

(P. 227) 2/3/94 Senate State Gov.  
(P. 350) 2/2/94 Senate - Do Pass

HOUSE FILE 2070  
BY COMMITTEE ON STATE GOVERNMENT

JAN 20 1994

Place On Calendar

(SUCCESSOR TO HSB 510)

Passed House, Date (P. 169) 2/3/94 Passed Senate, Date (P. 1064) 4/6/94  
Vote: Ayes 92 Nays 0 Vote: Ayes 48 Nays 0  
Approved April 18, 1994  
Passed 4-8-94  
Vote 95-1  
(P. 1314)

A BILL FOR

1 An Act relating to administrative activities by the department of  
2 public safety concerning the state fire marshal.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2070

1 Section 1. Section 100.13, Code 1993, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 100.13 VIOLATIONS -- ORDERS.

5 1. If a person has violated or is violating a provision of  
6 this chapter or a rule adopted pursuant to this chapter, the  
7 state fire marshal, the chief of any fire department, or the  
8 fire prevention officer of a fire department organized under  
9 chapter 400 may issue an order directing the person to desist  
10 in the practice which constitutes the violation and to take  
11 corrective action as necessary to ensure that the violation  
12 will cease. The order shall be in writing and shall specify a  
13 reasonable time by which the person shall comply with the  
14 order. The person to whom the order is issued may appeal the  
15 order as provided in chapter 17A. On appeal, the  
16 administrative law judge may affirm, modify, or vacate the  
17 order. Judicial review may be sought in accordance with  
18 chapter 17A.

19 2. Notwithstanding any other provision of law to the  
20 contrary, if the state fire marshal determines that an  
21 emergency exists respecting any matter affecting or likely to  
22 affect the public safety, the fire marshal may issue any order  
23 necessary to terminate the emergency without notice or  
24 hearing. An emergency order is binding and effective  
25 immediately, until or unless the order is modified, vacated,  
26 or stayed at an administrative hearing or by a district court.

27 Sec. 2. Section 100.14, Code 1993, is amended by striking  
28 the section and inserting in lieu thereof the following:

29 100.14 PENALTIES -- BURDEN OF PROOF.

30 At the request of the state fire marshal, the county  
31 attorney or the attorney general shall institute any legal  
32 proceedings on behalf of the state necessary to obtain  
33 compliance or enforce the penalty provisions of this chapter  
34 or rules or orders adopted or issued pursuant to this chapter,  
35 including, but not limited to, a legal action for injunctive

1 relief. The county attorney or any other attorney acting on  
2 behalf of the chief of a fire department or a fire prevention  
3 officer may institute legal proceedings, including, but not  
4 limited to, a legal action for injunctive relief, to obtain  
5 compliance or enforce the penalty provisions or orders issued  
6 pursuant to section 100.13.

7 Sec. 3. Section 100.16, Code 1993, is amended to read as  
8 follows:

9 100.16 JUDICIAL REVIEW.

10 1. Judicial review of actions of the fire marshal may be  
11 sought in accordance with the terms of the Iowa administrative  
12 procedure Act pursuant to chapter 17A. ~~Notwithstanding the~~  
13 ~~terms of said Act, petitions for judicial review may be filed~~  
14 ~~in the district court of the county where such building is~~  
15 ~~located.~~ If legal proceedings have been instituted pursuant  
16 to section 100.14, all related issues which could otherwise be  
17 raised in a proceeding for judicial review shall be raised in  
18 the legal proceedings instituted pursuant to section 100.14.

19 2. Upon judicial review of the fire marshal's action, if  
20 the court affirms the agency action, the court shall tax all  
21 court costs of the review proceeding against the appellant.  
22 However, if the court reverses, revokes, or annuls the fire  
23 marshal's action, the court shall tax all court costs of the  
24 review proceeding against the state. If the fire marshal's  
25 action is modified or the matter is remanded to the agency for  
26 further proceedings, the court shall apportion the court costs  
27 within the discretion of the court.

28 Sec. 4. Section 100.18, subsection 2, paragraph b, Code  
29 1993, is amended to read as follows:

30 b. The rules shall require the installation of smoke  
31 detectors in existing single-family rental units and multiple-  
32 unit residential buildings. Existing single-family dwelling  
33 units shall be equipped with approved smoke detectors. A  
34 person who files for a homestead credit pursuant to chapter  
35 425 shall certify that the single-family dwelling unit for

1 which the credit is filed has a smoke detector installed in  
2 compliance with this section, or that one will be installed  
3 within thirty days of the date the filing for the credit is  
4 made. The state fire marshal shall adopt rules and establish  
5 appropriate procedures ~~for-the-distribution-and-filing-of-such~~  
6 ~~certificates-with-the-state-fire-marshal~~ to administer this  
7 subsection.

8 Sec. 5. Section 100.26, Code 1993, is amended to read as  
9 follows:

10 100.26 TIME FOR COMPLIANCE WITH ORDER -- PENALTY.

11 ~~When no~~ If a petition of review ~~as provided in section~~  
12 ~~100-14~~ has not been filed or when the fire marshal on review  
13 or the court on review has affirmed or modified an order for  
14 the removal, destruction, or repair of a building, or the  
15 removal of any of its contents, or the change of any of its  
16 conditions, the owner, lessee, or occupant shall comply with  
17 the order within thirty days after the delivery of the order  
18 or a copy of the order to the person, either personally or by  
19 certified letter to the last known address, or by service upon  
20 the person's appointed agent. Failure of the owner, lessee,  
21 or occupant to comply with the order shall subject the owner,  
22 lessee, or occupant to a penalty of ten dollars for each day  
23 of failure or neglect after the expiration of the period. The  
24 penalty shall be recovered in the name of the state and paid  
25 into the treasury of the political subdivision which issues  
26 the order or the treasurer of state if the order is issued by  
27 the state. If the owner, lessee, or occupant cannot  
28 reasonably comply with the order within thirty days and a good  
29 faith effort at compliance has been made within thirty days,  
30 the owner, lessee, or occupant shall not be subject to a  
31 penalty under this section. However, the penalty may be  
32 imposed on the person upon a failure to continue the good  
33 faith compliance with the order.

34 Sec. 6. Section 100.31, unnumbered paragraph 2, Code 1993,  
35 is amended to read as follows:

1 Every school building with two or more classrooms shall  
2 have a warning system for fires of a type approved by the  
3 Underwriters' Laboratories and by the state fire marshal.  
4 ~~Said~~ The warning system shall be used only for fire drills or  
5 as a warning for emergency. Schools may modify the fire  
6 warning system for use as a tornado warning system or shall  
7 install a separate tornado warning system. Every school  
8 building shall also be equipped with first-aid portable fire  
9 extinguishers, with the type, size and number in accordance  
10 with National Fire Protection Association standards and  
11 approved by the state fire marshal.

12 Sec. 7. Section 103A.11, subsection 1, Code 1993, is  
13 amended by striking the subsection and inserting in lieu  
14 thereof the following:

15 1. The commissioner shall adopt rules pursuant to chapter  
16 17A which are necessary for the implementation of this  
17 chapter.

18 Sec. 8. Section 331.512, subsection 1, paragraph d, Code  
19 1993, is amended by striking the paragraph.

20 Sec. 9. Sections 100.15, 100.17, 100.19, 100.23, and  
21 100.27 through 100.29, Code 1993, are repealed.

22 EXPLANATION

23 This bill contains a number of provisions pertaining to the  
24 state fire marshal.

25 The bill strikes and repeals several provisions in the  
26 current Code pertaining to the state fire marshal. The bill  
27 strikes current procedures providing for the fire marshal or  
28 local authorities to issue orders requiring removal or repair  
29 of premises, as well as the review procedure for those orders  
30 in which the state fire marshal, under current law, undergoes  
31 a self-review process. The bill also repeals current  
32 provisions pertaining to hearings upon review, as well as a  
33 provision that upon judicial review, notwithstanding chapter  
34 17A, a petition may be filed in the district court where the  
35 building is located. The bill further repeals a provision

1 pertaining to bonds upon judicial review, which provides that  
2 upon filing a \$100 bond, any order subject to the review is  
3 suspended during the proceeding.

4 The bill further repeals a section which currently requires  
5 the state fire marshal to establish a data filing system  
6 utilizing fire hazard analysis. The bill repeals a section  
7 authorizing officials to demolish or repair a building upon  
8 failure to comply with an order, in which case expenses, as  
9 well as a 25 percent penalty, are assessed. The bill further  
10 repeals a review procedure concerning the assessment and a  
11 section pertaining to the entry of the assessment as a special  
12 charge against the real estate.

13 The bill replaces the stricken provisions by establishing  
14 procedures for the entry of orders by the state fire marshal,  
15 the chief of any fire department, or the fire prevention  
16 officer of a fire department organized under chapter 400. The  
17 bill requires the orders to state a reasonable time for  
18 compliance. The bill authorizes the person to contest the  
19 order in accordance with chapter 17A.

20 The bill permits the state fire marshal to issue emergency  
21 orders without notice or hearing. These orders are  
22 immediately effective, unless or until modified, vacated, or  
23 stayed through administrative hearing or by a district court.

24 The bill authorizes the county attorney or attorney general  
25 to institute legal actions for enforcement on behalf of the  
26 state fire marshal, and provides that injunctive relief may be  
27 sought. Under the bill, if an enforcement action has been  
28 instituted, all related issues which could otherwise be raised  
29 in a proceeding for judicial review shall be raised in the  
30 enforcement action. The bill also contains a provision  
31 similar to one in current law, pertaining to payment of costs  
32 in a judicial review proceeding, which assesses costs against  
33 an unsuccessful party.

34 The bill changes a reference to fire extinguishers which  
35 are required for school buildings. The bill eliminates the

1 current procedure pertaining to rulemaking concerning the  
2 state building code, and inserts the rulemaking provisions of  
3 chapter 17A.

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HOUSE FILE 2070

S-5472

- 1 Amend House File 2070, as passed by the House as
- 2 follows:
- 3 1. Page 1, line 31, by striking the words "or the
- 4 attorney general".

By RANDAL J. GIANNETTO

*Adopted 4-6-94 (P. 1064)*  
S-5472 FILED APRIL 5, 1994

HOUSE FILE 2070

S-5103

- 1 Amend House File 2070, as passed by the House, as
- 2 follows:
- 3 1. Page 2, line 24, by striking the word "state"
- 4 and inserting the following: "agency".

By RANDAL J. GIANNETTO  
SHELDON RITTMER

BERL E. PRIEBE  
DERRYL McLAREN

S-5103 FILED MARCH 7, 1994

*Adopted 4-6-94  
(P. 1064)*

HOUSE FILE 2070

S-5405

- 1 Amend House File 2070, as passed by the House, as
- 2 follows:
- 3 1. Page 1, lines 30 and 31, by striking the words
- 4 "county attorney or the".
- 5 2. Page 4, by inserting after line 19 the
- 6 following:
- 7 "Sec. \_\_\_\_ Section 331.756, subsection 23, Code
- 8 Supplement 1993, is amended by striking the
- 9 subsection."
- 10 3. Page 4, line 20, by inserting after the figure
- 11 "100.19," the following: "100.20,".

By TOM VILSACK

**WITHDRAWN** *4-6-94 (P. 1064)*

S-5405 FILED MARCH 31, 1994

SENATE AMENDMENT TO HOUSE FILE 2070

H-6031

- 1 Amend House File 2070, as passed by the House as
- 2 follows:
- 3 1. Page 1, line 31, by striking the words "or the
- 4 attorney general".
- 5 2. Page 2, line 24, by striking the word "state"
- 6 and inserting the following: "agency".
- 7 3. By renumbering, relettering, or redesignating
- 8 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6031 FILED APRIL 6, 1994

*House Concurred 4-8-94 (P. 1314)*

HSB 510

STATE GOVERNMENT

SENATE/HOUSE FILE 2070  
BY (PROPOSED DEPARTMENT OF PUBLIC  
SAFETY BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to administrative activities by the department of  
2 public safety concerning the state fire marshal.

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

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8 fire prevention officer of a fire department organized under  
9 chapter 400 may issue an order directing the person to desist  
10 in the practice which constitutes the violation and to take  
11 corrective action as necessary to ensure that the violation  
12 will cease. The order shall be in writing and shall specify a  
13 reasonable time by which the person shall comply with the  
14 order. The person to whom the order is issued may appeal the  
15 order as provided in chapter 17A. On appeal, the  
16 administrative law judge may affirm, modify, or vacate the  
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18 chapter 17A.

19 2. Notwithstanding any other provision of law to the  
20 contrary, if the state fire marshal determines that an  
21 emergency exists respecting any matter affecting or likely to  
22 affect the public safety, the fire marshal may issue any order  
23 necessary to terminate the emergency without notice or  
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32 proceedings on behalf of the state necessary to obtain  
33 compliance or enforce the penalty provisions of this chapter  
34 or rules or orders adopted or issued pursuant to this chapter,  
35 including, but not limited to, a legal action for injunctive

1 relief. The county attorney or any other attorney acting on  
2 behalf of the chief of a fire department or a fire prevention  
3 officer may institute legal proceedings, including, but not  
4 limited to, a legal action for injunctive relief, to obtain  
5 compliance or enforce the penalty provisions or orders issued  
6 pursuant to section 100.13.

7 Sec. 3. Section 100.16, Code 1993, is amended to read as  
8 follows:

9 100.16 JUDICIAL REVIEW.

10 1. Judicial review of actions of the fire marshal may be  
11 sought in accordance with the terms of the Iowa administrative  
12 procedure Act pursuant to chapter 17A. Notwithstanding the  
13 terms of said Act, petitions for judicial review may be filed  
14 in the district court of the county where such building is  
15 located. If legal proceedings have been instituted pursuant  
16 to section 100.14, all related issues which could otherwise be  
17 raised in a proceeding for judicial review shall be raised in  
18 the legal proceedings instituted pursuant to section 100.14.

19 2. Upon judicial review of the fire marshal's action, if  
20 the court affirms the agency action, the court shall tax all  
21 court costs of the review proceeding against the appellant.  
22 However, if the court reverses, revokes, or annuls the fire  
23 marshal's action, the court shall tax all court costs of the  
24 review proceeding against the state. If the fire marshal's  
25 action is modified or the matter is remanded to the agency for  
26 further proceedings, the court shall apportion the court costs  
27 within the discretion of the court.

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31 detectors in existing single-family rental units and multiple-  
32 unit residential buildings. Existing single-family dwelling  
33 units shall be equipped with approved smoke detectors. A  
34 person who files for a homestead credit pursuant to chapter  
35 425 shall certify that the single-family dwelling unit for

1 which the credit is filed has a smoke detector installed in  
2 compliance with this section, or that one will be installed  
3 within thirty days of the date the filing for the credit is  
4 made. The state fire marshal shall adopt rules and establish  
5 appropriate procedures ~~for-the-distribution-and-filing-of-such~~  
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7 subsection.

8 Sec. 5. Section 100.26, Code 1993, is amended to read as  
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10 100.26 TIME FOR COMPLIANCE WITH ORDER -- PENALTY.

11 ~~When no~~ If a petition of review ~~as-provided-in-section~~  
12 ~~100.14~~ has not been filed ~~or-when-the-fire-marshal-on-review~~  
13 or the court on review has affirmed or modified an order for  
14 the removal, destruction, or repair of a building, or the  
15 removal of any of its contents, or the change of any of its  
16 conditions, the owner, lessee, or occupant shall comply with  
17 the order within thirty days after the delivery of the order  
18 or a copy of the order to the person, either personally or by  
19 certified letter to the last known address, or by service upon  
20 the person's appointed agent. Failure of the owner, lessee,  
21 or occupant to comply with the order shall subject the owner,  
22 lessee, or occupant to a penalty of ten dollars for each day  
23 of failure or neglect after the expiration of the period. The  
24 penalty shall be recovered in the name of the state and paid  
25 into the treasury of the political subdivision which issues  
26 the order or the treasurer of state if the order is issued by  
27 the state. If the owner, lessee, or occupant cannot  
28 reasonably comply with the order within thirty days and a good  
29 faith effort at compliance has been made within thirty days,  
30 the owner, lessee, or occupant shall not be subject to a  
31 penalty under this section. However, the penalty may be  
32 imposed on the person upon a failure to continue the good  
33 faith compliance with the order.

34 Sec. 6. Section 100.31, unnumbered paragraph 2, Code 1993,  
35 is amended to read as follows:

1 Every school building with two or more classrooms shall  
2 have a warning system for fires of a type approved by the  
3 Underwriters' Laboratories and by the state fire marshal.  
4 ~~Said~~ The warning system shall be used only for fire drills or  
5 as a warning for emergency. Schools may modify the fire  
6 warning system for use as a tornado warning system or shall  
7 install a separate tornado warning system. Every school  
8 building shall also be equipped with ~~first-aid~~ portable fire  
9 extinguishers, with the type, size and number in accordance  
10 with National Fire Protection Association standards and  
11 approved by the state fire marshal.

12 Sec. 7. Section 103A.11, subsection 1, Code 1993, is  
13 amended by striking the subsection and inserting in lieu  
14 thereof the following:

15 1. The commissioner shall adopt rules pursuant to chapter  
16 17A which are necessary for the implementation of this  
17 chapter.

18 Sec. 8. Section 331.512, subsection 1, paragraph d, Code  
19 1993, is amended by striking the paragraph.

20 Sec. 9. Sections 100.15, 100.17, 100.19, 100.23, and  
21 100.27 through 100.29, Code 1993, are repealed.

22 EXPLANATION

23 This bill contains a number of provisions pertaining to the  
24 state fire marshal.

25 The bill strikes and repeals several provisions in the  
26 current Code pertaining to the state fire marshal. The bill  
27 strikes current procedures providing for the fire marshal or  
28 local authorities to issue orders requiring removal or repair  
29 of premises, as well as the review procedure for those orders  
30 in which the state fire marshal, under current law, undergoes  
31 a self-review process. The bill also repeals current  
32 provisions pertaining to hearings upon review, as well as a  
33 provision that upon judicial review, notwithstanding chapter  
34 17A, a petition may be filed in the district court where the  
35 building is located. The bill further repeals a provision

1 pertaining to bonds upon judicial review, which provides that  
2 upon filing a \$100 bond, any order subject to the review is  
3 suspended during the proceeding.

4 The bill further repeals a section which currently requires  
5 the state fire marshal to establish a data filing system  
6 utilizing fire hazard analysis. The bill repeals a section  
7 authorizing officials to demolish or repair a building upon  
8 failure to comply with an order, in which case expenses, as  
9 well as a 25 percent penalty, are assessed. The bill further  
10 repeals a review procedure concerning the assessment and a  
11 section pertaining to the entry of the assessment as a special  
12 charge against the real estate.

13 The bill replaces the stricken provisions by establishing  
14 procedures for the entry of orders by the state fire marshal,  
15 the chief of any fire department, or the fire prevention  
16 officer of a fire department organized under chapter 400. The  
17 bill requires the orders to state a reasonable time for  
18 compliance. The bill authorizes the person to contest the  
19 order in accordance with chapter 17A.

20 The bill permits the state fire marshal to issue emergency  
21 orders without notice or hearing. These orders are  
22 immediately effective, unless or until modified, vacated, or  
23 stayed through administrative hearing or by a district court.

24 The bill authorizes the county attorney or attorney general  
25 to institute legal actions for enforcement on behalf of the  
26 state fire marshal, and provides that injunctive relief may be  
27 sought. Under the bill, if an enforcement action has been  
28 instituted, all related issues which could otherwise be raised  
29 in a proceeding for judicial review shall be raised in the  
30 enforcement action. The bill also contains a provision  
31 similar to one in current law, pertaining to payment of costs  
32 in a judicial review proceeding, which assesses costs against  
33 an unsuccessful party.

34 The bill changes a reference to fire extinguishers which  
35 are required for school buildings. The bill eliminates the

1 current procedure pertaining to rulemaking concerning the  
2 state building code, and inserts the rulemaking provisions of  
3 chapter 17A.

4                                   BACKGROUND STATEMENT  
5                                   SUBMITTED BY THE AGENCY

6       The bill strikes and repeals a number of provisions in the  
7 current Code relating to the state fire marshal. Under  
8 current law, appeals of a fire marshal order are made to the  
9 fire marshal; thus the fire marshal undergoes a "self-review"  
10 process. The bill replaces stricken provisions of this appeal  
11 procedure by authorizing persons to contest orders in  
12 accordance with chapter 17A, the administrative procedures  
13 Act, and establishing procedures for the entry of orders by  
14 the fire marshal or the chief of any fire department organized  
15 under chapter 400.

16       The bill permits the state fire marshal to issue emergency  
17 orders without notice or hearing in those situations requiring  
18 immediate action, which are immediately effective unless  
19 modified, vacated, or stayed through administrative hearing or  
20 by a district court (similar to language in section 101.25).

21       The bill authorizes the county attorney or attorney general  
22 to institute legal actions for enforcement on behalf of the  
23 state fire marshal, as is current practice, and provides that  
24 injunctive relief may be sought. Under the bill, if an  
25 enforcement action has been instituted, all related issues  
26 which could otherwise be raised in a proceeding for judicial  
27 review shall be raised in the enforcement action. The bill  
28 also replaces a provision similar to one in current law,  
29 pertaining to payment of costs in a judicial review  
30 proceeding, which assesses costs against an unsuccessful  
31 party.

32       The bill changes a reference to fire extinguishers which  
33 are required for school buildings, and deletes a requirement  
34 that the fire marshal implement a fire hazard analysis system.  
35 It also deletes section 331.512 relating to levy of tax, since

1 that section references deleted sections of chapter 100.

2 The bill deletes a reference to public "hearings" of  
3 building code rules and allows the fire marshal to adopt rules  
4 pursuant to chapter 17A.

5 These provisions are included in the following sections of  
6 the bill:

7 Section 1 of this bill strikes current language related to  
8 removal or repair of conditions which violate chapter 100 and  
9 replaces it with language similar to that found in section  
10 101.25, pertaining to orders related to flammable liquids.

11 Under the bill, the fire marshal may order deficiencies  
12 affecting public safety terminated immediately without notice  
13 or hearing. The order may be modified, vacated, or stayed at  
14 an administrative hearing or by the district court.

15 Section 2 of this bill clarifies that the attorney general  
16 shall institute necessary legal proceedings. Current law  
17 refers specifically only to actions by the county attorney, as  
18 provided in section 100.20 and section 331.756, subsection 23.

19 Section 3 of the bill provides for judicial review pursuant  
20 to chapter 17A and for payment of costs. The provision  
21 concerning the assessment of costs reflects current language  
22 and court procedures.

23 Section 4 of the bill deletes a requirement that county  
24 assessors send certifications of intent to install smoke  
25 detectors to the fire marshal, and provides that the fire  
26 marshal shall adopt rules to administer the provisions  
27 pertaining to installation of smoke detectors.

28 Section 5 of the bill contains a technical correction to  
29 reflect the changes pertaining to review pursuant to chapter  
30 17A, by deleting a reference to fire marshal review of orders.

31 Section 6 of the bill contains a technical correction,  
32 which changes a reference to "portable" fire extinguishers,  
33 rather than "first aid" fire extinguishers.

34 Section 7 of the bill deletes an antiquated requirement  
35 that the fire marshal hold multiple public hearings and allows

1 for the adoption of rules pursuant to chapter 17A.

2 Section 8 of the bill includes a technical correction, as  
3 the provisions referenced in section 321.512 are deleted in  
4 this bill.

5 Section 9 of the bill repeals section 100.15, pertaining to  
6 hearing on review, section 100.17, concerning the posting of  
7 bond and suspension of the fire marshal's order, section  
8 100.19, relating to the fire hazard analysis system, section  
9 100.23, pertaining to judicial review costs, section 100.27,  
10 pertaining to refusal to obey orders, section 100.28,  
11 concerning notice and hearing, and section 100.29, providing  
12 for the entry of expenses on the tax records of a county. The  
13 bill repeals these provisions in order to provide for similar  
14 procedures pursuant to chapter 17A.

15 However, section 100.19, which relates to the creation of a  
16 fire hazard analysis system, was enacted in 1987 but was never  
17 funded. The resources of the fire marshal's office are not  
18 sufficient to comply with the intent of this section.

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HOUSE FILE 2070

AN ACT

RELATING TO ADMINISTRATIVE ACTIVITIES BY THE DEPARTMENT OF  
PUBLIC SAFETY CONCERNING THE STATE FIRE MARSHAL.

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

Section 1. Section 100.13, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

100.13 VIOLATIONS -- ORDERS.

1. If a person has violated or is violating a provision of this chapter or a rule adopted pursuant to this chapter, the state fire marshal, the chief of any fire department, or the fire prevention officer of a fire department organized under chapter 400 may issue an order directing the person to desist in the practice which constitutes the violation and to take corrective action as necessary to ensure that the violation will cease. The order shall be in writing and shall specify a reasonable time by which the person shall comply with the order. The person to whom the order is issued may appeal the order as provided in chapter 17A. On appeal, the administrative law judge may affirm, modify, or vacate the order. Judicial review may be sought in accordance with chapter 17A.

2. Notwithstanding any other provision of law to the contrary, if the state fire marshal determines that an emergency exists respecting any matter affecting or likely to affect the public safety, the fire marshal may issue any order necessary to terminate the emergency without notice or hearing. An emergency order is binding and effective immediately, until or unless the order is modified, vacated, or stayed at an administrative hearing or by a district court.

Sec. 2. Section 100.14, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

100.14 PENALTIES -- BURDEN OF PROOF.

At the request of the state fire marshal, the county attorney shall institute any legal proceedings on behalf of the state necessary to obtain compliance or enforce the penalty provisions of this chapter or rules or orders adopted or issued pursuant to this chapter, including, but not limited to, a legal action for injunctive relief. The county attorney or any other attorney acting on behalf of the chief of a fire department or a fire prevention officer may institute legal proceedings, including, but not limited to, a legal action for injunctive relief, to obtain compliance or enforce the penalty provisions or orders issued pursuant to section 100.13.

Sec. 3. Section 100.16, Code 1993, is amended to read as follows:

100.16 JUDICIAL REVIEW.

1. Judicial review of actions of the fire marshal may be sought in accordance with the terms of the Iowa administrative procedure Act pursuant to chapter 17A. ~~Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where such building is located.~~ If legal proceedings have been instituted pursuant to section 100.14, all related issues which could otherwise be raised in a proceeding for judicial review shall be raised in the legal proceedings instituted pursuant to section 100.14.

2. Upon judicial review of the fire marshal's action, if the court affirms the agency action, the court shall tax all court costs of the review proceeding against the appellant. However, if the court reverses, revokes, or annuls the fire marshal's action, the court shall tax all court costs of the review proceeding against the agency. If the fire marshal's action is modified or the matter is remanded to the agency for further proceedings, the court shall apportion the court costs within the discretion of the court.

Sec. 4. Section 100.18, subsection 2, paragraph b, Code 1993, is amended to read as follows:

b. The rules shall require the installation of smoke detectors in existing single-family rental units and multiple-unit residential buildings. Existing single-family dwelling units shall be equipped with approved smoke detectors. A person who files for a homestead credit pursuant to chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke detector installed in compliance with this section, or that one will be installed within thirty days of the date the filing for the credit is made. The state fire marshal shall adopt rules and establish appropriate procedures ~~for the distribution and filing of such certificates with the state fire marshal to administer this subsection.~~

Sec. 5. Section 100.26, Code 1993, is amended to read as follows:

100.26 TIME FOR COMPLIANCE WITH ORDER -- PENALTY.

~~When no~~ If a petition of review ~~as provided in section 100.14~~ has not been filed ~~or when the fire marshal on review~~ or the court on review has affirmed or modified an order for the removal, destruction, or repair of a building, or the removal of any of its contents, or the change of any of its conditions, the owner, lessee, or occupant shall comply with the order within thirty days after the delivery of the order or a copy of the order to the person, either personally or by

certified letter to the last known address, or by service upon the person's appointed agent. Failure of the owner, lessee, or occupant to comply with the order shall subject the owner, lessee, or occupant to a penalty of ten dollars for each day of failure or neglect after the expiration of the period. The penalty shall be recovered in the name of the state and paid into the treasury of the political subdivision which issues the order or the treasurer of state if the order is issued by the state. If the owner, lessee, or occupant cannot reasonably comply with the order within thirty days and a good faith effort at compliance has been made within thirty days, the owner, lessee, or occupant shall not be subject to a penalty under this section. However, the penalty may be imposed on the person upon a failure to continue the good faith compliance with the order.

Sec. 6. Section 100.31, unnumbered paragraph 2, Code 1993, is amended to read as follows:

Every school building with two or more classrooms shall have a warning system for fires of a type approved by the Underwriters' Laboratories and by the state fire marshal. ~~Said~~ The warning system shall be used only for fire drills or as a warning for emergency. Schools may modify the fire warning system for use as a tornado warning system or shall install a separate tornado warning system. Every school building shall also be equipped with ~~first-aid~~ portable fire extinguishers, with the type, size and number in accordance with National Fire Protection Association standards and approved by the state fire marshal.

Sec. 7. Section 103A.11, subsection 1, Code 1993, is amended by striking the subsection and inserting in lieu thereof the following:

1. The commissioner shall adopt rules pursuant to chapter 17A which are necessary for the implementation of this chapter.

Sec. 8. Section 331.512, subsection 1, paragraph d, Code 1993, is amended by striking the paragraph.

Sec. 9. Sections 100.15, 100.17, 100.19, 100.23, and 100.27 through 100.29, Code 1993, are repealed.

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HAROLD VAN MAANEN  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2070, Seventy-fifth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 18, 1994

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TERRY E. BRANSTAD  
Governor