the department of inspections and appeals, the state department of transportation may disapprove the ~~resolution-or~~ ordinance if public safe, or convenience does not require ~~a-resolution-or~~ the ordinance. The decision of the state department of transportation is final agency action. The ~~resolution-or~~ ordinance approved by the political subdivision is prima-facie

prima facie evidence that the ~~resolution-or~~ ordinance is adopted to preserve public safety or convenience.

The department of inspections and appeals when considering rebuttal evidence shall weigh the benefits accruing to the political subdivision as it bears to they affect the general public use compared to the burden placed on the railroad operation. Public safety or convenience may include, but ~~shall is~~ not be limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

~~Political-subdivisions-shall-notify-the-authority-within sixty-days-of-July-17-1976,-of-each-existing-resolution-or ordinance-which-does-not-conform-with-the-provisions-of-this section--Political-subdivisions-not-notifying-the-authority of-an-existing-resolution-or-ordinance-during-the-calendar year-beginning-January-17-1976-shall-have-an-additional-sixty days-after-July-17-1977-to-notify-the-authority--Failure-to do-so-shall-render-the-resolution-or-ordinance-void.~~

~~Such-ordinances-or-resolutions-may-remain-in-effect-until the-department-of-inspections-and-appeals-has-acted-upon-each ordinance-or-resolution-under-the-procedures-specified-in-this section.~~

A resolution regulating the length of time a specific crossing may be blocked, which was adopted before the effective date of Senate File 500 of the Seventy-third General Assembly, is an ordinance for the purposes of this section.

Sec. 38. Section 327G.62, Code 1989, is amended to read as follows:

327G.62 CONTROVERSIES.

When a disagreement arises between a railroad corporation, its grantee, or its successor in interest, and the owner, lessee, or licensee of a building or other improvement, including trackage, used for receiving, storing, transporting, or manufacturing an article of commerce transported or to be transported, situated on a present or former railroad right-

of-way or any on land owned or controlled by the railroad corporation, its grantee, or its successor in interest, as to the terms and conditions on which the article is to be continued or removed, the railway corporation, its grantee, or its successor in interest, or the owner, lessee, or licensee may make written application to the department ~~and the~~. The department shall notify the department of inspections and appeals which shall hear and determine the controversy and make an order as which is just and equitable between the parties, ~~which~~. ~~That order shall be enforced in the same manner as other orders of~~ is subject to review by the state department of transportation. The decision of the state department of transportation is final agency action.

Sec. 39. Section 327G.65, Code 1989, is amended to read as follows:

327G.65 COST OF CONSTRUCTION.

Such The railroad corporation may require the person primarily to be served ~~thereby~~ to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right of way for such the spur track and of constructing ~~the same it~~, as ~~shall be~~ determined in separate items by the department. Except as provided in section 327G.66, the total cost ~~thereof~~ as ascertained by said the department shall be deposited with the railroad corporation before it ~~shall be~~ is required to incur any expense. If an agreement cannot be reached, the question shall be referred to the department which may, after a hearing conducted by the department of inspections and appeals, issue an order.

Sec. 40. Section 601J.5, subsection 3, paragraph d, Code 1989, is amended to read as follows:

d. The department of inspections and appeals shall establish an appeal process under chapter pursuant to chapters 0A and 17A which allows those agencies or organizations determined to not be in compliance with this chapter an opportunity for a timely hearing before the department of

inspections and appeals. A decision by the department of inspections and appeals is subject to review by the state department of transportation. The state department of transportation's decision is the final agency action. Judicial review of the action of the department may be sought in accordance with chapter 17A.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 163, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved June 1, 1989

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TERRY E. BRANSTAD  
Governor