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SENATE FILE 2404

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2280)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the Iowa administrative procedure Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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ARTICLE 1

GENERAL PROVISIONS

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3 Section 1. NEW SECTION. 17A.1101 CITATION, STATEMENT OF
4 PURPOSE, AND CONSTRUCTION.

5 1. This chapter may be cited as the "Iowa Administrative
6 Procedure Act".

7 2. The purposes of this chapter are the following:

8 a. To provide legislative and gubernatorial oversight of
9 powers and duties delegated to administrative agencies.

10 b. To increase the public accountability of administrative
11 agencies.

12 c. To simplify government by assuring a uniform minimum
13 procedure to which all agencies will be held in the conduct of
14 their most important functions.

15 d. To increase public access to information about agency
16 law and policy.

17 e. To increase public participation in the formulation of
18 administrative rules and the efficacy and acceptability of
19 those rules.

20 f. To increase the fairness and efficiency of agencies in
21 their conduct of adjudicatory proceedings.

22 g. To simplify the process of judicial review of agency
23 action as well as to increase its availability and
24 effectiveness.

25 3. In accomplishing its objectives, the intention of this
26 chapter is to strike a fair balance between the need for
27 adequate protection of private rights and political control of
28 agency processes and the need for efficient, economical, and
29 effective government administration.

30 4. The coverage and requirements of this chapter shall be
31 construed broadly to effectuate the purposes of this chapter
32 and any exemptions from its requirements contained in this
33 chapter or elsewhere shall be narrowly construed.

34 Sec. 2. NEW SECTION. 17A.1102 DEFINITIONS.

35 As used in this chapter, unless the context otherwise

1 requires:

2 1. "Adjudicative proceeding" means the process for
3 formulating and issuing an order.

4 2. "Agency" means a board, commission, department,
5 officer, or other administrative unit of this state, including
6 the agency head, and one or more members of the agency head or
7 agency employees or other persons directly or indirectly
8 purporting to act on behalf or under the authority of the
9 agency head. "Agency" does not mean the general assembly or
10 any of its components, the judicial department or any of its
11 components, the governor, or a political subdivision of the
12 state or any of the administrative units of a political
13 subdivision, but it does include a board, commission,
14 department, officer, or other administrative unit created or
15 appointed by joint or concerted action of an agency and one or
16 more political subdivisions of the state or any of their
17 administrative units. To the extent it purports to exercise
18 authority subject to any provision of this chapter, an
19 administrative unit otherwise qualifying as an "agency" must
20 be treated as a separate agency even if the administrative
21 unit is located within or subordinate to another agency.

22 3. "Agency action" means any one of the following:

23 a. The whole or a part of a rule or an order.

24 b. The failure to adopt a rule or issue an order.

25 c. An agency's performance of, or failure to perform, any
26 other duty, function, or activity, discretionary or otherwise.

27 4. "Agency head" means an individual or body of
28 individuals in whom the ultimate legal authority of the
29 agency, with respect to the matter at issue, is vested by any
30 provision of law.

31 5. "License" means a franchise, permit, certification,
32 approval, registration, charter, or similar form of
33 authorization required by law.

34 6. "Order" means an agency action of particular
35 applicability that determines the legal rights, duties,

1 privileges, immunities, or other legal interests of one or
2 more specific persons. The term does not include an
3 "executive order" issued by the governor pursuant to section
4 17A.1104 or 17A.3202.

5 7. "Party to agency proceedings" or "party" in context so
6 indicating, means any of the following:

7 a. A person to whom the agency action is specifically
8 directed.

9 b. A person named as a party to an agency proceeding or
10 allowed to intervene or participate as a party in the
11 proceeding.

12 8. "Party to judicial review or civil enforcement
13 proceeding" or "party" in context so indicating, means any of
14 the following:

15 a. A person who files a petition for judicial review or
16 civil enforcement.

17 b. A person named as a party in a proceeding for judicial
18 review or civil enforcement or allowed to participate as a
19 party in the proceeding.

20 9. "Person" means an individual, partnership, corporation,
21 association, governmental subdivision or unit thereof, or
22 public or private organization or entity of any character, and
23 includes another agency.

24 10. "Presiding officer" means an individual who presides
25 at any stage in an adjudicatory proceeding.

26 11. "Provision of law" means the whole or a part of the
27 federal or state constitution, or of any federal or state
28 statute, court rule, executive order, or rule of an agency.

29 12. "Rule" means the whole or a part of an agency
30 statement of general applicability that implements,
31 interprets, or prescribes law or policy, or the organization,
32 procedures, or practice requirements of an agency. The term
33 includes the amendment, repeal, or suspension of an existing
34 rule. Notwithstanding any other provision of law, "rule"
35 includes an executive order or directive of the governor which

1 creates an agency or establishes a program or which transfers
2 a program between agencies established by statute or rule.

3 13. "Rulemaking" means the process for formulating and
4 adopting a rule.

5 Sec. 3. NEW SECTION. 17A.1103 APPLICABILITY AND RELATION
6 TO OTHER LAW.

7 1. This chapter applies to all agencies and all
8 proceedings not expressly exempted, mentioning this chapter by
9 name or number.

10 2. This chapter creates only procedural rights and imposes
11 only procedural duties. The procedural rights and duties are
12 in addition to those created and imposed by other statutes.
13 To the extent that any other statute would diminish a right
14 created or duty imposed by this chapter, the other statute is
15 superseded by this chapter, unless the other statute expressly
16 provides otherwise, mentioning this chapter by name or number.

17 3. An agency may grant procedural rights to persons in
18 addition to those conferred by this chapter as long as rights
19 conferred upon other persons by any provision of law are not
20 substantially prejudiced.

21 Sec. 4. NEW SECTION. 17A.1104 SUSPENSION OF CHAPTER'S
22 PROVISIONS WHEN NECESSARY TO AVOID LOSS OF FEDERAL FUNDS OR
23 SERVICES.

24 1. To the extent necessary to avoid a denial of funds or
25 services from the United States which would otherwise be
26 available to the state, the governor by executive order may
27 suspend, in whole or in part, one or more provisions of this
28 chapter. The governor by executive order shall declare the
29 termination of a suspension as soon as it is no longer
30 necessary to prevent the loss of funds or services from the
31 United States.

32 2. An executive order issued under subsection 1 is subject
33 to the requirements applicable to the adoption and
34 effectiveness of a rule.

35 3. If any provision of this chapter is suspended pursuant

1 to this section, the governor shall promptly report the
2 suspension to the general assembly. The report must include
3 recommendations concerning any desirable legislation that may
4 be necessary to conform this chapter to federal law.

5 Sec. 5. NEW SECTION. 17A.1105 WAIVER.

6 Except to the extent precluded by another provision of law,
7 a person may waive any right conferred upon that person by
8 this chapter.

9 Sec. 6. NEW SECTION. 17A.1106 INFORMAL SETTLEMENTS.

10 Except to the extent precluded by another provision of law,
11 informal settlement of matters that may make unnecessary more
12 elaborate proceedings under this chapter is encouraged.
13 Agencies shall establish by rule specific procedures to
14 facilitate informal settlement of matters. This section does
15 not require any party or other person to settle a matter
16 pursuant to informal procedures.

17 Sec. 7. NEW SECTION. 17A.1107 CONVERSION OF PROCEEDINGS.

18 1. At any point in an agency proceeding the presiding
19 officer or other agency official responsible for the
20 proceeding may convert the proceeding to another type of
21 agency proceeding provided for by this chapter if the
22 conversion is appropriate under the particular circumstances,
23 is in the public interest, and does not prejudice the
24 substantial rights of any party. If required by any provision
25 of law, the presiding officer or other agency official
26 responsible for the proceeding shall convert the proceeding to
27 another type of agency proceeding provided by this chapter.

28 2. A conversion of a proceeding of one type to a
29 proceeding of another type may be effected only upon notice to
30 all parties to the original proceeding and an opportunity to
31 present argument on that issue. An order converting one type
32 of proceeding to another type of proceeding is a final order.

33 3. If the presiding officer or other agency official
34 responsible for the original proceeding would not have
35 authority over the new proceeding to which it is to be

1 converted, that officer or official, in accordance with agency
2 rules, shall secure the appointment of a successor to preside
3 over or be responsible for the new proceeding.

4 4. To the extent feasible and consistent with the rights
5 of parties and the requirements of this chapter pertaining to
6 the new proceeding, the record of the original agency
7 proceeding must be used in the new agency proceeding.

8 5. After a proceeding is converted from one type to
9 another, the presiding officer or other agency official
10 responsible for the new proceeding shall do all of the
11 following:

12 a. Give such additional notice to parties or other persons
13 as is necessary to satisfy the requirements of this chapter
14 pertaining to the new proceeding.

15 b. Dispose of the matters involved without further
16 proceedings if sufficient proceedings have already been held
17 to satisfy the requirements of this chapter pertaining to the
18 new proceeding.

19 c. Conduct or cause to be conducted any additional
20 proceedings necessary to satisfy the requirements of this
21 chapter pertaining to the new proceeding.

22 6. Each agency shall adopt rules to govern the conversion
23 of one type of proceeding to another. The rules must include
24 an enumeration of the factors to be considered in determining
25 whether and under what circumstances one type of proceeding
26 will be converted to another.

27 Sec. 8. NEW SECTION. 17A.1108 EFFECTIVE DATE.

28 This chapter takes effect on July 1, 1997, and does not
29 govern proceedings pending on that date. This chapter governs
30 all agency proceedings, and all proceedings for judicial
31 review or civil enforcement of agency action, commenced after
32 that date. This chapter also governs agency proceedings
33 conducted on a remand from a court or another agency after the
34 effective date of this chapter.

35

ARTICLE 2

1 PUBLIC ACCESS TO AGENCY LAW AND POLICY

2 Sec. 9. NEW SECTION. 17A.2101 PUBLICATION, COMPILATION,
3 INDEXING, AND PUBLIC INSPECTION OF RULES.

4 1. The administrative rules editor shall cause the "Iowa
5 Administrative Bulletin" to be published in pamphlet or
6 electronic form at least every other week containing all of
7 the following:

8 a. Notices of proposed rule adoption prepared in such a
9 manner so that the text of a proposed or adopted rule shows
10 the text of any existing rule being changed and the change
11 being made.

12 b. Newly filed adopted rules prepared so that the text of
13 the newly filed adopted rule shows the text of any existing
14 rule being changed and the change being made.

15 c. All proclamations and executive orders of the governor
16 which are general and permanent in nature.

17 d. Resolutions nullifying administrative rules passed by
18 the general assembly pursuant to article III, section 40 of
19 the Constitution of the State of Iowa.

20 e. Other materials deemed appropriate for such publication
21 by the administrative rules review committee or the
22 administrative rules coordinator.

23 2. Subject to the direction of the administrative rules
24 coordinator, the administrative rules editor shall cause the
25 "Iowa Administrative Code" to be compiled, indexed, and
26 published in loose-leaf or electronic form containing all
27 effective rules of each agency. The administrative rules
28 editor shall also cause loose-leaf or electronic supplements
29 to the Iowa administrative code to be published on a schedule
30 determined by the administrative rules coordinator and the
31 administrative rules review committee. Any such loose-leaf
32 supplements shall be in a form suitable for insertion in the
33 appropriate places in the permanent compilation, and any such
34 electronic supplements shall be wholly integrated into the
35 text of the permanent compilation. The administrative rules

1 coordinator shall devise a uniform numbering system for rules
2 and may renumber rules before publication to conform with the
3 system.

4 3. a. The administrative rules editor may omit from the
5 Iowa administrative bulletin or code any proposed or filed
6 adopted rule the publication of which would be unduly
7 cumbersome, expensive, or otherwise inexpedient, if all of the
8 following apply:

9 (1) The administrative rules editor and the administrative
10 rules coordinator determine that knowledge of the rule is
11 likely to be important to only a small class of persons.

12 (2) On application to the adopting agency, the proposed or
13 adopted rule in printed or electronic form is made available
14 at no more than its cost of reproduction.

15 (3) The administrative bulletin or code contains a notice
16 stating in detail the specific subject matter of the omitted
17 proposed or adopted rule and how a copy of the omitted
18 material may be obtained.

19 b. The administrative rules editor shall omit from the
20 Iowa administrative code any rule or portion of a rule
21 nullified by the general assembly pursuant to article III,
22 section 40 of the Constitution of the State of Iowa, any rule
23 or portion of a rule rescinded by the governor pursuant to
24 section 17A.3202, and any other rule that is no longer
25 effective.

26 4. The Iowa administrative bulletin and the Iowa
27 administrative code and its supplements shall be made
28 available upon request to all persons who subscribe to any of
29 them through the state printing division of the department of
30 general services. Copies of this code so made available shall
31 be kept current by the division.

32 Each agency shall also make available for public inspection
33 and copying in its principal office those portions of the Iowa
34 administrative bulletin and code containing all rules adopted
35 or used by the agency in the discharge of its functions, and

1 the index to those rules. An agency may satisfy the
2 requirements of this paragraph by making available for public
3 inspection and copying in its principal office a complete and
4 up-to-date set of the administrative bulletin and code.

5 5. All expenses incurred by the administrative rules
6 editor under this section shall be defrayed under section
7 2B.22.

8 6. a. The Iowa administrative code shall be cited as
9 (agency identification number) IAC, (chapter, rule, subrule,
10 lettered paragraph, or numbered subparagraph).

11 b. The Iowa administrative bulletin shall be cited as IAB
12 (volume), (number), (publication date), (page number), (ARC
13 number). "ARC number" means the identification number
14 assigned by the administrative rules coordinator to each
15 rulemaking document.

16 7. Except as otherwise required by law, subsections 1 and
17 2 do not apply to rules governed by section 17A.3116, and the
18 following provisions apply instead:

19 a. Each agency shall maintain an official, current, and
20 dated compilation that is indexed by subject, containing, to
21 the extent feasible and practicable, all of its rules within
22 the scope of section 17A.3116. Each addition to, change in,
23 or deletion from this official compilation must also be dated,
24 indexed, and a record thereof kept. All portions of the
25 compilation must be made available for public inspection and
26 copying at no more than the cost of reproduction; however, an
27 agency need not make available for public inspection and
28 copying those portions containing rules governed by section
29 17A.3116, subsection 2, except to the extent that such
30 inspection and copying is required by constitution or statute
31 or in discovery under the Iowa rules of civil or criminal
32 procedure. Certified copies of the full compilation must also
33 be furnished to the administrative rules coordinator and
34 members of the administrative rules review committee, and be
35 kept current by the agency at least every thirty days.

1 b. A rule subject to the requirements of this subsection
2 shall not be relied on by an agency to the detriment of any
3 person who does not have actual, timely knowledge of the
4 contents of the rule until the requirements of paragraph "a"
5 are satisfied. The burden of proving that knowledge or that
6 the failure to include a rule subject to this subsection in
7 the required compilation was justified because it was not
8 feasible or practicable to do so, is on the agency. This
9 provision is inapplicable to the extent necessary to avoid
10 imminent peril to the public health, safety, or welfare.

11 Sec. 10. NEW SECTION. 17A.2102 PUBLIC INSPECTION AND
12 INDEXING OF AGENCY ORDERS.

13 1. In addition to other requirements imposed by any
14 provision of law, each agency shall make all written final
15 orders, including settlement orders, available for public
16 inspection and copying at no more than the cost of
17 reproduction and index them by name and subject. When the
18 agency makes them available for public inspection and copying,
19 the agency shall delete from those orders identifying details
20 to the extent required by any provision of law or necessary to
21 prevent a clearly unwarranted invasion of privacy or release
22 of trade secrets. In each case the justification for the
23 deletion must be explained in writing and attached to the
24 order.

25 2. A written final order shall not be relied on as
26 precedent by an agency and shall not be invoked by an agency
27 for any purpose, to the detriment of any person, until it has
28 been made available for public inspection and indexed in the
29 manner described in subsection 1. This provision is
30 inapplicable to any person who has actual timely knowledge of
31 the order. The burden of proving that knowledge is on the
32 agency.

33 Sec. 11. NEW SECTION. 17A.2103 DECLARATORY ORDERS.

34 1. Any person may petition an agency for a declaratory
35 order as to the applicability to specified circumstances of a

1 statute, rule, or order within the primary jurisdiction of the
2 agency. An agency shall issue a declaratory order in response
3 to a petition for that order unless the agency determines that
4 issuance of the order under the circumstances would be
5 contrary to a rule adopted in accordance with subsection 2.
6 However, an agency shall not issue a declaratory order that
7 would substantially prejudice the rights of a person who would
8 be a necessary party and who does not consent in writing to
9 the determination of the matter by a declaratory order
10 proceeding.

11 2. Each agency shall adopt rules that provide for the
12 form, contents, and filing of petitions for declaratory
13 orders, the procedural rights of persons in relation to the
14 petitions, and the disposition of the petitions. The rules
15 must describe the classes of circumstances in which the agency
16 will not issue a declaratory order and must be consistent with
17 the public interest and with the general policy of this
18 chapter to facilitate and encourage agency issuance of
19 reliable advice.

20 3. Within fifteen days after receipt of a petition for a
21 declaratory order, an agency shall give notice of the petition
22 to all persons to whom notice is required by any provision of
23 law and may give notice to any other persons.

24 4. Persons who qualify under any applicable provision of
25 law as an intervenor and who file timely petitions for
26 intervention according to agency rules may intervene in
27 proceedings for declaratory orders. Other provisions of
28 article 4 of this chapter apply to agency proceedings for
29 declaratory orders only to the extent an agency so provides by
30 rule or order.

31 5. Within thirty days after receipt of a petition for a
32 declaratory order an agency, in writing, shall do one of the
33 following:

34 a. Issue an order declaring the applicability of the
35 statute, rule, or order in question to the specified

1 circumstances.

2 b. Set the matter for specified proceedings.

3 c. Agree to issue a declaratory order by a specified time.

4 d. Decline to issue a declaratory order, stating the
5 reasons for its action.

6 6. A copy of all orders issued in response to a petition
7 for a declaratory order must be mailed promptly to the
8 petitioner and any other parties.

9 7. A declaratory order has the same status and binding
10 effect as any other order issued in an agency adjudicative
11 proceeding. A declaratory order must contain the names of all
12 parties to the proceeding on which it is based, the particular
13 facts on which it is based, and the reasons for its
14 conclusion.

15 8. If an agency has not issued a declaratory order within
16 sixty days after receipt of a petition therefor, the petition
17 is deemed to have been denied.

18 Sec. 12. NEW SECTION. 17A.2104 REQUIRED RULEMAKING.

19 In addition to other rulemaking requirements imposed by
20 law, each agency shall do all of the following:

21 1. Adopt as a rule a description of the organization of
22 the agency which states the course and method of its
23 operations, the administrative subdivisions of the agency and
24 the programs implemented by each of them, a statement of the
25 mission of the agency and the methods by which and location
26 where the public may obtain information or make submissions or
27 requests.

28 2. Adopt rules of practice setting forth the nature and
29 requirements of all formal and informal procedures available
30 to the public, including a description of all forms and
31 instructions that are to be used by the public in dealing with
32 the agency.

33 3. As soon as feasible and to the extent practicable,
34 adopt rules, in addition to those otherwise required by this
35 chapter, embodying appropriate standards, principles, and

1 procedural safeguards that the agency will apply to the law it
2 administers.

3 ARTICLE 3

4 RULEMAKING

5 PART 1

6 ADOPTION AND EFFECTIVENESS OF RULES

7 Sec. 13. NEW SECTION. 17A.3101 ADVICE ON POSSIBLE RULES
8 BEFORE NOTICE OF PROPOSED RULE ADOPTION.

9 1. In addition to seeking information by other methods, an
10 agency, before publication of a notice of proposed rule
11 adoption under section 17A.3103, may solicit comments from the
12 public on a subject matter of possible rulemaking under active
13 consideration within the agency by causing notice to be
14 published in the administrative bulletin of the subject matter
15 and indicating where, when, and how persons may comment.

16 2. Each agency head may also appoint formal committees, as
17 determined by the agency head, to comment, before publication
18 of a notice of proposed rule adoption under section 17A.3103,
19 on the subject matter of a possible rulemaking under active
20 consideration within the agency. The membership of those
21 committees must be published at least annually in the
22 administrative bulletin.

23 Sec. 14. NEW SECTION. 17A.3102 PUBLIC RULEMAKING DOCKET.

24 1. Each agency shall maintain a current, public rulemaking
25 docket.

26 2. The rulemaking docket must contain a listing of the
27 precise subject matter of each possible rule currently under
28 active consideration within the agency for proposal under
29 section 17A.3103, the name and address of agency personnel
30 with whom persons may communicate with respect to the matter,
31 and an indication of the present status within the agency of
32 that possible rule. For the purposes of this subsection, each
33 agency shall define by rule the point at which a "possible
34 rule" is "currently under active consideration within the
35 agency for proposal under section 17A.3103." Failure to

1 include in the docket a possible rule currently under active
2 consideration shall not be grounds for the invalidation of
3 that rule after it is adopted if the agency can demonstrate
4 that its omission was in good faith.

5 3. The rulemaking docket must list each pending rulemaking
6 proceeding. A rulemaking proceeding is pending from the time
7 it is commenced, by publication of a notice of proposed rule
8 adoption, to the time it is terminated, by publication of a
9 notice of termination or the rule becoming effective. For
10 each rulemaking proceeding, the docket must indicate all of
11 the following:

12 a. The subject matter of the proposed rule.

13 b. A citation to all published notices relating to the
14 proceeding.

15 c. Where written submissions on the proposed rule may be
16 inspected.

17 d. The time during which written submissions may be made.

18 e. The names of persons who have made written requests for
19 an opportunity to make oral presentations on the proposed
20 rule, where those requests may be inspected, and where and
21 when oral presentations may be made.

22 f. Whether a written request for the issuance of a
23 regulatory analysis of the proposed rule has been filed,
24 whether that analysis has been issued, and where the written
25 request and analysis may be inspected.

26 g. The current status of the proposed rule and any agency
27 determinations with respect thereto.

28 h. Any known timetable for agency decisions or other
29 action in the proceeding.

30 i. The date of the rule's adoption.

31 j. The date or dates the rule is to be or was considered
32 by the Administrative Rules Review Committee and an indication
33 of any action taken by that committee on the rule.

34 k. The date of the rule's filing, indexing, and
35 publication.

1 1. When the rule will become effective.

2 Sec. 15. NEW SECTION. 17A.3103 NOTICE OF PROPOSED RULE
3 ADOPTION.

4 1. At least thirty-five days before the adoption of a
5 rule, an agency shall cause notice of its contemplated action
6 to be published in the administrative bulletin by submitting
7 five copies of the proposed rule to the administrative rules
8 coordinator, who shall assign an ARC number to each rulemaking
9 document and forward three copies to the administrative rules
10 editor for publication in the administrative bulletin. The
11 notice of proposed rule adoption must include all of the
12 following:

13 a. A short explanation of the purpose of the proposed
14 rule.

15 b. The specific legal authority authorizing the proposed
16 rule.

17 c. Subject to section 17A.2101, subsection 3, the text of
18 the proposed rule.

19 d. Where, when, and how persons may present their views on
20 the proposed rule.

21 e. Where, when, and how persons may demand an oral
22 proceeding on the proposed rule if the notice does not already
23 provide for one.

24 2. Within three days after its publication in the
25 administrative bulletin, the agency shall cause a copy of the
26 notice of proposed rule adoption to be mailed to each person
27 who has made a timely request to the agency for a mailed copy
28 of the notice. An agency may charge persons for the actual
29 cost of providing them with mailed copies. Failure to provide
30 copies as provided in this subsection shall not be grounds for
31 invalidation of a rule, unless that failure was deliberate on
32 the part of the agency or a result of gross negligence.

33 3. An agency may publish a notice of proposed rule
34 adoption and hold a rulemaking proceeding on the notice after
35 the enactment and before the effective date of a statute

1 authorizing it to adopt such a rule as long as any rule
2 adopted on the basis of that proceeding states that it will
3 not become effective until a specified date on or after the
4 effective date of the authorizing statute.

5 Sec. 16. NEW SECTION. 17A.3104 PUBLIC PARTICIPATION.

6 1. For at least twenty days after publication of the
7 notice of proposed rule adoption, an agency shall afford
8 persons the opportunity to submit in writing, argument, data,
9 and views on the proposed rule.

10 2. a. An agency shall schedule an oral proceeding on a
11 proposed rule if, within twenty days after the published
12 notice of proposed rule adoption, a written request for an
13 oral proceeding is submitted by the administrative rules
14 review committee, the administrative rules coordinator, a
15 political subdivision, an agency, or twenty-five persons. At
16 that proceeding, persons may present oral argument, data, and
17 views on the proposed rule.

18 b. An oral proceeding on a proposed rule, if required, may
19 not be held earlier than twenty days after notice of its
20 location and time is published in the administrative bulletin.

21 c. The agency head, a member of the agency head, or
22 another person designated by the agency, shall preside at a
23 required oral proceeding on a proposed rule. The person
24 presiding must have knowledge of the purpose and subject
25 matter of the proposed rule. If the agency does not preside,
26 the presiding officer shall prepare a memorandum for
27 consideration by the agency summarizing the contents of the
28 presentations made at the oral proceeding. Oral proceedings
29 must be open to the public and be recorded by stenographic or
30 other means.

31 d. Each agency shall adopt rules for the conduct of oral
32 rulemaking proceedings. Those rules may include provisions
33 calculated to prevent undue repetition in the oral
34 proceedings.

35 Sec. 17. NEW SECTION. 17A.3105 REGULATORY ANALYSIS.

1 1. An agency shall issue a regulatory analysis of a
2 proposed rule that complies with requirements of subsection 2,
3 paragraphs "a" and "b", if, within thirty-five days after the
4 published notice of proposed rule adoption, a written request
5 for the analysis is submitted to the agency by the
6 administrative rules review committee or the administrative
7 rules coordinator. An agency shall also issue a regulatory
8 analysis of a proposed rule that complies with subsection 2,
9 paragraphs "a" and "b", if that rule would have a substantial
10 impact on small business and if such a request is submitted to
11 the agency within the specified time period by at least
12 twenty-five persons signing that request who each qualify as a
13 small business or by an organization representing at least
14 twenty-five such persons. If a rule has been adopted without
15 prior notice and an opportunity for public participation in
16 reliance upon section 17A.3108, the written request for the
17 analysis may be made within seventy days of publication of
18 that rule.

19 2. a. Except to the extent that the written request
20 expressly waives one or more of the following, the regulatory
21 analysis must contain all of the following:

22 (1) A description of the classes of persons who probably
23 will be affected by the proposed rule, including classes that
24 will bear the costs of the proposed rule and classes that will
25 benefit from the proposed rule.

26 (2) A description of the probable quantitative and
27 qualitative impact of the proposed rule, economic or
28 otherwise, upon affected classes of persons, including a
29 description of the nature and amount of all of the different
30 kinds of costs that would be incurred in complying with the
31 proposed rule.

32 (3) The probable costs to the agency and to any other
33 agency of the implementation and enforcement of the proposed
34 rule and any anticipated effect on state revenues.

35 (4) A comparison of the probable costs and benefits of the

1 proposed rule to the probable costs and benefits of inaction.

2 (5) A determination of whether there are less costly
3 methods or less intrusive methods for achieving the purpose of
4 the proposed rule.

5 (6) A description of any alternative methods for achieving
6 the purpose of the proposed rule that were seriously
7 considered by the agency and the reasons why they were
8 rejected in favor of the proposed rule.

9 b. In the case of a rule that would have a substantial
10 impact on small business, the regulatory analysis must also
11 contain a discussion of whether it would be feasible and
12 practicable to do any of the following to reduce the impact of
13 the rule on small business:

14 (1) Establish less stringent compliance or reporting
15 requirements in the rule for small business.

16 (2) Establish less stringent schedules or deadlines in the
17 rule for compliance or reporting requirements for small
18 business.

19 (3) Consolidate or simplify the rule's compliance or
20 reporting requirements for small business.

21 (4) Establish performance standards to replace design or
22 operational standards in the rule for small business.

23 (5) Exempt small business from any or all requirements of
24 the rule.

25 c. The agency shall reduce the impact of the proposed rule
26 on small business by using a method discussed in paragraph "b"
27 if it finds that the method is legal and feasible in meeting
28 the statutory objectives which are the basis of the proposed
29 rule.

30 3. Each regulatory analysis must include quantifications
31 of the data to the extent practicable and must take account of
32 both short-term and long-term consequences.

33 4. Notwithstanding any other time period specified in this
34 chapter, a concise summary of the regulatory analysis must be
35 published in the administrative bulletin at least ten days

1 before the earliest of the following:

2 a. The end of the period during which persons may make
3 written submissions on the proposed rule.

4 b. The end of the period during which an oral proceeding
5 may be requested.

6 c. The date of any required oral proceeding on the
7 proposed rule.

8 In the case of a rule adopted without prior notice and an
9 opportunity for public participation in reliance upon section
10 17A.3108, the summary must be published within seventy days of
11 the request.

12 5. The published summary of the regulatory analysis must
13 also indicate where persons may obtain copies of the full text
14 of the regulatory analysis and where, when, and how persons
15 may present their views on the proposed rule and demand an
16 oral proceeding thereon if one is not already provided.

17 6. If the agency has made a good faith effort to comply
18 with the requirements of subsections 1 through 3, the rule may
19 not be invalidated on the ground that the contents of the
20 regulatory analysis are insufficient or inaccurate.

21 7. For the purpose of this section, "small business" means
22 any entity including but not limited to an individual,
23 partnership, corporation, joint venture, association, or
24 cooperative, to which all of the following apply:

25 a. It is not an affiliate or subsidiary of an entity
26 dominant in its field of operation.

27 b. It has either twenty or fewer full-time equivalent
28 positions or less than one million dollars in annual gross
29 revenues in the preceding fiscal year.

30 For purposes of this definition, "dominant in its field of
31 operation" means having more than twenty full-time equivalent
32 positions and more than one million dollars in annual gross
33 revenues, and "affiliate or subsidiary of an entity dominant
34 in its field of operation" means an entity which is at least
35 twenty percent owned by an entity dominant in its field of

1 operation, or by partners, officers, directors, majority
2 stockholders, or their equivalent, of an entity dominant in
3 that field of operation.

4 Sec. 18. NEW SECTION. 17A.3106 TIME AND MANNER OF RULE
5 ADOPTION.

6 1. An agency shall not adopt a rule until the period for
7 making written submissions and oral presentations has expired.

8 2. Within one hundred eighty days after the later of the
9 publication of the notice of proposed rule adoption, or the
10 end of oral proceedings thereon, an agency shall adopt a rule
11 pursuant to the rulemaking proceeding or terminate the
12 proceeding by publication of a notice to that effect in the
13 administrative bulletin.

14 3. Before the adoption of a rule, an agency shall consider
15 the written submissions, oral submissions or any memorandum
16 summarizing oral submissions, and any regulatory analysis,
17 provided for by this part.

18 4. Within the scope of its delegated authority, an agency
19 may use its own experience, technical competence, specialized
20 knowledge, and judgment, in the adoption of a rule.

21 Sec. 19. NEW SECTION. 17A.3107 VARIANCE BETWEEN ADOPTED
22 RULE AND NOTICE OF PROPOSED RULE ADOPTION.

23 1. The agency shall not adopt a rule that differs from the
24 rule proposed in the notice of proposed rule adoption on which
25 the rule is based unless all of the following apply:

26 a. The differences are within the scope of the matter
27 announced in the notice of proposed rule adoption and are in
28 character with the issues raised in that notice.

29 b. The differences are a logical outgrowth of the contents
30 of that notice of proposed rule adoption and the comments
31 submitted in response thereto.

32 c. The notice of proposed rule adoption provided fair
33 warning that the outcome of that rulemaking proceeding could
34 be the rule in question.

35 2. In determining whether the notice of proposed rule

1 adoption provided fair warning that the outcome of that rule-
2 making proceeding could be the rule in question the agency
3 shall consider all of the following factors:

4 a. The extent to which persons who will be affected by the
5 rule should have understood that the rulemaking proceeding on
6 which it is based could affect their interests.

7 b. The extent to which the subject matter of the rule or
8 issues determined by the rule are different from the subject
9 matter or issues contained in the notice of proposed rule
10 adoption.

11 c. The extent to which the effects of the rule differ from
12 the effects of the proposed rule contained in the notice of
13 proposed rule adoption.

14 Sec. 20. NEW SECTION. 17A.3108 GENERAL EXEMPTION FROM
15 PUBLIC RULEMAKING PROCEDURES.

16 1. To the extent an agency for good cause finds that any
17 requirements of sections 17A.3103 through 17A.3107 are
18 unnecessary, impracticable, or contrary to the public interest
19 in the process of adopting a particular rule, those
20 requirements do not apply. The agency shall incorporate the
21 required finding and a brief statement of its supporting
22 reasons in each rule adopted in reliance upon this subsection.
23 An agency shall not rely upon this subsection on the ground
24 that it has insufficient time to follow usual procedures to
25 adopt a rule, because adoption of the rule is required by a
26 statute that became effective only very recently, unless that
27 statute also requires the agency to adopt the rule by a
28 specified date and it would be impracticable to follow usual
29 procedures for adoption of the rule during the period between
30 the date of the enactment of the statute and the specified
31 date by which the agency must adopt the rule.

32 2. In an action contesting a rule adopted under subsection
33 1, the burden is upon the agency to demonstrate that any
34 omitted requirements of sections 17A.3103 through 17A.3107
35 were impracticable, unnecessary, or contrary to the public

1 interest in the particular circumstances involved.

2 3. Within two years after the effective date of a rule
3 adopted under subsection 1, the administrative rules review
4 committee or the governor may request the agency to hold a
5 rulemaking proceeding thereon according to the requirements of
6 sections 17A.3103 through 17A.3107. The request must be in
7 writing, filed in the office of the administrative rules
8 coordinator, and sent to the agency. The administrative rules
9 coordinator shall immediately forward to the administrative
10 rules editor a certified copy of the request. Notice of the
11 filing of the request must be published in the next issue of
12 the administrative bulletin. The rule in question ceases to
13 be effective one hundred eighty days after the request is
14 filed. However, an agency, after the filing of the request,
15 may subsequently adopt an identical rule in a rulemaking
16 proceeding conducted pursuant to the requirements of sections
17 17A.3103 through 17A.3107.

18 Sec. 21. NEW SECTION. 17A.3109 EXEMPTION FOR CERTAIN
19 RULES.

20 1. An agency need not follow the provisions of sections
21 17A.3103 through 17A.3108 in the adoption of a rule that only
22 defines the meaning of a statute or other provision of law or
23 precedent if the agency does not possess delegated authority
24 to bind the courts to any extent with its definition. A rule
25 adopted under this subsection must include a statement that it
26 was adopted under this subsection when it is published in the
27 administrative bulletin, and there must be an indication to
28 that effect in a footnote to the rule when it is published in
29 the administrative code.

30 2. A reviewing court shall determine wholly de novo the
31 validity of a rule within the scope of subsection 1 that is
32 adopted without complying with the provisions of sections
33 17A.3103 through 17A.3108.

34 Sec. 22. NEW SECTION. 17A.3110 CONCISE EXPLANATORY
35 STATEMENT.

1 1. At the time it adopts a rule, an agency shall issue a
2 concise explanatory statement containing all of the following:

3 a. A summary of the principal reasons urged for and
4 against the rule.

5 b. The agency's reasons for adopting the rule, including
6 the agency's reasons for overruling the considerations urged
7 against its adoption.

8 c. An indication of any change between the text of the
9 proposed rule contained in the published notice of proposed
10 rule adoption and the text of the rule as finally adopted,
11 with the reasons for any change.

12 2. Only the reasons contained in the concise explanatory
13 statement may be used by any party as justifications for the
14 adoption of the rule in any proceeding in which its validity
15 is at issue.

16 Sec. 23. NEW SECTION. 17A.3111 CONTENTS, STYLE, AND FORM
17 OF RULE.

18 1. Each rule adopted by an agency must contain the text of
19 the rule and all of the following:

20 a. The date the agency adopted the rule.

21 b. A concise statement of the purpose of the rule.

22 c. A reference to all rules repealed, amended, or
23 suspended by the rule.

24 d. A reference to the specific statutory or other
25 authority authorizing adoption of the rule.

26 e. Any findings required by any provisions of law as a
27 prerequisite to adoption or effectiveness of the rule.

28 f. The effective date of the rule if other than that
29 specified in section 17A.3115, subsection 1.

30 2. To the extent feasible, each rule should be written in
31 clear and concise language understandable to persons who may
32 be affected by it.

33 3. An agency may incorporate, by reference in its rules
34 and without publishing the incorporated matter in full, all or
35 any part of a code, standard, rule, or regulation that has

1 been adopted by an agency of the United States or of this
2 state, another state, or by a nationally recognized
3 organization or association, if incorporation of its text in
4 agency rules would be unduly cumbersome, expensive, or
5 otherwise inexpedient. The reference in the agency rules must
6 fully identify the incorporated matter by location, date, and
7 otherwise, and must state that the rule does not include any
8 later amendments or editions of the incorporated matter. An
9 agency may incorporate by reference such matter in its rules
10 only if the agency, organization, or association originally
11 issuing that matter makes copies of it readily available to
12 the public. The rules must state where copies of the
13 incorporated matter are available at cost from the agency
14 issuing the rule, and where copies are available from the
15 agency of the United States, this state, another state, or the
16 organization or association originally issuing that matter.
17 An agency which adopts standards by reference to another
18 publication shall purchase and provide a copy of the
19 publication containing the standards to the administrative
20 rules coordinator who shall deposit the copy in the state law
21 library where it shall be made available for inspection and
22 reference. In those cases where the purchase of an additional
23 copy would be an unreasonable expense, the administrative
24 rules coordinator may waive this requirement if the
25 publication can be temporarily and promptly obtained for
26 review by the state law library upon request.

27 Sec. 24. NEW SECTION. 17A.3112 AGENCY RULEMAKING RECORD.

28 1. An agency shall maintain for a period of five years an
29 official rulemaking record for each rule it adopts. The
30 record and materials incorporated by reference must be
31 available for public inspection.

32 2. The agency rulemaking record must contain all of the
33 following:

34 a. Copies of all publications in the administrative
35 bulletin with respect to the rule or the proceeding upon which

1 the rule is based.

2 b. Copies of any portions of the agency's public rule-
3 making docket containing entries relating to the rule or the
4 proceeding upon which the rule is based.

5 c. All written petitions, requests, submissions, and
6 comments received by the agency and all other written
7 materials that are unprivileged and that are not required by
8 statute to be kept confidential that were considered by the
9 agency in connection with the formulation, proposal, or
10 adoption of the rule or the proceeding upon which the rule is
11 based.

12 d. Any official transcript of oral presentations made in
13 the proceeding upon which the rule is based or, if not
14 transcribed, any tape recording or stenographic record of
15 those presentations, and any memorandum prepared by a
16 presiding officer summarizing the contents of those
17 presentations.

18 e. A copy of any regulatory analysis prepared for the
19 proceeding upon which the rule is based.

20 f. A copy of the rule and explanatory statement filed in
21 the office of the administrative rules coordinator.

22 g. All petitions for exceptions to, amendments of, or
23 repeal or suspension of, the rule.

24 h. A copy of any request filed pursuant to section
25 17A.3108, subsection 3.

26 i. A copy of any objection to the rule filed by the
27 administrative rules review committee pursuant to section
28 17A.3204, subsection 4, and the agency's response.

29 j. A copy of any filed executive order with respect to the
30 rule.

31 3. Upon judicial review, the record required by this
32 section constitutes the official agency rulemaking record with
33 respect to a rule. Except as provided in section 17A.3110,
34 subsection 2, or otherwise required by a provision of law, the
35 agency rulemaking record need not constitute the exclusive

1 basis for agency action on that rule or for judicial review
2 thereof.

3 Sec. 25. NEW SECTION. 17A.3113 INVALIDITY OF RULES NOT
4 ADOPTED ACCORDING TO CHAPTER -- TIME LIMITATIONS.

5 1. A rule adopted after the effective date of this Act is
6 invalid unless adopted in substantial compliance with the
7 provisions of sections 17A.3102 through 17A.3108 and sections
8 17A.3110 through 17A.3112.

9 2. An action to contest the validity of a rule on the
10 grounds of its noncompliance with any provision of sections
11 17A.3102 through 17A.3108 or sections 17A.3110 through
12 17A.3112 must be commenced within two years after the
13 effective date of the rule.

14 Sec. 26. NEW SECTION. 17A.3114 FILING OF RULES.

15 1. An agency shall file in the office of the
16 administrative rules coordinator three certified copies of
17 each rule it adopts and all existing rules that have not
18 previously been filed. The filing must be done as soon after
19 adoption of the rule as is practicable. At the time of
20 filing, each adopted rule must have attached to it the
21 explanatory statement required by section 17A.3110. The
22 administrative rules coordinator shall assign an ARC number to
23 each rule and shall affix to each rule and statement a
24 certification of the time and date of filing and keep a
25 permanent register open to public inspection of all filed
26 rules and attached explanatory statements. In filing a rule,
27 each agency shall use a standard form prescribed by the
28 administrative rules coordinator.

29 2. The administrative rules coordinator shall transmit to
30 the administrative rules editor, two certified copies of each
31 filed rule as soon after its filing as is practicable.

32 Sec. 27. NEW SECTION. 17A.3115 EFFECTIVE DATE OF RULES.

33 1. Except to the extent subsection 2 provides otherwise,
34 each adopted rule becomes effective thirty-five days after the
35 later of its filing in the office of the administrative rules

1 coordinator or its publication and indexing in the
2 administrative bulletin.

3 2. a. A rule becomes effective on a date later than that
4 established by subsection 1 if a later date is required by
5 another statute or specified in the rule.

6 b. A rule may become effective immediately upon its filing
7 or on any subsequent date earlier than that established by
8 subsection 1 if the agency establishes such an effective date
9 and finds that one or more of the following applies:

10 (1) The earlier effective date is required by
11 constitution, statute, or court order.

12 (2) The rule only confers a benefit or removes a
13 restriction on the public or some segment thereof.

14 (3) The rule only delays the effective date of another
15 rule that is not yet effective.

16 (4) The earlier effective date is necessary to avoid
17 immediate danger to the public health, safety, or welfare.

18 (5) The rule is wholly ministerial and does not alter the
19 existing legal rights of any person.

20 c. The finding and a brief statement of the reasons
21 therefor required by paragraph "b" must be made a part of the
22 rule. In any action contesting the effective date of a rule
23 made effective under paragraph "b", the burden is on the
24 agency to justify its finding.

25 d. Each agency shall make a reasonable effort to make
26 known to persons who may be affected by it a rule made
27 effective before publication and indexing under this
28 subsection.

29 3. This section does not relieve an agency from compliance
30 with any provision of law requiring that some or all of its
31 rules be approved by other designated officials or bodies
32 before they become effective.

33 Sec. 28. NEW SECTION. 17A.3116 SPECIAL PROVISION FOR
34 CERTAIN CLASSES OF RULES.

35 Except to the extent otherwise provided by any provision of

1 law, sections 17A.3102 through 17A.3115 are inapplicable to
2 all of the following:

3 1. A rule concerning only the internal management of an
4 agency which does not directly and substantially affect the
5 procedural or substantive rights or duties of any segment of
6 the public.

7 2. A rule that establishes criteria or guidelines to be
8 used by the staff of an agency in performing audits,
9 investigations, or inspections, settling commercial disputes,
10 negotiating commercial arrangements, or in the defense,
11 prosecution, or settlement of cases, if disclosure of the
12 criteria or guidelines would do any of the following:

13 a. Enable law violators to avoid detection.

14 b. Facilitate disregard of requirements imposed by law.

15 c. Give a clearly improper advantage to persons who are in
16 an adverse position to the state.

17 3. A rule that only establishes specific prices to be
18 charged for particular goods or services sold by an agency.

19 4. A rule concerning only the physical servicing,
20 maintenance, or care of agency owned or operated facilities or
21 property.

22 5. A rule relating only to the use of a particular
23 facility or property owned, operated, or maintained by the
24 state or any of its political subdivisions, if the substance
25 of the rule is adequately indicated by means of signs or
26 signals to persons who use the facility or property.

27 6. A rule concerning only inmates of a correctional or
28 detention facility, students enrolled in an educational
29 institution, or patients admitted to a hospital, if adopted by
30 that facility, institution, or hospital.

31 7. A form whose contents or substantive requirements are
32 prescribed by rule or statute, and instructions for the
33 execution or use of the form.

34 8. An agency budget.

35 9. An opinion of the attorney general.

1 10. The terms of a collective bargaining agreement.
2 Sec. 29. NEW SECTION. 17A.3117 PETITION FOR ADOPTION OF
3 RULE.

4 1. Any person may petition an agency requesting the
5 adoption of a rule. Each agency shall prescribe by rule the
6 form of the petition and the procedure for its submission,
7 consideration, and disposition. Within sixty days after
8 submission of a petition, the agency shall either deny the
9 petition in writing, stating its reasons therefor, initiate
10 rulemaking proceedings in accordance with this chapter or if
11 otherwise lawful, adopt a rule.

12 2. If a person petitions an agency requesting the adoption
13 of a rule superseding specified principles of law or policy
14 lawfully declared by the agency as the basis for its decisions
15 in particular cases, the agency shall initiate rulemaking
16 proceedings in accordance with this chapter and adopt such a
17 rule unless the agency finds, and incorporates in that finding
18 the reasons therefor, that the adoption of such a rule at this
19 time is infeasible or that such a rule is impracticable, and
20 provides a copy of that finding to the petitioner.

21 PART 2

22 REVIEW OF AGENCY RULES

23 Sec. 30. NEW SECTION. 17A.3201 REVIEW BY AGENCY.
24 Within each five-year period an agency shall review each of
25 its rules to determine whether each such rule should be
26 repealed or amended, or a new rule adopted instead. In
27 conducting that review, the agency shall prepare a written
28 report summarizing its findings, its supporting reasons, and
29 any proposed course of action. The report must include, for
30 each such rule, a concise statement of all of the following:
31 1. The rule's effectiveness in achieving its objectives,
32 including a summary of any available data supporting the
33 conclusions reached.
34 2. Criticisms of the rule received during the previous
35 five years, including a summary of any petitions for waiver of

1 the rule tendered to the agency or granted by the agency.

2 3. Alternative solutions to the criticisms and the reasons
3 they were rejected or the changes made in the rule in response
4 to those criticisms and the reasons for the changes.

5 A copy of the report must be sent to the administrative
6 rules review committee and the administrative rules
7 coordinator and be available for public inspection.

8 Sec. 31. NEW SECTION. 17A.3202 REVIEW BY GOVERNOR --
9 ADMINISTRATIVE RULES COORDINATOR.

10 1. To the extent the agency itself would have such
11 authority, the governor may rescind or suspend all or a
12 severable portion of a rule of an agency. In exercising this
13 authority, the governor shall act by an executive order. If
14 the rule in question has been effective for more than one
15 hundred eighty days, that executive order shall be subject to
16 the provisions of sections 17A.3103, 17A.3104, and 17A.3106
17 through 17A.3116 applicable to the adoption and effectiveness
18 of a rule.

19 2. The governor may summarily terminate any pending rule-
20 making proceeding by an executive order to that effect,
21 stating in the order the reasons for the action. The
22 executive order must be filed in the office of the
23 administrative rules coordinator, which shall promptly forward
24 a certified copy to the agency and the administrative rules
25 editor. An executive order terminating a rulemaking
26 proceeding becomes effective on the date it is filed and must
27 be published in the next issue of the administrative bulletin.

28 3. There is created, within the office of the governor, an
29 administrative rules coordinator to advise the governor in the
30 execution of the authority vested under this article. The
31 governor shall appoint the administrative rules coordinator
32 who shall serve at the pleasure of the governor.

33 Sec. 32. NEW SECTION. 17A.3203 ADMINISTRATIVE RULES
34 REVIEW COMMITTEE.

35 1. There is created an administrative rules review

1 committee. The committee shall be bipartisan and shall be
2 composed of the following members:

3 a. Five senators appointed by the majority leader of the
4 senate.

5 b. Five representatives appointed by the speaker of the
6 house.

7 2. Committee members shall be appointed prior to the
8 adjournment of a regular session convened in an odd-numbered
9 year. Member's terms of office shall be for four years
10 beginning May 1 of the year of appointment. However, a member
11 shall serve until a successor is appointed. A vacancy on the
12 committee shall be filled by the original appointing authority
13 for the remainder of the term. A vacancy shall exist whenever
14 a committee member ceases to be a member of the house from
15 which the member was appointed.

16 3. A committee member shall be paid the per diem specified
17 in section 2.10, subsection 6, for each day in attendance and
18 shall be reimbursed for actual and necessary expenses. There
19 is appropriated from money in the general fund not otherwise
20 appropriated an amount sufficient to pay costs incurred under
21 this section.

22 4. The committee shall choose a chairperson from its
23 membership and prescribe its rules of procedure. The
24 committee may employ a secretary or may appoint the
25 administrative rules editor or a designee to act as secretary.

26 5. A regular committee meeting shall be held at the seat
27 of government on the second Tuesday of each month. Unless
28 impracticable in advance of each such meeting the subject
29 matter to be considered shall be published in the Iowa
30 administrative bulletin. A special committee meeting may be
31 called by the chairperson at any place in the state and at any
32 time. Unless impracticable, in advance of each special
33 meeting notice of the time and place of such meeting and the
34 subject matter to be considered shall be published in the Iowa
35 administrative bulletin.

1 6. Notwithstanding section 13.7, the committee may employ
2 necessary legal and technical staff.

3 Sec. 33. NEW SECTION. 17A.3204 REVIEW BY ADMINISTRATIVE
4 RULES REVIEW COMMITTEE.

5 1. The administrative rules review committee shall
6 selectively review possible, proposed, or adopted rules and
7 prescribe appropriate committee procedures for that purpose.
8 The committee may receive and investigate complaints from
9 members of the public with respect to possible, proposed, or
10 adopted rules and hold public proceedings on those complaints.

11 2. Committee meetings must be open to the public. Subject
12 to procedures established by the committee, persons may
13 present oral argument, data, or views at those meetings. The
14 committee may require a representative of an agency whose
15 possible, proposed, or adopted rule is under examination to
16 attend a committee meeting and answer relevant questions. The
17 committee may also communicate to the agency its comments on
18 any possible, proposed, or adopted rule and require the agency
19 to respond to them in writing. Unless impracticable, in
20 advance of each committee meeting notice of the time and place
21 of the meeting and the specific subject matter to be
22 considered must be published in the administrative bulletin.

23 3. The committee may recommend enactment of a statute to
24 improve the operation of an agency. The committee may also
25 recommend that a particular rule be superseded in whole or in
26 part by statute. The speaker of the house and the president
27 of the senate shall refer those recommendations to the
28 appropriate standing committees. This subsection does not
29 preclude any committee of the general assembly from reviewing
30 a rule on its own motion or recommending that it be superseded
31 in whole or in part by statute.

32 4. a. If the committee objects to all or some portion of
33 a rule because the committee considers it to be beyond the
34 procedural or substantive authority delegated to the adopting
35 agency, the committee may file that objection in the office of

1 the administrative rules coordinator. The filed objection
2 must contain a concise statement of the committee's reasons
3 for its action.

4 b. The administrative rules coordinator shall affix to
5 each objection a certification of the date and time of its
6 filing and as soon thereafter as practicable shall transmit a
7 certified copy thereof to the agency issuing the rule in
8 question and the administrative rules editor. The
9 administrative rules coordinator shall also maintain a
10 permanent register open to public inspection of all objections
11 by the committee.

12 c. The administrative rules editor shall publish and index
13 an objection filed pursuant to this subsection in the next
14 issue of the administrative bulletin and indicate its
15 existence in a footnote to the rule in question when that rule
16 is published in the administrative code. In case of a filed
17 objection by the committee to a rule that is subject to the
18 requirements of section 17A.2101, subsection 7, the agency
19 shall indicate the existence of that objection adjacent to the
20 rule in the official compilation referred to in that
21 subsection.

22 d. Within thirty days after the filing of an objection by
23 the committee to a rule, the adopting agency shall respond in
24 writing to the committee. After receipt of the response, the
25 committee may withdraw or modify its objection.

26 e. After the filing of an objection by the committee that
27 is not subsequently withdrawn, the burden is upon the agency
28 in any proceeding for judicial review or for enforcement of
29 the rule to establish that the whole or portion of the rule
30 objected to is within the procedural and substantive authority
31 delegated to the agency. A court holding a rule in such a
32 proceeding to be invalid because it is outside the authority
33 delegated to the agency shall render judgment against the
34 agency for court costs. Court costs include a reasonable
35 attorney's fee and are payable by the treasurer of state from

1 the support appropriations of the agency that adopted the
2 rule.

3 f. The failure of the administrative rules review
4 committee to object to a rule is not an implied legislative
5 authorization of its procedural or substantive validity.

6 5. The committee may recommend to an agency that it adopt
7 a rule. The committee may also require an agency to publish
8 notice of the committee's recommendation as a proposed rule of
9 the agency and to allow public participation thereon,
10 according to the provisions of sections 17A.3103 and 17A.3104.
11 An agency is not required to adopt the proposed rule.

12 6. The committee may, by a two-thirds vote of the
13 committee members, delay the effective date of an adopted rule
14 that is not yet effective for any period designated by the
15 committee that would end no later than the next adjournment of
16 a regular session of the general assembly. When the committee
17 takes such action the committee shall state the reasons
18 therefor. If the general assembly has not disapproved the
19 rule by a joint resolution prior to the end of the period
20 during which its effectiveness has been delayed by the action
21 of the committee, the rule shall become effective. If the
22 rule is disapproved by the general assembly during that
23 period, the rule shall not become effective and the agency
24 shall summarily withdraw the rule.

25 7. The committee shall file an annual report with the
26 presiding officer of each house and the governor.

27 ARTICLE 4

28 ADJUDICATIVE PROCEEDINGS

29 PART 1

30 AVAILABILITY OF ADJUDICATIVE PROCEEDINGS --

31 APPLICATIONS -- LICENSES -- WAIVER OF RULE

32 Sec. 34. NEW SECTION. 17A.4101 ADJUDICATIVE PROCEEDINGS
33 -- WHEN REQUIRED -- EXCEPTIONS.

34 1. An agency shall conduct an adjudicative proceeding as
35 the process for formulating and issuing an order. However, an

1 agency need not conduct an adjudicative proceeding if the
2 order is a decision to do any of the following:

- 3 a. To issue or not to issue a complaint, summons, or
4 similar accusation.
- 5 b. To initiate or not to initiate an investigation,
6 prosecution, or other proceeding before the agency, another
7 agency, or a court.
- 8 c. Under section 17A.4103, not to conduct an adjudicative
9 proceeding.

10 This subsection does not preclude an agency from
11 establishing, subject to sections 17A.5107 and 17A.5112,
12 procedures that must be followed prior to the commencement of
13 an adjudicative proceeding, or from issuing an order prior to
14 conducting an adjudicative proceeding if any of the following
15 apply:

16 (1) The person subject to that order may, within a time
17 period specified by rule or in the order, file an application
18 for an adjudicatory proceeding, that application will
19 automatically dissolve the order from the time of its
20 issuance, and the substantial rights of the person subject to
21 that order are not prejudiced by the order in the interim
22 period prior to its automatic dissolution resulting from the
23 filing of an application for an adjudicatory proceeding.

24 (2) The order was properly issued in accordance with
25 section 17A.4501.

26 (3) The agency was expressly authorized by statute to
27 issue that order prior to conducting an adjudicatory
28 proceeding, in which case, the agency must proceed as quickly
29 as feasible after its issuance to complete any proceeding that
30 would be required if the statute had not authorized such
31 action in advance of any adjudicative proceeding.

32 2. This article applies to rulemaking proceedings only to
33 the extent that another statute expressly so requires.

34 Sec. 35. NEW SECTION. 17A.4102 ADJUDICATIVE PROCEEDINGS
35 -- COMMENCEMENT.

1 1. Subject to the requirements of other provisions of law,
2 an agency may commence an adjudicative proceeding at any time
3 with respect to a matter within the agency's jurisdiction.

4 2. An agency shall commence an adjudicative proceeding
5 upon the application of any person, unless any of the
6 following apply:

7 a. The agency lacks jurisdiction of the subject matter.

8 b. Resolution of the matter requires the agency to
9 exercise discretion within the scope of section 17A.4101,
10 subsection 1.

11 c. A statute vests the agency with discretion to conduct
12 or not to conduct an adjudicative proceeding before issuing an
13 order to resolve the matter and, in the exercise of that
14 discretion, the agency has determined not to conduct an
15 adjudicative proceeding.

16 d. Resolution of the matter does not require the agency to
17 issue an order that determines the applicant's legal rights,
18 duties, privileges, immunities, or other legal interests.

19 e. The matter was not timely submitted to the agency
20 according to any applicable provision of law.

21 f. The matter was not submitted in a form substantially
22 complying with any applicable provision of law.

23 3. Subject to other provisions of law, each agency may, by
24 rule, establish specified time limits for commencing various
25 classes of adjudicative proceedings that are within the
26 agency's jurisdiction.

27 4. An application for an agency to issue an order includes
28 an application for the agency to conduct appropriate
29 adjudicative proceedings, whether or not the applicant
30 expressly requests those proceedings.

31 5. An adjudicative proceeding commences when the agency or
32 a presiding officer does any of the following:

33 a. Notifies a party that a prehearing conference, hearing,
34 or other stage of an adjudicative proceeding will be
35 conducted.

1 b. Begins to take action on a matter that appropriately
2 may be determined by an adjudicative proceeding, unless this
3 action is one of the following:

4 (1) An investigation for the purpose of determining
5 whether an adjudicative proceeding should be conducted.

6 (2) A decision which, under section 17A.4101, subsection
7 1, the agency may make without conducting an adjudicative
8 proceeding.

9 Sec. 36. NEW SECTION. 17A.4103 DECISION NOT TO CONDUCT
10 ADJUDICATIVE PROCEEDING.

11 An agency that decides, pursuant to section 17A.4102,
12 subsection 2, not to conduct an adjudicative proceeding in
13 response to an application, shall furnish the applicant a copy
14 of its decision in writing, with a brief statement of the
15 agency's reasons and of any administrative review available to
16 the applicant.

17 Sec. 37. NEW SECTION. 17A.4104 AGENCY ACTION ON
18 APPLICATIONS.

19 1. Except to the extent that the time limits in this
20 subsection are inconsistent with limits established by another
21 statute for any stage of the proceedings, an agency shall
22 process an application for an order, other than a declaratory
23 order, as follows:

24 a. Within thirty days after receipt of the application,
25 the agency shall examine the application, notify the applicant
26 of any apparent errors or omissions, request any additional
27 information the agency wishes to obtain and is permitted by
28 law to require, and notify the applicant of the name, official
29 title, mailing address, and telephone number of any agency
30 member or employee who may be contacted regarding the
31 application.

32 b. Except in situations governed by paragraph "c", within
33 ninety days after receipt of the application or of the
34 response to a timely request made by the agency pursuant to
35 paragraph "a", the agency shall do one of the following:

1 (1) Approve or deny the application, in whole or in part,
2 on the basis of emergency or summary adjudicative proceedings,
3 if those proceedings are available under this chapter for
4 disposition of the matter.

5 (2) Commence a formal adjudicative hearing or a conference
6 adjudicative hearing in accordance with this chapter.

7 (3) Dispose of the application in accordance with section
8 17A.4103.

9 c. If the application pertains to subject matter that is
10 not available when the application is filed but may be
11 available in the future, including an application for housing
12 or employment at a time no vacancy exists, the agency may
13 proceed to make a determination of eligibility within the time
14 provided in paragraph "b". If the agency determines that the
15 applicant is eligible, the agency shall maintain the
16 application on the agency's list of eligible applicants as
17 provided by law and, upon request, shall notify the applicant
18 of the status of the application.

19 2. If a timely application has been made for renewal of a
20 license with reference to any activity of a continuing nature,
21 the existing license does not expire until the agency has
22 taken final action upon the application for renewal or, if the
23 agency's action is unfavorable, until the last day for seeking
24 judicial review of the agency's action or a later date fixed
25 by the reviewing court or agency.

26 Sec. 38. NEW SECTION. 17A.4105 AGENCY ACTION AGAINST
27 LICENSEES.

28 An agency shall not revoke, suspend, modify, annul,
29 withdraw, or amend a license unless the agency first gives
30 notice and an opportunity for an appropriate adjudicative
31 proceeding in accordance with this chapter or other statute.
32 This section does not preclude an agency from taking immediate
33 action to protect the public interest in accordance with
34 section 17A.4501 or adopting rules, otherwise within the scope
35 of its authority, pertaining to a class of licensees,

1 including rules affecting the existing licenses of a class of
2 licensees.

3 Sec. 39. NEW SECTION. 17A.4106 PETITION FOR WAIVER OF
4 RULE.

5 1. A person may file a petition with an agency requesting
6 a waiver, in whole or in part, of a rule of that agency on the
7 ground that the application of the rule to the particular
8 circumstances of that person would qualify for a waiver under
9 subsection 5. A petition filed under this provision must
10 specify the rule in question, the precise scope of the waiver
11 requested, the specific facts that would justify a waiver for
12 petitioner, and the reasons why the particular application of
13 the rule to petitioner for which the waiver is requested would
14 qualify for a waiver under subsection 5.

15 2. Each agency shall issue rules consistent with this
16 section concerning all of the following:

17 a. Governing the form, contents, and filing of petitions
18 for the waivers of rules.

19 b. Specifying the procedural rights of persons in relation
20 to such petitions.

21 c. Providing for the disposition of those petitions.

22 3. Within fifteen days after receipt of a petition for
23 waiver of a rule, the agency shall give notice of the petition
24 to all persons to whom notice is required by any provision of
25 law and may give notice to any other persons. Persons who
26 qualify under any applicable provision of law as an intervenor
27 and file timely petitions for intervention according to agency
28 rules may intervene in proceedings for waivers of a rule.

29 Other provisions of this article apply to agency proceedings
30 for waivers of a rule only to the extent an agency so provides
31 by rule or order.

32 4. An order granting or denying such a petition shall be
33 in writing and shall contain a statement of the relevant facts
34 and reasons supporting that action. An agency shall grant or
35 deny such a petition within ninety days of its receipt.

1 Failure of an agency to grant or deny such a petition within
2 ninety days of its receipt shall be deemed a denial of that
3 petition by the agency.

4 5. An agency shall issue an order granting a petition for
5 a waiver of a rule, in whole or in part, if application of the
6 rule to the petitioner on the basis of the particular facts
7 specified in the petition would not serve any of the purposes
8 of the rule. An agency may issue an order granting a petition
9 for waiver of a rule, in whole or in part, if application of
10 the rule to the petitioner would result in undue hardship,
11 waiver of the rule on the basis of the facts specified in the
12 petition would be consistent with the public interest, and
13 waiver of the rule as to petitioner would not prejudice the
14 substantial rights of any other person. An order granting
15 such a petition shall constitute a defense in any subsequent
16 proceeding where the applicability of that rule to petitioner
17 is at issue if petitioner proves in that subsequent proceeding
18 all of the relevant facts pertaining to petitioner upon which
19 that waiver order was based and that the particular
20 application of the rule at issue was within the scope of the
21 waiver order in question.

22 6. In an agency proceeding to enforce a rule of that
23 agency, a person resisting the enforcement of the rule may
24 defend successfully upon a demonstration that application of
25 the rule to the person would not serve any of the purposes of
26 the rule.

27 7. An agency may, on its own motion, waive the application
28 of one or more of its rules, in whole or in part, to a
29 specified person on the ground that the relevant facts
30 pertaining to that person would qualify that person for a
31 waiver under the provisions of subsection 5, by rendering an
32 order containing the facts and reasons justifying that waiver.

33 8. Any order issued under this section shall be
34 transmitted to petitioner or to the person as to whom the
35 waiver order pertains within seven days of its rendition.

1 9. An agency shall maintain a file for each of its rules
2 for which a waiver order has been issued containing all orders
3 waiving the application to any person of that rule.

4 PART 2

5 FORMAL ADJUDICATIVE HEARING

6 Sec. 40. NEW SECTION. 17A.4201 APPLICABILITY.

7 An adjudicative proceeding is governed by this part, except
8 as otherwise provided by any of the following:

9 1. A statute other than this chapter.

10 2. A rule that adopts the procedures for the conference
11 adjudicative hearing or summary adjudicative proceeding in
12 accordance with the standards provided in this chapter for
13 those proceedings.

14 3. Section 17A.4501 pertaining to emergency adjudicative
15 proceedings.

16 4. Section 17A.2103 pertaining to declaratory proceedings.

17 5. Section 17A.4106 pertaining to petitions for waiver of
18 rules.

19 Sec. 41. NEW SECTION. 17A.4202 PRESIDING OFFICER,
20 DISQUALIFICATION, SUBSTITUTION.

21 1. a. If the agency or an officer of the agency under
22 whose authority the adjudicative proceeding is to take place
23 is a named party to that proceeding or a real party in
24 interest to that proceeding, in the discretion of the agency
25 head, the presiding officer may be either the agency head, one
26 or more members of the agency head, or one or more
27 administrative law judges assigned by the office of
28 administrative hearings in accordance with the provisions of
29 section 17A.4301. However, the agency head shall designate as
30 the presiding officer an administrative law judge assigned by
31 the office of administrative hearings in accordance with the
32 provisions of section 17A.4301 if any person to whom the
33 agency action is specifically directed timely requests an
34 administrative law judge to preside at the proceeding.

35 b. If the agency or an officer of the agency under whose

1 authority the adjudicative proceeding is to take place is not
2 a named party to that proceeding or a real party in interest
3 to that proceeding, in the discretion of the agency head, the
4 presiding officer may be either the agency head, one or more
5 members of the agency head, an administrative law judge
6 assigned by the office of administrative hearings in
7 accordance with the provisions of section 17A.4301, or any
8 other person designated as a presiding officer by the agency
9 head. Any other person designated as a presiding officer by
10 the agency head may be employed by and officed in the agency
11 for which that person acts as a presiding officer, but such a
12 person shall not perform duties inconsistent with that
13 person's duties and responsibilities as a presiding officer
14 and shall be governed by the merit system provisions of
15 chapter 19A.

16 2. Any person serving or designated to serve alone or with
17 others as a presiding officer is subject to disqualification
18 for bias, prejudice, interest, or any other cause provided in
19 this chapter or for which a judge is or may be disqualified.

20 3. Any party may timely request the disqualification of a
21 person after receipt of notice indicating that the person will
22 preside or upon discovering facts establishing grounds for
23 disqualification, whichever is later.

24 4. A person whose disqualification is requested shall
25 determine whether to grant the request, stating facts and
26 reasons for the determination.

27 5. If a substitute is required for a person who is
28 disqualified or becomes unavailable for any other reason, the
29 substitute must be appointed by either of the following:

30 a. The governor, if the disqualified or unavailable person
31 is an elected official.

32 b. The appointing authority, if the disqualified or
33 unavailable person is an appointed official.

34 6. Any action taken by a duly-appointed substitute for a
35 disqualified or unavailable person is as effective as if taken

1 by the latter.

2 Sec. 42. NEW SECTION. 17A.4203 REPRESENTATION.

3 1. Any party may participate in the hearing in person or,
4 if the party is a corporation or other artificial person, by a
5 duly authorized representative.

6 2. Whether or not participating in person, any party may
7 be advised and represented at the party's own expense by
8 counsel or, if permitted by any provision of law, other
9 representative.

10 3. Any party may designate in writing with an agency an
11 authorized representative to act on behalf of that party in a
12 particular proceeding. An attorney licensed to practice in
13 this state who files an appearance or a pleading with an
14 agency on behalf of a party shall be deemed to be the
15 designated authorized representative of the party in that
16 proceeding. If an authorized representative has been
17 designated, notice to a party required under this article must
18 be satisfied by providing the notice to that representative.

19 Sec. 43. NEW SECTION. 17A.4204 PREHEARING CONFERENCE --
20 AVAILABILITY -- NOTICE.

21 The presiding officer designated to conduct the hearing may
22 determine, subject to the agency's rules, whether a pre-
23 hearing conference will be conducted. If the conference is
24 conducted the following apply:

25 1. The presiding officer shall promptly notify the agency
26 of the determination that a prehearing conference will be
27 conducted. If the presiding officer decides that another
28 presiding officer should conduct that conference, the agency
29 shall assign or request the office of administrative hearings
30 to assign a presiding officer for the prehearing conference,
31 exercising the same discretion as is provided by section
32 17A.4202 concerning the selection of a presiding officer for a
33 hearing.

34 2. The presiding officer for the prehearing conference
35 shall set the time and place of the conference and give

1 reasonable and timely written notice to all parties and to all
2 persons who have filed written petitions to intervene in the
3 matter. The agency shall also give such notice to other
4 persons entitled to notice under any provision of law.

5 3. The notice must include all of the following:

6 a. The names of all parties, and the mailing addresses of
7 all parties or the names and mailing addresses of their
8 designated representatives, and the names and mailing
9 addresses of all other persons to whom notice is being given
10 by the presiding officer.

11 b. The name, official title, mailing address, and
12 telephone number of any counsel or employee who has been
13 designated to appear for the agency.

14 c. The official file or other reference number, the name
15 of the proceeding, and a general description of the subject
16 matter.

17 d. A statement of the time, place, and nature of the
18 prehearing conference.

19 e. A statement of the legal authority and jurisdiction
20 under which the prehearing conference and the hearing are to
21 be held.

22 f. The name, official title, mailing address and telephone
23 number of the presiding officer for the prehearing conference.

24 g. A statement that at the prehearing conference the
25 proceeding, without further notice, may be converted into a
26 conference adjudicative hearing or a summary adjudicative
27 proceeding for disposition of the matter as provided by this
28 chapter.

29 h. A statement that a party who fails to attend or
30 participate in a prehearing conference, hearing, or other
31 stage of an adjudicative proceeding may be held in default
32 under this chapter.

33 4. The notice may include a statement that each party must
34 bring to the prehearing conference specified listed materials
35 or information, as determined by the presiding officer, and

1 that a failure to do so, without good cause, will preclude
2 that party from subsequently introducing those materials or
3 that information in the proceeding. The notice may also
4 include any other matters that the presiding officer considers
5 desirable to expedite the proceedings.

6 Sec. 44. NEW SECTION. 17A.4205 PREHEARING CONFERENCE --
7 PROCEDURE AND PREHEARING ORDER.

8 1. The presiding officer may conduct all or part of the
9 prehearing conference by telephone, videoconference, or other
10 electronic means if each participant in the conference has an
11 opportunity to participate in, to hear, and, if technically
12 feasible, to see the entire proceeding while it is taking
13 place.

14 2. The presiding officer shall conduct the prehearing
15 conference, as may be appropriate, to deal with such matters
16 as conversion of the proceeding to another type of proceeding,
17 exploration of settlement possibilities, waivers of any rights
18 conferred upon a party by this chapter that are relevant to
19 the proceeding, preparation of stipulations on any relevant
20 matter, clarification of issues, rulings on identity and
21 limitation of the number of witnesses, objections to proffers
22 of evidence, determination of the extent to which evidence
23 will be presented in written form, and the extent to which
24 telephone, videoconference, or other electronic means will be
25 used as a substitute for proceedings in person, order of
26 presentation of evidence and cross-examination, rulings
27 regarding issuance of subpoenas, discovery orders and
28 protective orders, and such other matters as will promote the
29 orderly and prompt conduct of the hearing. The presiding
30 officer shall issue a prehearing order incorporating the
31 matters determined at the prehearing conference and may
32 deviate from that order at the hearing only with the consent
33 of all parties or for good cause.

34 3. If a prehearing conference is not held, the presiding
35 officer for the hearing may issue a prehearing order, based on

1 the pleadings, to regulate the conduct of the proceedings.

2 Sec. 45. NEW SECTION. 17A.4206 NOTICE OF HEARING.

3 1. The presiding officer for the hearing, or another
4 person authorized to do so by rule of the agency, shall set
5 the time and place of the hearing and give reasonable and
6 timely written notice to all parties and to all persons who
7 have filed written petitions to intervene in the matter.

8 2. The notice must include a copy of any prehearing order
9 rendered in the matter unless the parties and persons who have
10 filed written petitions to intervene have already been
11 furnished with a copy of such an order.

12 3. To the extent not included in a prehearing order
13 accompanying it, the notice must include all of the following:

14 a. The names of all parties, and the mailing addresses of
15 all parties or the names and mailing addresses of their
16 designated representatives, and the names and mailing
17 addresses of all other persons to whom notice is being given.

18 b. The name, official title, mailing address and telephone
19 number of any counsel or employee who has been designated to
20 appear for the agency.

21 c. The official file or other reference number, the name
22 of the proceeding, and a general description of the subject
23 matter.

24 d. A statement of the time, place, and nature of the
25 hearing.

26 e. A statement of the legal authority and jurisdiction
27 under which the hearing is to be held.

28 f. The name, official title, mailing address, and
29 telephone number of the presiding officer.

30 g. To the extent known to the person giving notice, a
31 statement of the issues involved and of the matters asserted
32 by the parties.

33 h. A statement that a party who fails to attend or
34 participate in a prehearing conference, hearing, or other
35 stage of an adjudicative proceeding may be held in default

1 under this chapter.

2 4. The notice may include any other matters the presiding
3 officer considers desirable to expedite the proceedings.

4 5. The agency shall give notice to persons entitled to
5 notice under any provision of law who have not been given
6 notice by the presiding officer. Notice under this subsection
7 may include all types of information provided in subsections 1
8 through 4 or may consist of a brief statement indicating the
9 subject matter, parties, time, place, and nature of the
10 hearing, manner in which copies of the notice to the parties
11 may be inspected and copied, and name and telephone number of
12 the presiding officer.

13 Sec. 46. NEW SECTION. 17A.4207 PLEADINGS, BRIEFS,
14 MOTIONS, SERVICE.

15 1. The presiding officer, at appropriate stages of the
16 proceedings, shall give all parties full opportunity to file
17 pleadings, motions, and objections.

18 2. The presiding officer, at appropriate stages of the
19 proceedings, may give all parties full opportunity to file
20 briefs, proposed findings of fact and conclusions of law, and
21 proposed initial or final orders.

22 3. A party shall serve copies of any filed item on all
23 parties, by mail or any other means prescribed by agency rule.

24 Sec. 47. NEW SECTION. 17A.4208 DEFAULT.

25 1. If a party fails to attend or participate in a pre-
26 hearing conference, hearing, or other stage of an adjudicative
27 proceeding, the presiding officer may serve by certified mail
28 all parties written notice of a proposed default order,
29 including a statement of the grounds.

30 2. Within fifteen days or such longer period specified by
31 rule after the mailing by certified mail of a proposed default
32 order, the party against whom it was issued may file a written
33 motion requesting that the proposed default order be vacated
34 and stating the grounds relied upon. A proposed default order
35 may be vacated for any reason specified in the rules of civil

1 procedure or for any other reason specified by agency rule.
2 During the time within which a party may file a written motion
3 under this subsection, the presiding officer may adjourn the
4 proceedings or conduct them without the participation of the
5 party against whom a proposed default order was issued, having
6 due regard for the interests of justice and the orderly and
7 prompt conduct of the proceedings.

8 3. The presiding officer shall either issue or vacate the
9 default order promptly after expiration of the time within
10 which the party may file a written motion under subsection 2.

11 4. After issuing a default order, the presiding officer
12 shall conduct any further proceedings necessary to complete
13 the adjudication without the participation of the party in
14 default and shall determine all issues in the adjudication,
15 including those affecting the defaulting party.

16 Sec. 48. NEW SECTION. 17A.4209 INTERVENTION.

17 1. The presiding officer shall grant a petition for
18 intervention if all of the following apply:

19 a. The petition is submitted in writing to the presiding
20 officer, with copies mailed to all parties named in the
21 presiding officer's notice of the hearing, at least twenty
22 days before the hearing.

23 b. The petition states facts demonstrating that the
24 petitioner's legal rights, duties, privileges, immunities, or
25 other legal interests may be substantially affected by the
26 proceeding or that the petitioner qualifies as an intervenor
27 under any provision of law.

28 c. The presiding officer determines that the interests of
29 justice and the orderly and prompt conduct of the proceedings
30 will not be impaired by allowing the intervention.

31 2. The presiding officer may grant a petition for
32 intervention at any time, upon determining that the
33 intervention sought is in the interests of justice and will
34 not impair the orderly and prompt conduct of the proceedings.

35 3. If a petitioner qualifies for intervention, the

1 presiding officer may impose conditions upon the intervenor's
2 participation in the proceedings, either at the time that
3 intervention is granted or at any subsequent time. Conditions
4 may include any or all of the following:

5 a. Limiting the intervenor's participation to designated
6 issues in which the intervenor has a particular interest
7 demonstrated by the petition.

8 b. Limiting the intervenor's use of discovery, cross-
9 examination, and other procedures so as to promote the orderly
10 and prompt conduct of the proceedings.

11 c. Requiring two or more intervenors to combine their
12 presentations of evidence and argument, cross-examination,
13 discovery, and other participation in the proceedings.

14 4. The presiding officer shall issue an order granting or
15 denying each pending petition for intervention, specifying any
16 conditions, and briefly stating the reasons for the order.

17 The presiding officer may modify the order at any time,
18 stating the reasons for the modification. The presiding
19 officer shall promptly give notice of an order granting,
20 denying, or modifying intervention to the petitioner for
21 intervention and to all parties.

22 Sec. 49. NEW SECTION. 17A.4210 SUBPOENAS, DISCOVERY, AND
23 PROTECTIVE ORDERS.

24 1. Discovery procedures applicable to civil actions are
25 available to all parties in accordance with the rules of civil
26 procedure. Upon notice to all parties, the presiding officer
27 at the request of any party shall, and upon the presiding
28 officer's own motion may, administer oaths and issue
29 subpoenas, discovery orders, and protective orders, in
30 accordance with the rules of civil procedure.

31 2. Any party or person to whom the subpoena or similar
32 process is directed may object to the issuance of the subpoena
33 or process. The presiding officer and any reviewing district
34 court shall sustain the subpoena or similar process only to
35 the extent that it is found to be in accordance with the law

1 applicable to the issuance of subpoenas or discovery in civil
2 actions.

3 3. Subpoenas and orders issued under this section may be
4 enforced pursuant to article 5, part 2, of this chapter on
5 civil enforcement of agency action.

6 4. An agency that relies on a witness in an adjudicative
7 proceeding, whether or not an agency employee, who has made
8 prior statements or reports with respect to the subject matter
9 of the witness' testimony, shall, on request, make such
10 statements or reports available prior to hearing to parties
11 for use on cross-examination, unless those statements or
12 reports are otherwise expressly exempt from disclosure by
13 constitution or statute. Identifiable agency records that are
14 relevant to disputed material facts involved in an
15 adjudicative proceeding, shall, upon request, promptly be made
16 available to a party unless the requested records are
17 expressly exempt from disclosure by constitution or statute.

18 5. Unless provided otherwise by any applicable provision
19 of law, an agency authorized to issue an investigatory
20 subpoena for the purpose of determining whether to commence an
21 adjudicatory proceeding may do so only after giving notice of
22 the proposed issuance of the subpoena and an opportunity to
23 contest its issuance to the persons who are the subject of the
24 agency investigation. However, an agency may omit such notice
25 and opportunity if it obtains an order from a district court
26 approving that omission because of any of the following:

27 a. The whereabouts of the persons who are the subject of
28 the agency investigation are unknown and could not be
29 ascertained with reasonable efforts.

30 b. Such notice to the persons who are the subject of the
31 agency investigation would seriously interfere with the
32 agency's ability to obtain the evidence necessary to perform
33 its law enforcement responsibilities.

34 c. Such notice would result in imminent peril to the
35 health, safety, or welfare of any person or persons.

1 Sec. 50. NEW SECTION. 17A.4211 PROCEDURE AT HEARING.

2 At a hearing, all of the following apply:

3 1. The presiding officer shall regulate the course of the
4 proceedings in conformity with any prehearing order.

5 2. To the extent necessary for full disclosure of all
6 relevant facts and issues, the presiding officer shall afford
7 to all parties the opportunity to respond, present evidence
8 and argument, conduct cross-examination, and submit rebuttal
9 evidence, except as restricted by a limited grant of
10 intervention or by the prehearing order.

11 3. The presiding officer may conduct all or part of the
12 hearing by telephone, videoconference, or other electronic
13 means, if each participant in the hearing has an opportunity
14 to participate in, to hear, and, if technically feasible, to
15 see the entire proceeding while it is taking place.

16 4. The presiding officer shall cause the hearing to be
17 recorded at the agency's expense. The agency is not required,
18 at its expense, to prepare a transcript, unless required to do
19 so by a provision of law. Any party, at the party's expense,
20 may cause a reporter approved by the agency to prepare a
21 transcript from the agency's record, or cause additional
22 recordings to be made during the hearing if the making of the
23 additional recordings does not cause distraction or
24 disruption. The recording or stenographic notes of oral
25 proceedings or the transcription thereof shall be filed with
26 and maintained by the agency for at least five years from the
27 date of the final decision in that case.

28 5. The hearing is open to public observation, except for
29 the parts that the presiding officer states to be closed
30 pursuant to a provision of law expressly authorizing closure.
31 To the extent that a hearing is conducted by telephone, video-
32 conference, or other electronic means, and is not closed, the
33 availability of public observation is satisfied by giving
34 members of the public an opportunity to observe and hear that
35 communication at the location of any one of the participants,

1 as designated by the presiding officer, or if that is not
2 feasible, at reasonable times, to hear or inspect the agency's
3 record, and to inspect any transcript obtained by the agency.

4 Sec. 51. NEW SECTION. 17A.4212 EVIDENCE -- OFFICIAL
5 NOTICE.

6 1. Upon proper objection, the presiding officer shall
7 exclude evidence that is irrelevant, immaterial, unduly
8 repetitious, or excludable on constitutional or statutory
9 grounds or on the basis of evidentiary privilege recognized in
10 the courts of this state. In the absence of proper objection,
11 the presiding officer may exclude objectionable evidence after
12 notifying the parties of an intention to do so and providing
13 the parties with an opportunity to object to that exclusion.
14 Evidence shall not be excluded solely because it is hearsay.

15 2. All testimony of parties and witnesses must be made
16 under oath or affirmation.

17 3. Any part of the evidence may be received in written
18 form if doing so will expedite the hearing without substantial
19 prejudice to the interests of any party.

20 4. Documentary evidence may be received in the form of a
21 copy or excerpt. Upon request, parties must be given an
22 opportunity to compare the copy with the original if
23 available.

24 5. Official notice may be taken of any fact that could be
25 judicially noticed in the courts of this state, the record of
26 other proceedings before the agency, technical or scientific
27 matters within the agency's specialized knowledge, and codes
28 or standards that have been adopted by an agency of the United
29 States, of this state, or of another state, or by a nationally
30 recognized organization or association. Parties must be
31 notified before or during the hearing, or before the issuance
32 of any initial or final order that is based in whole or in
33 part on facts or material noticed, of the specific facts or
34 material noticed and the source thereof, including any staff
35 memoranda and data, and be afforded an opportunity to contest

1 and rebut the facts or material so noticed. However, if the
2 required notification of the parties is infeasible or
3 impracticable prior to the issuance of such an initial or
4 final order, the notification may first occur in that order
5 itself, as long as the parties are afforded, through the
6 granting of a motion for reconsideration timely filed with the
7 presiding officer, an opportunity, after the order is
8 rendered, to contest and rebut the facts or material so
9 noticed before that order becomes final.

10 Sec. 52. NEW SECTION. 17A.4213 EX PARTE COMMUNICATIONS.

11 1. Except as provided in subsection 2, or unless required
12 for the disposition of ex parte matters specifically
13 authorized by statute, a presiding officer serving in an
14 adjudicative proceeding shall not communicate, directly or
15 indirectly, regarding any issue in the proceeding other than
16 inquiries about scheduling, while the proceeding is pending,
17 with any party, with any person who has a direct or indirect
18 interest in the outcome of the proceeding, or with any person
19 who presided at a previous stage of the proceeding, without
20 notice and opportunity for all parties to participate in the
21 communication.

22 2. A member of a multi-member panel of presiding officers
23 may communicate with other members of the panel regarding a
24 matter pending before the panel, and any presiding officer may
25 receive aid from staff assistants if the assistants do not
26 receive ex parte communications of a type that the presiding
27 officer would be prohibited from receiving or that furnish,
28 augment, diminish, or modify the evidence in the record.

29 3. Unless required for the disposition of ex parte matters
30 specifically authorized by statute, a party to an adjudicative
31 proceeding, and a person who has a direct or indirect interest
32 in the outcome of the proceeding or who presided at a previous
33 stage of the proceeding, shall not communicate, directly or
34 indirectly, in connection with any issue in that proceeding
35 other than inquiries about scheduling, while the proceeding is

1 pending, with any person serving as presiding officer, without
2 notice and opportunity for all parties to participate in the
3 communication.

4 4. If, before serving as presiding officer in an
5 adjudicative proceeding, a person receives an ex parte
6 communication of a type that could not properly be received
7 while serving, the person, promptly after starting to serve,
8 shall disclose the communication in the manner prescribed in
9 subsection 5.

10 5. A presiding officer who receives an ex parte
11 communication in violation of this section shall place on the
12 record of the pending matter all written communications
13 received, all written responses to the communications, and a
14 memorandum stating the substance of all oral and other
15 communications received, all responses made, and the identity
16 of each person from whom the presiding officer received an ex
17 parte communication, and shall advise all parties that these
18 matters have been placed on the record. Any party desiring to
19 rebut the ex parte communication must be allowed to do so,
20 upon requesting the opportunity for rebuttal within ten days
21 after notice of the communication.

22 6. When necessary to eliminate the effect of an ex parte
23 communication received in violation of this section, a
24 presiding officer who receives the communication shall be
25 disqualified and the portions of the record pertaining to the
26 communication shall be sealed by protective order.

27 7. The agency and any party may report any violation of
28 this section to appropriate authorities for any disciplinary
29 proceedings provided by law. In addition, each agency by rule
30 may provide for appropriate sanctions, including default,
31 suspending or revoking a privilege to practice before the
32 agency, and for censuring, suspending, or dismissing agency
33 personnel, for any violations of this section.

34 8. In a proceeding for judicial review, the burden shall
35 be on the party seeking to uphold the validity of an order to

1 demonstrate that any violation of subsections 1 through 5
2 relating to the issuance of that order did not prejudice the
3 substantial rights of the party seeking its invalidation.

4 Sec. 53. NEW SECTION. 17A.4214 SEPARATION OF FUNCTIONS.

5 1. A person who has served personally as an investigator,
6 prosecutor, or advocate in an adjudicative proceeding or in
7 its pre-adjudicative stage shall not serve as presiding
8 officer or assist or advise a presiding officer in the same
9 proceeding.

10 2. A person who is subject to the authority, direction, or
11 discretion of one who has served personally as an
12 investigator, prosecutor, or advocate in an adjudicative
13 proceeding or in its pre-adjudicative stage shall not serve as
14 presiding officer or assist or advise a presiding officer in
15 the same proceeding.

16 3. A person who has participated in a determination of
17 probable cause or other equivalent preliminary determination
18 as to the sufficiency of the evidence to support the facts
19 alleged by any party in an adjudicative proceeding shall not
20 serve as presiding officer or assist or advise a presiding
21 officer in the same proceeding.

22 4. A person may serve as presiding officer at successive
23 stages of the same adjudicative proceeding, unless a party
24 demonstrates grounds for disqualification in accordance with
25 this section or section 17A.4202.

26 5. In a proceeding for judicial review, the burden shall
27 be on the party seeking to uphold the validity of an order to
28 demonstrate that any violation of this section relating to the
29 issuance of that order did not prejudice the substantial
30 rights of the party seeking its invalidation.

31 Sec. 54. NEW SECTION. 17A.4215 FINAL ORDER -- INITIAL
32 ORDER.

33 1. If the presiding officer is the agency head, the
34 presiding officer shall render a final order.

35 2. If the presiding officer is not the agency head, the

1 presiding officer shall render an initial order, which becomes
2 a final order unless reviewed in accordance with section
3 17A.4216.

4 3. A final order and an initial order must include the
5 date of its rendition and, separately stated, findings of
6 fact, conclusions of law, and policy reasons for the decision
7 if it is an exercise of the agency's discretion, for all
8 aspects of the order, including the remedy prescribed and, if
9 applicable, the action taken on a petition for stay of
10 effectiveness. The order must include an explanation of why
11 the evidence in the record supports each finding of fact and
12 why the evidence in the record that is contrary to a finding
13 does not preclude it. Findings of fact, if set forth in
14 language that is no more than mere repetition or paraphrase of
15 the relevant provision of law, must also be accompanied by a
16 concise and explicit statement of each of the underlying facts
17 in the record that support those findings. Each conclusion of
18 law must be supported by cited authority or by a reasoned
19 explanation. If a party has submitted proposed findings of
20 fact, conclusions of law, or policy reasons, the order must
21 include a ruling on the proposed findings. The order must
22 also include a statement of the available procedures and time
23 limits for seeking reconsideration or other administrative
24 relief from that final or initial order. An initial order
25 must include a statement of any circumstances under which the
26 initial order, without further notice, may become a final
27 order.

28 4. Findings of fact must be based exclusively upon the
29 evidence of record in the adjudicative proceeding and on
30 matters officially noticed in that proceeding. Findings must
31 be based upon the kind of evidence on which reasonably prudent
32 persons are accustomed to rely in the conduct of their serious
33 affairs and may be based upon such evidence even if it would
34 be inadmissible in a civil trial. The presiding officer's
35 experience, technical competence, and specialized knowledge

1 may be utilized in evaluating evidence, but only in accordance
2 with section 17A.4212, subsection 5. Unless provided
3 otherwise by another provision of law, findings of fact shall
4 be based upon a preponderance of the evidence and the burden
5 of proof shall be on the proponent of the agency action
6 requested.

7 5. If a person serving or designated to serve as presiding
8 officer becomes unavailable, for any reason, before rendition
9 of the final order or initial order, a substitute presiding
10 officer must be appointed as provided in section 17A.4202.
11 The substitute presiding officer shall use any existing record
12 and may conduct any further proceedings appropriate in the
13 interests of justice; but if demeanor of witnesses is a
14 substantial factor and the original presiding officer is
15 unavailable the portions of the hearing involving demeanor
16 heard by the original presiding officer shall be heard again
17 by the new presiding officer.

18 6. The presiding officer may allow the parties a
19 designated amount of time after conclusion of the hearing for
20 the submission of proposed findings.

21 7. A final order or initial order must be rendered in
22 writing within ninety days after conclusion of the hearing or
23 after submission of proposed findings in accordance with
24 subsection 6 unless this period is waived, extended with the
25 written consent of all parties, or extended for good cause
26 shown.

27 8. The presiding officer shall cause copies of the final
28 order or initial order to be mailed or otherwise delivered to
29 each party within two working days from the time the order is
30 rendered.

31 Sec. 55. NEW SECTION. 17A.4216 REVIEW OF INITIAL ORDER
32 -- EXCEPTIONS TO REVIEWABILITY.

33 1. The agency head, upon its own motion may, and upon
34 appeal by any party shall, review an initial order, except to
35 the extent that any of the following apply:

1 a. A provision of law precludes or limits agency review of
2 the initial order.

3 b. The agency head, in the exercise of discretion
4 conferred by a provision of law, does any of the following:

5 (1) Determines to review some but not all issues, or not
6 to exercise any review.

7 (2) Delegates its authority to review the initial order to
8 one or more persons.

9 (3) Authorizes one or more persons to review the initial
10 order, subject to further review by the agency head.

11 2. A petition for appeal from an initial order must be
12 filed with the agency head, or with any person designated for
13 this purpose by rule of the agency, within twenty days after
14 rendition of the initial order or within such longer time
15 period, not to exceed thirty days, as established by rule of
16 the agency. If the agency head on its own motion decides to
17 review an initial order, the agency head shall give written
18 notice of its intention to review the initial order within
19 twenty days after its rendition. The time period for a party
20 to file a petition for appeal or for the agency head to give
21 notice of its intention to review an initial order on the
22 agency head's own motion is tolled by the submission of a
23 timely petition for reconsideration of the initial order
24 pursuant to section 17A.4218, and a new time period starts to
25 run upon disposition of the petition for reconsideration. If
26 an initial order is subject both to a timely petition for
27 reconsideration and to a petition for appeal or to review by
28 the agency head on its own motion, the petition for
29 reconsideration must be disposed of first, unless the agency
30 head determines that action on the petition for
31 reconsideration has been unreasonably delayed.

32 3. The petition for appeal must state its basis. If the
33 agency head on its own motion gives notice of its intent to
34 review an initial order, the agency head shall identify the
35 issues that it intends to review.

1 4. The presiding officer for the review of an initial
2 order shall exercise all the decision-making power that the
3 presiding officer would have had to render a final order had
4 the presiding officer presided over the hearing, except to the
5 extent that the issues subject to review are limited by a
6 provision of law or by the presiding officer upon notice to
7 all parties.

8 5. The presiding officer shall afford each party an
9 opportunity to present briefs and may afford each party an
10 opportunity to present oral argument.

11 6. Before rendering a final order, the presiding officer
12 may cause a transcript to be prepared, at the agency's
13 expense, of such portions of the proceeding under review as
14 the presiding officer considers necessary.

15 7. The presiding officer may render a final order
16 disposing of the proceeding or may remand the matter for
17 further proceedings with instructions to the person who
18 rendered the initial order. Upon remanding a matter, the
19 presiding officer may order such temporary relief as is
20 authorized and appropriate.

21 8. A final order or an order remanding the matter for
22 further proceedings must be rendered in writing within sixty
23 days after receipt of briefs and oral argument unless that
24 period is waived, extended with the written consent of all
25 parties, extended for good cause shown, or extended by rule
26 for that class of cases for an additional period of not longer
27 than thirty days.

28 9. A final order or an order remanding the matter for
29 further proceedings under this section must identify any
30 difference between this order and the initial order and must
31 include, or incorporate by express reference to the initial
32 order, all the matters required by section 17A.4215,
33 subsection 3.

34 10. The presiding officer shall cause copies of the final
35 order or order remanding the matter for further proceedings to

1 be mailed or otherwise delivered to each party within two
2 working days from the time the order is rendered.

3 Sec. 56. NEW SECTION. 17A.4217 STAY.

4 A party may submit to the presiding officer a petition for
5 stay of effectiveness of an initial or final order within
6 twenty days after its rendition unless otherwise provided by
7 statute or stated in the initial or final order. The
8 presiding officer may take action on the petition for stay,
9 either before or after the effective date of the initial or
10 final order. A petition for a stay is deemed to have been
11 denied if the presiding officer does not dispose of it within
12 ten days after the filing of the petition.

13 Sec. 57. NEW SECTION. 17A.4218 RECONSIDERATION.

14 Unless otherwise provided by statute or rule the following
15 apply:

16 1. Any party, within twenty days after rendition of an
17 initial or final order, may file a petition for
18 reconsideration of that order, stating the specific grounds
19 upon which relief is requested. The filing of the petition is
20 not a prerequisite for seeking administrative or judicial
21 review. A copy of the application for reconsideration shall
22 be timely mailed by the presiding officer to all parties of
23 record not joining in the application.

24 2. The petition must be disposed of by the same person or
25 persons who rendered the initial or final order, if available.

26 3. The presiding officer shall render a written order
27 denying the petition, or granting the petition and dissolving
28 or modifying the initial or final order, or setting the matter
29 for further proceedings. The petition may be granted, in
30 whole or in part, only if the presiding officer states, in the
31 written order, findings of fact, conclusions of law, and
32 policy reasons for the decision if it is an exercise of the
33 agency's discretion, to justify the order. The petition is
34 deemed to have been denied if the presiding officer does not
35 dispose of it within twenty days after the filing of the

1 petition.

2 Sec. 58. NEW SECTION. 17A.4219 REVIEW BY SUPERIOR
3 AGENCY.

4 If, pursuant to statute, an agency may review the final
5 order of another agency, the review is deemed to be a
6 continuous proceeding as if before a single agency. The final
7 order of the first agency is treated as an initial order and
8 the second agency functions as though it were reviewing an
9 initial order in accordance with section 17A.4216.

10 Sec. 59. NEW SECTION. 17A.4220 EFFECTIVENESS OF ORDERS.

11 1. Unless a later date is stated in a final order or a
12 stay is granted, a final order is effective twenty days after
13 rendition, except for any of the following:

14 a. A party shall not be required to comply with a final
15 order unless the party has been served with or has actual
16 knowledge of the final order.

17 b. A final order shall not be invoked for any purpose
18 against any person unless the agency has made the final order
19 available for public inspection and copying or the person has
20 actual knowledge of the final order.

21 c. A final order may become effective on a specified date
22 stated in the order that is earlier than twenty days after its
23 rendition if any of the following exist:

24 (1) Another statute authorizes the agency to set an
25 earlier effective date for that order.

26 (2) The order only confers a benefit or relieves a
27 restriction on the parties other than the agency issuing the
28 order.

29 (3) The earlier effective date is necessary to avoid an
30 immediate danger to the public health, safety, or welfare.

31 2. Unless a later date is stated in an initial order or a
32 stay is granted, the time when an initial order becomes a
33 final order in accordance with section 17A.4215 is determined
34 as follows:

35 a. When the initial order is rendered, if administrative

1 review is unavailable.

2 b. When the agency head renders an order stating, after a
3 petition for appeal has been filed, that review will not be
4 exercised, if discretion is available to make a determination
5 to this effect.

6 c. Twenty days after rendition of the initial order, if no
7 party has filed a petition for appeal and the agency head has
8 not given written notice of its intention to exercise review.

9 3. Unless a later date is stated in an initial order or a
10 stay is granted, an initial order that becomes a final order
11 in accordance with subsection 2 and section 17A.4215 is
12 effective twenty days after becoming a final order, except for
13 any of the following:

14 a. A party shall not be required to comply with the final
15 order unless the party has been served with or has actual
16 knowledge of the initial order or of an order stating that
17 review will not be exercised.

18 b. An initial order shall not be invoked for any purpose
19 against any person unless the agency has made the initial
20 order available for public inspection and copying or the
21 person has actual knowledge of the initial order or of an
22 order stating that review will not be exercised.

23 c. An initial order that becomes a final order may become
24 effective on a specified date stated in the order that is
25 earlier than twenty days after it becomes a final order if it
26 satisfies the requirements of subsection 1, paragraph "a",
27 "b", or "c".

28 4. This section does not preclude an agency from taking
29 immediate action to protect the public interest in accordance
30 with section 17A.4501.

31 Sec. 60. NEW SECTION. 17A.4221 AGENCY RECORD.

32 1. An agency shall maintain an official record of each
33 adjudicative proceeding under this part.

34 2. The agency record consists only of all of the
35 following:

- 1 a. Notices of all proceedings.
- 2 b. Any prehearing order.
- 3 c. Any motions, pleadings, briefs, petitions, requests,
- 4 and intermediate rulings.
- 5 d. Evidence received or considered.
- 6 e. A statement of matters officially noticed.
- 7 f. Proffers of proof and objections and rulings thereon.
- 8 g. Proposed findings, requested orders, and exceptions.
- 9 h. The record prepared for the presiding officer at the
- 10 hearing, together with any transcript of all or part of the
- 11 hearing considered before final disposition of the proceeding.
- 12 i. Any final order, initial order, or order on
- 13 reconsideration.
- 14 j. Staff memoranda or data submitted to the presiding
- 15 officer, unless prepared and submitted by personal assistants
- 16 and not inconsistent with section 17A.4213, subsection 2.
- 17 k. Matters placed on the record after an ex parte
- 18 communication.

19 3. Except to the extent that this chapter or another
20 statute provides otherwise, the agency record constitutes the
21 exclusive basis for agency action in adjudicative proceedings
22 under this part and for judicial review thereof.

23 PART 3

24 OFFICE OF ADMINISTRATIVE HEARINGS

25 Sec. 61. NEW SECTION. 17A.4301 OFFICE OF ADMINISTRATIVE
26 HEARINGS -- CREATION, POWERS, DUTIES.

27 1. An independent office of administrative hearings is
28 created to be headed by a director appointed by the governor
29 and confirmed by the senate. The director serves at the
30 pleasure of the governor.

31 2. The office shall employ administrative law judges as
32 necessary to conduct proceedings required by this chapter or
33 any other provision of law. Administrative law judges
34 employed by the office shall not perform duties inconsistent
35 with their duties and responsibilities as administrative law

1 judges and shall not be located in offices within the agencies
2 for which they act as presiding officers. Administrative law
3 judges shall be covered by the merit system provisions of
4 chapter 19A. Subject to the approval of the department of
5 personnel, the office shall, insofar as practicable, provide
6 for different classes of administrative law judges with
7 different salary scales. The office shall also facilitate,
8 insofar as practicable, specialization by its administrative
9 law judges so that particular judges may become expert in
10 presiding over cases in particular agencies.

11 3. If the office cannot furnish one of its administrative
12 law judges in response to an agency request, the director
13 shall designate in writing a full-time employee of an agency
14 other than the requesting agency to serve as administrative
15 law judge for the proceeding, but only with the consent of the
16 employing agency. The designee must possess the same
17 qualifications required of administrative law judges employed
18 by the office.

19 4. The director may furnish administrative law judges on a
20 contract basis to any governmental entity to conduct any
21 proceeding not subject to this chapter.

22 5. After the effective date of this Act, a person shall
23 not be newly employed by the office as an administrative law
24 judge to preside over formal adjudicative hearings unless that
25 person has a license to practice law in this state.

26 6. The office shall adopt rules pursuant to this chapter
27 to do all of the following:

28 a. To establish qualifications for administrative law
29 judges employed by the office, and, subject to the approval of
30 the department of personnel, procedures by which candidates
31 for a position as an administrative law judge in the office
32 will be considered for employment and the manner in which
33 public notice of vacancies for positions as administrative law
34 judges in the office will be given.

35 b. To establish procedures for agencies to request and for

1 the director to assign administrative law judges employed by
2 the office; however, an agency shall not select or reject any
3 individual administrative law judge for any proceeding except
4 in accordance with this chapter.

5 c. To establish procedures and adopt forms, consistent
6 with this chapter and other provisions of law, to govern
7 administrative law judges employed by the office, but any
8 rules adopted under this paragraph shall be applicable to a
9 particular adjudicatory proceeding only to the extent that
10 they are not inconsistent with the rules of the agency under
11 whose authority that proceeding is conducted.

12 d. To establish standards and procedures for the
13 evaluation, training, promotion, and discipline by the office
14 of administrative law judges employed by the office.

15 e. To establish, consistent with the provisions of this
16 chapter, a code of administrative judicial conduct that is
17 similar in function and substantially equivalent to the Iowa
18 code of judicial conduct, to govern the actions of all persons
19 who act as presiding officers under the authority of section
20 17A.4202, subsection 1.

21 f. To facilitate the performance of the responsibilities
22 conferred upon the office by this chapter.

23 7. The director may do all of the following:

24 a. Maintain a staff of reporters and other personnel.

25 b. Administer the provisions of this section and rules
26 adopted under its authority.

27 8. The office may charge agencies for services rendered
28 and the payment received shall be considered repayment
29 receipts as defined in section 8.2.

30 PART 4

31 CONFERENCE ADJUDICATIVE HEARING

32 Sec. 62. NEW SECTION. 17A.4401 CONFERENCE ADJUDICATIVE
33 HEARING -- APPLICABILITY.

34 A conference adjudicative hearing may be used if its use in
35 the circumstances does not violate any provision of law and

1 the matter is entirely within one or more categories for which
2 the agency by rule has adopted this part. However, those
3 categories may include only the following:

4 1. A matter in which there is no disputed issue of
5 material fact.

6 2. A matter in which there is a disputed issue of material
7 fact, if the matter involves one or more of the following:

8 a. A monetary amount of not more than one thousand
9 dollars. In determining whether a matter involves only a
10 monetary amount of one thousand dollars or less, a presumption
11 arises that, if a claimant prevails on the merits, the
12 claimant will subsequently be qualified for and entitled to
13 the amount of any periodic payments claimed for the maximum
14 period allowed by law and that claimant may aggregate the
15 amount of those subsequent payments for purposes of
16 determining the monetary amount involved in the matter at
17 issue.

18 b. A disciplinary sanction against an inmate.

19 c. A disciplinary sanction against a student which does
20 not involve expulsion or suspension for more than ten days
21 from an educational institution.

22 d. A disciplinary sanction against a public employee which
23 does not involve discharge or suspension for more than ten
24 days from employment.

25 e. A disciplinary sanction against a licensee which does
26 not involve revocation, suspension, annulment, withdrawal, or
27 amendment of a license, or a reprimand or warning against an
28 occupational or professional licensee which may reasonably be
29 deemed to affect the economic or professional status or
30 reputation of that licensee.

31 Sec. 63. NEW SECTION. 17A.4402 CONFERENCE ADJUDICATIVE
32 HEARING -- PROCEDURES.

33 The procedures of this chapter pertaining to formal
34 adjudicative hearings apply to a conference adjudicative
35 hearing, except to the following extent:

1 1. If a matter is initiated as a conference adjudicative
2 hearing, a prehearing conference shall not be held.

3 2. The provisions of section 17A.4210 do not apply to
4 conference adjudicative hearings insofar as those provisions
5 authorize the issuance and enforcement of subpoenas and
6 discovery orders, but do apply to conference adjudicative
7 hearings insofar as those provisions authorize the presiding
8 officer to issue protective orders at the request of any party
9 or upon the presiding officer's motion.

10 3. Section 17A.4211, subsections 1 and 2, do not apply
11 except for the following:

12 a. The presiding officer shall regulate the course of the
13 proceedings,

14 b. Only the parties may testify and present written
15 exhibits.

16 c. The parties may offer comments on the issues and cross
17 examine each other with respect to any factual disputes.

18 4. The provisions of section 17A.4215, subsection 4,
19 requiring findings of fact to be based exclusively on the
20 evidence of record and on matters officially noticed, and
21 section 17A.4221 do not apply; instead, the provisions of
22 section 17A.4506 apply.

23 Sec. 64. NEW SECTION. 17A.4403 CONFERENCE ADJUDICATIVE
24 HEARING -- PROPOSED PROOF.

25 1. If the presiding officer has reason to believe that
26 material facts are in dispute, the presiding officer may
27 require any party to state the identity of the witnesses or
28 other sources through whom the party would propose to present
29 proof if the proceeding were converted to a formal
30 adjudicative hearing, but if disclosure of any fact,
31 allegation, or source is privileged or expressly prohibited by
32 any provision of law, the presiding officer may require the
33 party to indicate that confidential facts, allegations, or
34 sources are involved, but not to disclose the confidential
35 facts, allegations, or sources.

1 2. If a party has reason to believe that essential facts
2 must be obtained in order to permit an adequate presentation
3 of the case, the party may inform the presiding officer
4 regarding the general nature of the facts and the sources from
5 which the party would propose to obtain those facts if the
6 proceeding were converted to a formal adjudicative hearing.

7

PART 5

8

EMERGENCY AND SUMMARY ADJUDICATIVE PROCEEDINGS

9 Sec. 65. NEW SECTION. 17A.4501 EMERGENCY ADJUDICATIVE
10 PROCEEDINGS.

11 1. An agency may use emergency adjudicative proceedings in
12 a situation involving an immediate danger to the public
13 health, safety, or welfare requiring immediate agency action.

14 2. The agency may take only such action as is necessary to
15 prevent or avoid the immediate danger to the public health,
16 safety, or welfare that justifies use of emergency
17 adjudication.

18 3. The agency shall render an order, including a brief
19 statement of findings of fact, conclusions of law, and policy
20 reasons for the decision if it is an exercise of the agency's
21 discretion, to justify the determination of an immediate
22 danger and the agency's decision to take the specific action.

23 4. The agency shall give such notice as is practicable to
24 persons who are required to comply with the order. The order
25 is effective when rendered.

26 5. After issuing an order pursuant to this section, the
27 agency shall proceed as quickly as feasible to complete any
28 proceedings that would be required if the matter did not
29 involve an immediate danger.

30 6. The agency record consists of any documents regarding
31 the matter that were considered or prepared by the agency.
32 The agency shall maintain these documents as its official
33 record.

34 7. Unless otherwise required by a provision of law, the
35 agency record need not constitute the exclusive basis for

1 agency action in emergency adjudicative proceedings or for
2 judicial review thereof.

3 Sec. 66. NEW SECTION. 17A.4502 SUMMARY ADJUDICATIVE
4 PROCEEDINGS -- APPLICABILITY.

5 An agency may use summary adjudicative proceedings if all
6 of the following apply:

7 1. The use of those proceedings in the circumstances does
8 not violate any provision of law.

9 2. The protection of the public interest does not require
10 the agency to give notice and an opportunity to participate to
11 persons other than the parties.

12 3. The matter is entirely within one or more categories
13 for which the agency by rule has adopted this section and
14 sections 17A.4503 to 17A.4506; however, those categories may
15 include only the following:

16 a. A monetary amount of not more than one hundred dollars.

17 b. A reprimand, warning, disciplinary report, or other
18 purely verbal sanction without continuing impact against an
19 inmate, student, or public employee.

20 c. The denial of an application after the applicant has
21 abandoned the application.

22 d. The denial of an application for admission to an
23 educational institution or for employment by an agency.

24 e. The denial, in whole or in part, of an application if
25 the applicant has an opportunity for administrative review in
26 accordance with section 17A.4504.

27 f. A matter that is resolved on the sole basis of
28 inspections, examinations, or tests.

29 g. The acquisition, leasing, or disposal of property or
30 the procurement of goods or services by contract.

31 Sec. 67. NEW SECTION. 17A.4503 SUMMARY ADJUDICATIVE
32 PROCEEDINGS -- PROCEDURES.

33 1. The agency head, one or more members of the agency
34 head, one or more administrative law judges assigned by the
35 office of administrative hearings in accordance with section

1 17A.4301, or, unless prohibited by law, one or more other
2 persons designated by the agency head in the discretion of the
3 agency head, may be the presiding officer. Unless prohibited
4 by law, a person exercising authority over the matter is the
5 presiding officer.

6 2. If the proceeding involves a monetary matter or a
7 reprimand, warning, disciplinary report, or other sanction,
8 all of the following apply:

9 a. The presiding officer, before taking action, shall give
10 each party an opportunity to be informed of the agency's view
11 of the matter and to explain the party's view of the matter.

12 b. The presiding officer, at the time any unfavorable
13 action is taken, shall give each party a brief statement of
14 the reasons for the action.

15 3. An order rendered in a proceeding that involves a
16 monetary matter must be in writing. An order in any other
17 summary adjudicative proceeding may be oral or written.

18 4. The agency, by reasonable means, shall furnish to each
19 party notification of the order in a summary adjudicative
20 proceeding. Notification must at least include a statement of
21 the agency's action.

22 Sec. 68. NEW SECTION. 17A.4504 ADMINISTRATIVE REVIEW OF
23 SUMMARY ADJUDICATIVE PROCEEDINGS -- APPLICABILITY.

24 Except to the extent prohibited by any provision of law, an
25 agency, on its own motion, may conduct an administrative
26 review of an order resulting from summary adjudicative
27 proceedings, and shall conduct this review upon the written or
28 oral request of a party if the agency receives the request
29 within ten days after furnishing notification under section
30 17A.4503, subsection 4.

31 Sec. 69. NEW SECTION. 17A.4505 ADMINISTRATIVE REVIEW OF
32 SUMMARY ADJUDICATIVE PROCEEDINGS -- PROCEDURES.

33 Unless otherwise provided by statute:

34 1. An agency need not furnish notification of the pendency
35 of administrative review to any person who did not request the

1 review, but the agency shall not take any action on review
2 less favorable to any party than the original order without
3 giving that party notice and an opportunity to explain that
4 party's view of the matter.

5 2. The reviewing officer, in the discretion of the agency
6 head, may be any person who could have presided at the summary
7 adjudicative proceeding, but the reviewing officer must be one
8 who is authorized to grant appropriate relief upon review.

9 3. The reviewing officer shall give each party an
10 opportunity to explain the party's view of the matter unless
11 the party's view is apparent from the written materials in the
12 file submitted to the reviewing officer. The reviewing
13 officer shall make any inquiries necessary to ascertain
14 whether the proceeding must be converted to a conference
15 adjudicative hearing or a formal adjudicative hearing.

16 4. The reviewing officer may render an order disposing of
17 the proceeding in any manner that was available to the
18 presiding officer at the summary adjudicative proceeding or
19 the reviewing officer may remand the matter for further
20 proceedings, with or without conversion to a conference
21 adjudicative hearing or a formal adjudicative hearing.

22 5. If the order under review is or should have been in
23 writing, the order on review must be in writing, including a
24 brief statement of findings of fact, conclusions of law, and
25 policy reasons for the decision if it is an exercise of the
26 agency's discretion, to justify the order, and a notice of any
27 further available administrative review.

28 6. A request for administrative review is deemed to have
29 been denied if the reviewing officer does not dispose of the
30 matter or remand it for further proceedings within twenty days
31 after the request is submitted.

32 PART 6

33 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDING RECORDS

34 Sec. 70. NEW SECTION. 17A.4601 AGENCY RECORD OF

35 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDINGS AND

1 ADMINISTRATIVE REVIEW.

2 1. The agency record consists of any documents regarding
3 the matter that were submitted by a party to, or were
4 considered or prepared by the presiding officer for, that
5 conference or summary adjudicative proceeding or by the
6 presiding or reviewing officer for any subsequent agency
7 review. The agency shall maintain these documents as its
8 official record.

9 2. Unless otherwise required by a provision of law, the
10 agency record need not constitute the exclusive basis for
11 agency action in conference or summary adjudicative
12 proceedings or for judicial review thereof.

13 ARTICLE 5

14 JUDICIAL REVIEW AND CIVIL ENFORCEMENT

15 PART 1

16 JUDICIAL REVIEW

17 Sec. 71. NEW SECTION. 17A.5101 EXCLUSIVITY OF JUDICIAL
18 REVIEW PROVISIONS -- RELATIONSHIP BETWEEN JUDICIAL REVIEW
19 PROVISIONS OF THIS CHAPTER AND ANCILLARY PROCEDURAL
20 REQUIREMENTS OF OTHER LAW AND SUPERIOR JUDICIAL REMEDIES.

21 Except as expressly provided otherwise by another statute
22 referring to this chapter by name or number, this chapter
23 establishes the exclusive means of judicial review of agency
24 action, except for any of the following:

25 1. The provisions of this chapter for judicial review do
26 not apply to litigation in which the sole issue is a claim for
27 money damages or compensation and the agency whose action is
28 at issue does not have statutory authority to determine the
29 claim.

30 2. Ancillary procedural matters, including intervention,
31 class actions, consolidation, joinder, severance, transfer,
32 protective orders, and other relief from disclosure of
33 privileged or confidential material, are governed, to the
34 extent not inconsistent with this chapter, by other applicable
35 law.

1 3. If the relief available under other sections of this
2 chapter is not equal or substantially equivalent to the relief
3 otherwise available under law, the relief otherwise available
4 and the related procedures supersede and supplement this
5 chapter to the extent necessary for their effectuation. The
6 applicable provisions of this chapter and other law must be
7 combined to govern a single proceeding or, if the court
8 orders, two or more separate proceedings, with or without
9 transfer to other courts, but no type of relief may be sought
10 in a combined proceeding after expiration of the time limit
11 for doing so.

12 Sec. 72. NEW SECTION. 17A.5102 FINAL AGENCY ACTION
13 REVIEWABLE.

14 1. A person who qualifies under this chapter regarding
15 standing in section 17A.5106, exhaustion of administrative
16 remedies in section 17A.5107, and time for filing the petition
17 for review in section 17A.5108, and other applicable
18 provisions of law regarding bond, compliance, and other
19 preconditions is entitled to judicial review of final agency
20 action, whether or not the person has sought judicial review
21 of any related nonfinal agency action.

22 2. For purposes of this section and section 17A.5103:

23 a. "Final agency action" means the whole or a part of any
24 agency action other than nonfinal agency action.

25 b. "Nonfinal agency action" means the whole or a part of
26 an agency determination, investigation, proceeding, hearing,
27 conference, or other process that the agency intends or is
28 reasonably believed to intend to be preliminary, preparatory,
29 procedural, or intermediate with regard to subsequent agency
30 action of that agency or another agency.

31 Sec. 73. NEW SECTION. 17A.5103 NONFINAL AGENCY ACTION
32 REVIEWABLE.

33 A person is entitled to judicial review of nonfinal agency
34 action only if all of the following apply:

35 1. It appears likely that the person will qualify under

1 section 17A.5102 for judicial review of the related final
2 agency action.

3 2. Postponement of judicial review would result in an
4 inadequate remedy or irreparable harm disproportionate to the
5 public benefit derived from postponement.

6 Sec. 74. NEW SECTION. 17A.5104 JURISDICTION -- VENUE.

7 1. The district court shall conduct judicial review.

8 2. Venue shall be in the Polk county district court or the
9 district court for the county in which the petitioner resides
10 or has its principal place of business. When a proceeding for
11 judicial review has been commenced, a court may, in the
12 interest of justice, transfer the proceeding to the district
13 court for another county.

14 Sec. 75. NEW SECTION. 17A.5105 FORM OF ACTION -- SERVICE
15 -- CONTENTS OF PETITION.

16 Judicial review is initiated by filing a petition for
17 review in the appropriate district court. A petition may seek
18 any type of relief available under section 17A.5101,
19 subsection 3, and section 17A.5117.

20 Sec. 76. NEW SECTION. 17A.5106 STANDING.

21 1. The following persons have standing to obtain judicial
22 review of final or nonfinal agency action:

23 a. A person to whom the agency action is specifically
24 directed.

25 b. A person who was a party to the agency proceedings that
26 led to the agency action.

27 c. If the challenged agency action is a rule, a person
28 subject to that rule.

29 d. A person eligible for standing under another provision
30 of law.

31 e. A person otherwise aggrieved or adversely affected by
32 the agency action. For purposes of this paragraph, a person
33 does not have standing as one otherwise aggrieved or adversely
34 affected unless all of the following apply:

35 (1) The agency action has prejudiced or is likely to

1 prejudice that person.

2 (2) That person's asserted interests are among those that
3 the agency was required by law to consider when it engaged in
4 the agency action challenged.

5 (3) A judgment in favor of that person would substantially
6 eliminate or redress the prejudice to that person caused or
7 likely to be caused by the agency action.

8 2. The administrative rules review committee of the
9 general assembly, which is required to exercise general and
10 continuing oversight over administrative rules, may petition
11 for judicial review of any rule.

12 Sec. 77. NEW SECTION. 17A.5107 EXHAUSTION OF
13 ADMINISTRATIVE REMEDIES.

14 A person may file a petition for judicial review under this
15 chapter only after exhausting all administrative remedies
16 available within the agency whose action is being challenged
17 and within any other agency authorized to exercise
18 administrative review, except for any of the following:

19 1. A petitioner for judicial review of a rule need not
20 have participated in the rulemaking proceeding upon which that
21 rule is based, or have petitioned for its amendment or repeal.

22 2. A petitioner for judicial review need not exhaust
23 administrative remedies to the extent that this chapter or any
24 other statute states that exhaustion is not required.

25 3. The court may relieve a petitioner of the requirement
26 to exhaust any or all administrative remedies, to the extent
27 that the administrative remedies are inadequate, or requiring
28 their exhaustion would result in irreparable harm
29 disproportionate to the public benefit derived from requiring
30 exhaustion.

31 Sec. 78. NEW SECTION. 17A.5108 TIME FOR FILING PETITION
32 FOR REVIEW.

33 Subject to other requirements of this chapter or of another
34 statute:

35 1. A petition for judicial review of a rule may be filed

1 at any time, except as limited by section 17A.3113, subsection
2 2.

3 2. A petition for judicial review of an order is not
4 timely unless filed within thirty days after rendition of the
5 order, but the time is extended during the pendency of the
6 petitioner's timely attempts to exhaust administrative
7 remedies, if the attempts are not clearly frivolous or
8 repetitious.

9 3. A petition for judicial review of agency action other
10 than a rule or order is not timely unless filed within thirty
11 days after the agency action, but the time is extended if any
12 of the following apply:

13 a. During the pendency of the petitioner's timely attempts
14 to exhaust administrative remedies, if the attempts are not
15 clearly frivolous or repetitious.

16 b. During any period that the petitioner did not know and
17 was under no duty to discover, or did not know and was under a
18 duty to discover but could not reasonably have discovered,
19 that the agency had taken the action or that the agency action
20 had a sufficient effect to confer standing upon the petitioner
21 to obtain judicial review under this chapter.

22 Sec. 79. NEW SECTION. 17A.5109 PETITION FOR REVIEW --
23 FILING AND CONTENTS.

24 1. A petition for review must be filed with the clerk of
25 the district court and must name the agency as respondent.

26 2. A petition for review must set forth all of the
27 following:

28 a. The name and mailing address of the petitioner.

29 b. The name and mailing address of the agency whose action
30 is at issue.

31 c. Identification of the specific agency action at issue,
32 together with a duplicate copy, summary, or brief description
33 of the agency action.

34 d. Identification of persons who were parties in any
35 adjudicative proceedings that led to the agency action.

1 e. Facts to demonstrate that the petitioner is entitled to
2 obtain judicial review.

3 f. Facts on which venue is based.

4 g. The specific grounds on which relief is sought and the
5 petitioner's reasons for believing that relief should be
6 granted.

7 h. A request for relief, specifying the type and extent of
8 relief requested.

9 A petition for review that is in substantial compliance
10 with the requirements of this subsection shall not be
11 dismissed solely for failure to satisfy its requirements.

12 Sec. 80. NEW SECTION. 17A.5110 PETITION FOR REVIEW --
13 SERVICE AND NOTIFICATION -- NOTICE OF INTERVENTION.

14 1. Within ten days after the filing of a petition for
15 judicial review of agency action, the petitioner shall serve a
16 file stamped copy of the petition upon the agency in the
17 manner provided by the rules of civil procedure for the
18 personal service of an original notice or shall mail a file
19 stamped copy of the petition to the agency by restricted
20 certified mail.

21 2. Within ten days after the filing of a petition for
22 judicial review of agency action in an adjudicative
23 proceeding, the petitioner shall also give notice of the
24 petition for review to each other party of record in that
25 adjudicative proceeding either by serving a file stamped copy
26 of the petition upon that party in the manner provided by the
27 rules of civil procedure for the personal service of an
28 original notice or by restricted certified mail.

29 3. The personal service or mailing required by this
30 section shall be jurisdictional and may be made on the party
31 or the party's attorney of record in the proceeding before the
32 agency. A mailing shall be addressed to the parties or their
33 attorneys of record at their last known mailing address.
34 Proof of mailing shall be by the return receipt from the
35 restricted certified mail.

1 4. Any party of record in an adjudicative proceeding
2 before an agency who wishes to intervene and participate in
3 the judicial review proceeding must file an appearance in the
4 court indicating that intention within forty-five days from
5 the date the petition is filed.

6 Sec. 81. NEW SECTION. 17A.5111 STAY AND OTHER TEMPORARY
7 REMEDIES PENDING FINAL DISPOSITION.

8 1. Unless precluded by law, the agency may grant a stay on
9 appropriate terms or other temporary remedies during the
10 pendency of judicial review.

11 2. A party may file a motion in the reviewing court,
12 during the pendency of judicial review, seeking interlocutory
13 review of the agency's action on an application for stay or
14 other temporary remedies.

15 3. If the agency has found that its action on an
16 application for stay or other temporary remedies is justified
17 to protect against a substantial threat to the public health,
18 safety, or welfare, the court may grant relief only upon a
19 finding that all of the following apply:

20 a. The applicant is likely to prevail when the court
21 finally disposes of the matter.

22 b. Without relief the applicant will suffer irreparable
23 injury.

24 c. The grant of relief to the applicant will not
25 substantially harm other parties to the proceedings.

26 d. The type of threat to the public health, safety, or
27 welfare relied on by the agency is not sufficiently serious to
28 justify the agency's action in the circumstances.

29 4. If subsection 3 does not apply, the court shall grant
30 relief if it finds that the agency's action on the application
31 for stay or other temporary remedies was unreasonable in the
32 circumstances.

33 5. If the court determines that relief should be granted
34 from the agency's action on an application for stay or other
35 temporary remedies, the court may remand the matter to the

1 agency with directions to deny a stay, to grant a stay on
2 appropriate terms, or to grant other temporary remedies, or
3 the court may issue an order denying a stay, granting a stay
4 on appropriate terms, or granting other temporary remedies.

5 Sec. 82. NEW SECTION. 17A.5112 LIMITATION ON NEW ISSUES.

6 A person may obtain judicial review of an issue that was
7 not raised before the agency, only to the extent of any of the
8 following:

9 1. The agency did not have authority to grant an adequate
10 remedy based on a determination of the issue involved because
11 the issue or remedy was not within the jurisdiction of the
12 agency.

13 2. The person did not know and was under no duty to
14 discover, or did not know and was under a duty to discover but
15 could not reasonably have discovered, facts giving rise to the
16 issue.

17 3. The agency action subject to judicial review is a rule
18 and the person is challenging only the validity of that rule
19 and has not been a party in adjudicative proceedings which
20 provided an adequate opportunity to raise the issue.

21 4. The agency action subject to judicial review is an
22 order and the person was not notified of the adjudicative
23 proceeding in compliance with any provision of law or was
24 notified but was not permitted to participate in that
25 adjudicative proceeding.

26 5. The interests of justice would be served by judicial
27 resolution of an issue arising from any of the following:

28 a. A change in controlling law occurring after the agency
29 action.

30 b. Agency action occurring after the person exhausted the
31 last feasible opportunity for seeking relief from the agency.

32 Sec. 83. NEW SECTION. 17A.5113 JUDICIAL REVIEW OF FACTS
33 CONFINED TO RECORD FOR JUDICIAL REVIEW AND ADDITIONAL EVIDENCE
34 TAKEN PURSUANT TO THIS CHAPTER.

35 Judicial review of disputed issues of fact must be confined

1 to the agency record for judicial review as defined in this
2 chapter, supplemented by additional evidence taken pursuant to
3 this chapter.

4 Sec. 84. NEW SECTION. 17A.5114 NEW EVIDENCE TAKEN BY
5 COURT OR AGENCY BEFORE FINAL DISPOSITION.

6 1. The court may receive evidence, in addition to that
7 contained in the agency record for judicial review, only if it
8 relates to the validity of the agency action at the time it
9 was taken and is needed to decide disputed issues regarding
10 any of the following:

11 a. Improper constitution as a decision-making body, or
12 improper motive or grounds for disqualification, of those
13 taking the agency action.

14 b. Unlawfulness of procedure or of decision-making
15 process.

16 c. Any material fact that was not required by provision of
17 law to be determined exclusively on an agency record of a type
18 reasonably suitable for judicial review.

19 2. The court may remand a matter to the agency, before
20 final disposition of a petition for review, with directions
21 that the agency conduct fact-finding and other proceedings the
22 court considers necessary and that the agency take such
23 further action on the basis thereof as the court directs, if
24 any of the following apply:

25 a. The agency was required by this chapter or any other
26 provision of law to base its action exclusively on a record of
27 a type reasonably suitable for judicial review, but the agency
28 failed to prepare or preserve an adequate record.

29 b. The court finds that all of the following apply:

30 (1) New evidence has become available that relates to the
31 validity of the agency action at the time it was taken, that
32 one or more of the parties did not know and was under no duty
33 to discover, or did not know and was under a duty to discover
34 but could not reasonably have discovered, until after the
35 agency action.

1 (2) The interests of justice would be served by remand to
2 the agency.

3 c. The agency improperly excluded or omitted evidence from
4 the record.

5 d. A relevant provision of law changed after the agency
6 action and the court determines that the new provision may
7 control the outcome,

8 Sec. 85. NEW SECTION. 17A.5115 AGENCY RECORD FOR
9 JUDICIAL REVIEW -- CONTENTS, PREPARATION, TRANSMITTAL, COST.

10 1. Within thirty days after service of the petition, or
11 within further time allowed by the court or by other provision
12 of law, the agency shall transmit to the court the original or
13 a certified copy of the agency record for judicial review of
14 the agency action, consisting of any agency documents
15 expressing the agency action, other documents identified by
16 the agency as having been considered by it before its action
17 and used as a basis for its action, and any other material
18 described in this chapter as the agency record for the type of
19 agency action at issue, subject to the provisions of this
20 section.

21 2. If part of the record has been preserved without a
22 transcript, the agency shall prepare a transcript for
23 inclusion in the record transmitted to the court, except for
24 portions that the parties stipulate to omit in accordance with
25 subsection 4.

26 3. The agency may charge the petitioner with the
27 reasonable cost of preparing any necessary copies and
28 transcripts for transmittal to the court. A failure by the
29 petitioner to pay any of this cost to the agency does not
30 relieve the agency from the responsibility for timely
31 preparation of the record and transmittal to the court.

32 4. By stipulation of all parties to the review
33 proceedings, the record may be shortened, summarized, or
34 organized.

35 5. The court may tax the cost of preparing transcripts and

1 copies for the record in accordance with any of the following:

2 a. Against a party who unreasonably refuses to stipulate
3 to shorten, summarize, or organize the record.

4 b. As provided by section 17A.5117.

5 c. In accordance with any other provision of law.

6 6. Additions to the record pursuant to section 17A.5114
7 must be made as ordered by the court.

8 7. The court may require or permit subsequent corrections
9 or additions to the record.

10 Sec. 86. NEW SECTION. 17A.5116 SCOPE OF REVIEW --
11 GROUNDS FOR INVALIDITY.

12 1. Except to the extent that this chapter provides
13 otherwise, in suits for judicial review of agency action all
14 of the following apply:

15 a. The burden of demonstrating the required prejudice and
16 the invalidity of agency action is on the party asserting
17 invalidity.

18 b. The validity of agency action must be determined in
19 accordance with the standards of review provided in this
20 section, as applied to the agency action at the time that
21 action was taken.

22 2. The court shall make a separate and distinct ruling on
23 each material issue on which the court's decision is based.

24 3. The court shall grant relief from agency action if it
25 determines that substantial rights of the person seeking
26 judicial relief have been prejudiced because the agency action
27 is any of the following:

28 a. Unconstitutional on its face or as applied or is based
29 upon a provision of law that is unconstitutional on its face
30 or as applied.

31 b. Beyond the authority conferred upon the agency by any
32 provision of law or in violation of any provision of law.

33 c. Based upon an erroneous interpretation of a provision
34 of law whose interpretation has not clearly been delegated to
35 the discretion of the agency.

1 d. Based upon a procedure or decision-making process
2 prohibited by law or was taken without following the
3 prescribed procedure or decision-making process.

4 e. The product of decision making undertaken by persons
5 who were improperly constituted as a decision-making body,
6 were motivated by an improper purpose, or were subject to
7 disqualification.

8 f. Based upon a determination of fact clearly delegated to
9 the discretion of the agency that is not supported by
10 substantial evidence in the record before the court when that
11 record is viewed as a whole. For purposes of this paragraph
12 the following terms have the following meanings:

13 (1) "Substantial evidence" means the quantity and quality
14 of evidence that would be deemed sufficient by a neutral,
15 detached, and reasonable person, to establish the fact at
16 issue when the consequences resulting from the establishment
17 of that fact are understood to be serious and of great
18 importance.

19 (2) "Record before the court" means the agency record for
20 judicial review, as defined by this chapter, supplemented by
21 any additional evidence received by the court under the
22 provisions of this chapter.

23 (3) "When that record is viewed as a whole" means that the
24 adequacy of the evidence in the record before the court to
25 support a particular finding of fact must be judged in light
26 of all the relevant evidence in the record that detracts from
27 that finding as well as all of the relevant evidence that
28 supports it, including any determinations of veracity by the
29 presiding officer who personally observed the demeanor of the
30 witnesses and the agency's explanation of why the evidence in
31 the record supports its finding of fact and why the evidence
32 in the record that is contrary to its finding does not
33 preclude that finding.

34 g. Action other than a rule that is inconsistent with a
35 rule of the agency.

1 h. Action other than a rule that is inconsistent with the
2 agency's prior practice or precedents, unless the agency has
3 justified that inconsistency by stating credible reasons
4 sufficient to indicate a fair and rational basis for the
5 inconsistency.

6 i. The product of reasoning that is so illogical as to
7 render it wholly irrational.

8 j. The product of a decision-making process in which the
9 agency did not consider a relevant and important matter
10 relating to the propriety or desirability of the action in
11 question that a rational decision maker in similar
12 circumstances would have considered prior to taking that
13 action.

14 k. Not required by law and its negative impact on the
15 private rights affected is so grossly disproportionate to the
16 benefits accruing to the public interest from that action that
17 it must necessarily be deemed to lack any foundation in
18 rational agency policy.

19 l. Based upon an irrational, illogical, or wholly
20 unjustifiable interpretation of a provision of law whose
21 interpretation has clearly been delegated to the discretion of
22 the agency.

23 m. Based upon an irrational, illogical, or wholly
24 unjustifiable application of law to fact that has clearly been
25 delegated to the discretion of the agency.

26 n. Otherwise unreasonable, arbitrary, capricious, or an
27 abuse of discretion.

28 In making the determinations required by this subsection,
29 the court is not required to give any deference to the view of
30 the agency with respect to whether particular matters have
31 been delegated to the discretion of the agency and with
32 respect to the validity of agency action relating to matters
33 that have not been delegated to the discretion of the agency.
34 However, the court must give appropriate deference to the view
35 of the agency with respect to the validity of agency action

1 relating to matters that have been delegated to the discretion
2 of the agency.

3 Sec. 87. NEW SECTION. 17A.5117 TYPE OF RELIEF.

4 1. The court may award damages or compensation only to the
5 extent expressly authorized by another provision of law.

6 2. The court may grant other appropriate relief, whether
7 mandatory, injunctive, or declaratory; preliminary or final;
8 temporary or permanent; equitable or legal. In granting
9 relief, the court may order agency action required by law,
10 order agency exercise of discretion required by law, set aside
11 or modify agency action, enjoin or stay the effectiveness of
12 agency action, remand the matter for further proceedings,
13 render a declaratory judgment, or take any other action that
14 is authorized and appropriate.

15 3. The court may also grant necessary ancillary relief to
16 redress the effects of agency action wrongfully taken or
17 withheld, including the taxation of costs, but the court may
18 award attorney's fees or witness fees only to the extent
19 expressly authorized by other law.

20 4. If the court sets aside or modifies agency action or
21 remands the matter to the agency for further proceedings, the
22 court may make any interlocutory order it finds necessary to
23 preserve the interests of the parties and the public pending
24 further proceedings or agency action.

25 Sec. 88. NEW SECTION. 17A.5118 REVIEW BY HIGHER COURT.

26 Final decisions of the district court on petitions for
27 review of agency action are reviewable by appeal to the
28 supreme court as in other civil cases although the appeal may
29 be taken regardless of the amount involved. On appeal, the
30 supreme court, or court of appeals if the case is referred by
31 the supreme court to the court of appeals, shall reverse,
32 modify, or vacate the decision of the district court only if
33 the reviewing court determines that the district court applied
34 an incorrect legal standard or unreasonably applied a correct
35 legal standard.

PART 2

CIVIL ENFORCEMENT

1
2
3 Sec. 89. NEW SECTION. 17A.5201 PETITION BY AGENCY FOR
4 CIVIL ENFORCEMENT OF RULE OR ORDER.

5 1. In addition to other remedies provided by law, an
6 agency may seek enforcement of its rule or order by filing a
7 petition for civil enforcement in the district court.

8 2. The petition must name, as defendants, each alleged
9 violator against whom the agency seeks to obtain civil
10 enforcement.

11 3. Venue shall be in the district court for the county in
12 which the defendant resides or has its principal place of
13 business, or with the consent of the defendant, in the Polk
14 County district court. When a proceeding for enforcement has
15 been commenced, the court may, in the interest of justice,
16 transfer the proceeding to a district court for another
17 county.

18 4. A petition for civil enforcement filed by an agency may
19 request, and the court may grant, declaratory relief,
20 temporary or permanent injunctive relief, any other civil
21 remedy provided by law, or any combination of the foregoing.

22 Sec. 90. NEW SECTION. 17A.5202 PETITION BY QUALIFIED
23 PERSON FOR CIVIL ENFORCEMENT OF AGENCY'S ORDER.

24 1. Any person who would qualify under this chapter as
25 having standing to obtain judicial review of an agency's
26 failure to enforce its order may file a petition for civil
27 enforcement of that order, but the action shall not be
28 commenced until or under any of the following circumstances:

29 a. Until at least sixty days after the petitioner has
30 given notice of the alleged violation and of the petitioner's
31 intent to seek civil enforcement to the agency head concerned,
32 to the attorney general, and to each alleged violator against
33 whom the petitioner seeks civil enforcement.

34 b. If the agency has filed and is diligently prosecuting a
35 petition for civil enforcement of the same order against the

1 same defendant.

2 c. If a petition for review of the same order has been
3 filed and is pending in court.

4 2. The petition must name, as defendants, the agency whose
5 order is sought to be enforced and each alleged violator
6 against whom the petitioner seeks civil enforcement.

7 3. The agency whose order is sought to be enforced may
8 move to dismiss on the grounds that the petition fails to
9 qualify under this section or that enforcement would be
10 contrary to the policy of the agency. The court shall grant
11 the motion to dismiss unless the petitioner demonstrates that
12 the petition qualifies under this section and the agency's
13 failure to enforce its order is based on an exercise of
14 discretion that is improper on one or more of the grounds
15 provided in section 17A.5116, subsection 3, paragraph "h".

16 4. Except to the extent expressly authorized by any
17 provision of law, a petition for civil enforcement filed under
18 this section shall not request, and the court shall not grant,
19 any monetary payment apart from taxable costs.

20 Sec. 91. NEW SECTION. 17A.5203 DEFENSES -- LIMITATION ON
21 NEW ISSUES AND NEW EVIDENCE.

22 A defendant may assert, in a proceeding for civil
23 enforcement any of the following:

24 1. That the rule or order sought to be enforced is invalid
25 on any of the grounds stated in section 17A.5116. If that
26 defense is raised, the court may consider issues and receive
27 evidence only within the limitations provided by sections
28 17A.5112, 17A.5113, and 17A.5114.

29 2. Any of the following defenses on which the court, to
30 the extent necessary for the determination of the matter, may
31 consider new issues or take new evidence:

32 a. The rule or order does not apply to the party.

33 b. The party has not violated the rule or order.

34 c. The party has violated the rule or order but has
35 subsequently complied, but a party who establishes this

1 defense is not necessarily relieved from any sanction provided
2 by law for past violations.

3 d. Any other defense allowed by law.

4 Sec. 92. NEW SECTION. 17A.5204 INCORPORATION OF CERTAIN
5 PROVISIONS ON JUDICIAL REVIEW.

6 Proceedings for civil enforcement are governed by section
7 17A.5101, subsection 2, and section 17A.5115 concerning
8 judicial review, as modified where necessary to adapt them to
9 those proceedings.

10 Sec. 93. NEW SECTION. 17A.5205 REVIEW BY HIGHER COURT.

11 Final decisions of the district court on petitions for
12 civil enforcement of agency action are reviewable by appeal to
13 the supreme court as in other civil cases, although the appeal
14 may be taken regardless of the amount involved. On appeal,
15 the supreme court, or court of appeals if the case is referred
16 by the supreme court to the court of appeals, shall reverse,
17 modify, or vacate the decision of the district court only if
18 the reviewing court determines that the district court applied
19 an incorrect legal standard or unreasonably applied a correct
20 legal standard.

21 Sec. 94. Section 2B.17, subsection 4, Code 1995, is
22 amended to read as follows:

23 4. The Iowa administrative code and the Iowa
24 administrative bulletin shall be cited as provided in section
25 ~~17A.6~~ 17A.2101.

26 Sec. 95. Section 2C.9, subsection 1, Code 1995, is amended
27 to read as follows:

28 1. Investigate, on complaint or on the citizens' aide's
29 own motion, any administrative action of any agency, without
30 regard to the finality of the administrative action, except
31 that the citizens' aide shall not investigate the complaint of
32 an employee of an agency in regard to that employee's
33 employment relationship with the agency. A communication or
34 receipt of information made pursuant to the powers prescribed
35 in this chapter shall not be considered an ex parte

1 communication as described in the provisions of section ~~17A.17~~
2 17A.4213.

3 Sec. 96. Section 10A.601, subsection 7, Code 1995, is
4 amended to read as follows:

5 7. An application for ~~rehearing~~ reconsideration before the
6 appeal board shall be filed pursuant to section ~~17A.16~~
7 17A.4218, unless otherwise provided in chapter 19A, 80, 88,
8 89A, 91C, 96, or 97B. A petition for judicial review of a
9 decision of the appeal board shall be filed pursuant to
10 ~~section-17A.19~~ the provisions for judicial review in chapter
11 17A, article 5. The appeal board may be represented in any
12 such judicial review by an attorney who is a regular salaried
13 employee of the appeal board or who has been designated by the
14 appeal board for that purpose, or at the appeal board's
15 request, by the attorney general. Notwithstanding the
16 petitioner's residency requirement in section ~~17A.197~~
17 ~~subsection-2~~ 17A.5104, a petition for judicial review may be
18 filed in the district court of the county in which the
19 petitioner was last employed or resides, provided that if the
20 petitioner does not reside in this state, the action shall be
21 brought in the district court of Polk county, Iowa, and any
22 other party to the proceeding before the appeal board shall be
23 named in the petition. Notwithstanding the thirty-day
24 requirement in section ~~17A.197-subsection-6~~ 17A.5115, the
25 appeal board shall, within sixty days after filing of the
26 petition for judicial review or within a longer period of time
27 allowed by the court, transmit to the reviewing court the
28 original or a certified copy of the entire records of a
29 contested case. The appeal board may also certify to the
30 court, questions of law involved in any decision by the appeal
31 board. Petitions for judicial review and the questions so
32 certified shall be given precedence over all other civil cases
33 except cases arising under the workers' compensation law of
34 this state. No bond shall be required for entering an appeal
35 from any final order, judgment, or decree of the district

1 court to the supreme court.

2 Sec. 97. Section 21.6, subsection 1, Code 1995, is amended
3 to read as follows:

4 1. The remedies provided by this section against state
5 governmental bodies shall be in addition to those provided by
6 section ~~17A-19~~ 17A.5117. Any aggrieved person, taxpayer to,
7 or citizen of, the state of Iowa, or the attorney general or
8 county attorney, may seek judicial enforcement of the
9 requirements of this chapter. Suits to enforce this chapter
10 shall be brought in the district court for the county in which
11 the governmental body has its principal place of business.

12 Sec. 98. Section 22.7, subsection 15, Code Supplement
13 1995, is amended to read as follows:

14 15. Information concerning the procedures to be used to
15 control disturbances at adult correctional institutions. Such
16 information shall also be exempt from public inspection under
17 ~~section-17A-3~~ sections 17A.2101 and 17A.2102. As used in this
18 subsection disturbance means a riot or a condition that can
19 reasonably be expected to cause a riot.

20 Sec. 99. Section 22.8, subsection 4, paragraph f, Code
21 1995, is amended to read as follows:

22 f. The rights and remedies provided by this section are in
23 addition to any rights and remedies provided by ~~section-17A-19~~
24 chapter 17A, article 5.

25 Sec. 100. Section 22.9, unnumbered paragraph 2, Code 1995,
26 is amended to read as follows:

27 An agency within the meaning of section ~~17A-27-subsection-1~~
28 17A.1102 shall adopt as a rule, in each situation where this
29 section is believed applicable, its determination identifying
30 those particular provisions of this chapter that must be
31 waived in the circumstances to prevent the denial of federal
32 funds, services, or information.

33 Sec. 101. Section 22.10, subsection 1, Code 1995, is
34 amended to read as follows:

35 1. The rights and remedies provided by this section are in

1 addition to any rights and remedies provided by ~~section-17A-19~~
2 chapter 17A, article 5. Any aggrieved person, any taxpayer to
3 or citizen of the state of Iowa, or the attorney general or
4 any county attorney, may seek judicial enforcement of the
5 requirements of this chapter in an action brought against the
6 lawful custodian and any other persons who would be
7 appropriate defendants under the circumstances. Suits to
8 enforce this chapter shall be brought in the district court
9 for the county in which the lawful custodian has its principal
10 place of business.

11 Sec. 102. Section 68B.2, subsection 13, paragraph b,
12 subparagraph (8), Code 1995, is amended to read as follows:

13 (8) Persons whose activities are limited to submitting
14 data, views, or arguments in writing, or requesting an
15 opportunity to make an oral presentation under ~~section 17A-47~~
16 subsection-1 17A.3104.

17 Sec. 103. Section 68B.31, subsection 8, Code 1995, is
18 amended to read as follows:

19 8. If a hearing on the complaint is ordered the ethics
20 committee shall receive all admissible evidence, determine any
21 factual or legal issues presented during the hearing, and make
22 findings of fact based upon evidence received. Hearings shall
23 be conducted in the manner prescribed for adjudicative
24 proceedings in ~~section-17A-12~~ chapter 17A, article 4. The
25 rules of evidence applicable under ~~section 17A-14~~ 17A.4212
26 shall also apply in hearings before the ethics committee.
27 Clear and convincing evidence shall be required to support a
28 finding that the member of the general assembly or lobbyist
29 before the general assembly has committed a violation of this
30 chapter. Parties to a complaint may, subject to the approval
31 of the ethics committee, negotiate for settlement of disputes
32 that are before the ethics committee. Terms of any negotiated
33 settlements shall be publicly recorded. If a complaint is
34 filed or initiated less than ninety days before the election
35 for a state office, for which the person named in the

1 complaint is the incumbent officeholder, the ethics committee
2 shall, if possible, set the hearing at the earliest available
3 date so as to allow the issue to be resolved before the
4 election. An extension of time for a hearing may be granted
5 when both parties mutually agree on an alternate date for the
6 hearing. The ethics committee shall make every effort to hear
7 all ethics complaints within three months of the date that the
8 complaints are filed. However, after three months from the
9 date of the filing of the complaint, extensions of time for
10 purposes of preparing for hearing may only be granted by the
11 ethics committee when the party charged in the complaint with
12 the ethics violation consents to an extension. If the party
13 charged does not consent to an extension, the ethics committee
14 shall not grant any extensions of time for preparation prior
15 to hearing. All complaints alleging a violation of this
16 chapter or the code of ethics shall be heard within nine
17 months of the filing of the complaint. Final dispositions of
18 violations, which the ethics committee has found to have been
19 established by clear and convincing evidence, shall be made
20 within thirty days of the conclusion of the hearing on the
21 complaint.

22 Sec. 104. Section 68B.34, Code 1995, is amended to read as
23 follows:

24 68B.34 INVESTIGATION BY INDEPENDENT SPECIAL COUNSEL --
25 PROBABLE CAUSE.

26 The purpose of an investigation by the independent special
27 counsel is to determine whether there is probable cause to
28 proceed with an adjudicatory hearing on the matter. In
29 conducting investigations and holding hearings, the
30 independent special counsel may require by subpoena the
31 attendance and testimony of witnesses and may subpoena books,
32 papers, records, and any other real evidence relating to the
33 matter before the independent special counsel. The
34 independent special counsel shall have the additional
35 authority provided in section ~~17A.13~~ 17A.4210. If the

1 independent special counsel determines at any stage in the
2 proceedings that take place prior to hearing that the
3 complaint is without merit, the independent special counsel
4 shall report that determination to the appropriate ethics
5 committee and the complaint shall be dismissed and the
6 complainant and the party charged shall be notified. If,
7 after investigation, the independent special counsel
8 determines evidence exists which, if proven, would support a
9 finding of a violation of this chapter, a finding of probable
10 cause shall be made and reported to the ethics committee, and
11 a hearing shall be ordered by the ethics committee as provided
12 in section 68B.31. Independent special counsel investigations
13 are not meetings of a governmental body within the meaning of
14 chapter 21, and records and information obtained by
15 independent special counsel during investigations are
16 confidential until disclosed to a legislative ethics committee
17 under section 68B.31.

18 Sec. 105. Section 80A.17, subsection 1, unnumbered
19 paragraphs 2 and 3, Code 1995, are amended to read as follows:

20 Pursuant to section ~~17A.197-subsection-6~~ 17A.5115, the
21 department, upon an appeal by the licensee of the decision by
22 the department shall transmit the entire record of the
23 contested case to the reviewing court.

24 Notwithstanding section ~~17A.197-subsection-6~~ 17A.5115, if a
25 waiver of privilege has been involuntary and evidence has been
26 received at a disciplinary hearing, the court shall order
27 withheld the identity of the individual whose privilege was
28 waived.

29 Sec. 106. Section 86.17, subsection 1, Code 1995, is
30 amended to read as follows:

31 1. A deputy industrial commissioner may preside over any
32 ~~contested-case~~ adjudicative proceeding brought under this
33 chapter, or chapter 85 or 85A in the manner provided by
34 chapter 17A. The deputy commissioner or the commissioner may
35 make such inquiries and investigation in ~~contested-case~~

1 adjudicative proceedings as shall be deemed necessary,
2 consistent with the provisions of section ~~17A:17~~ 17A.4213.

3 Sec. 107. Section 86.19, subsection 2, Code 1995, is
4 amended to read as follows:

5 2. Notwithstanding the requirements of section ~~17A:12~~
6 17A.4211, subsection ~~7~~ 4, a certified shorthand reporter,
7 appointed by the presiding officer in ~~a-contested-case~~ an
8 adjudicative proceeding or by the industrial commissioner in
9 an appeal proceeding, may maintain and thus have the
10 responsibility for the recording or stenographic notes for the
11 period required by section ~~17A:12~~ 17A.4211, subsection ~~7~~ 4.

12 Sec. 108. Section 86.24, subsections 2 and 3, Code 1995,
13 are amended to read as follows:

14 2. In addition to the provisions of ~~section-17A:15~~
15 sections 17A.4215 and 17A.4216, the industrial commissioner
16 may affirm, modify, or reverse the decision of a deputy
17 commissioner or the commissioner may remand the decision to
18 the deputy commissioner for further proceedings.

19 3. In addition to the provisions of ~~section-17A:15~~
20 sections 17A.4215 and 17A.4216, the industrial commissioner,
21 on appeal, may limit the presentation of evidence as provided
22 by rule.

23 Sec. 109. Section 86.42, Code 1995, is amended to read as
24 follows:

25 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

26 Any party in interest may present a certified copy of an
27 order or decision of the commissioner, from which a timely
28 petition for judicial review has not been filed or if judicial
29 review has been filed, which has not had execution or
30 enforcement stayed as provided in section ~~17A:19--subsection-5~~
31 17A.5111, or an order or decision of a deputy commissioner
32 from which a timely appeal has not been taken within the
33 agency and which has become final by the passage of time as
34 provided by rule and section ~~17A:15~~ 17A.4220, or an agreement
35 for settlement approved by the commissioner, and all papers in

1 connection therewith, to the district court where judicial
2 review of the agency action may be commenced. The court shall
3 render a decree or judgment and cause the clerk to notify the
4 parties. The decree or judgment, in the absence of a petition
5 for judicial review or if judicial review has been commenced,
6 in the absence of a stay of execution or enforcement of the
7 decision or order of the industrial commissioner, or in the
8 absence of an act of any party which prevents a decision of a
9 deputy industrial commissioner from becoming final, has the
10 same effect and in all proceedings in relation thereto is the
11 same as though rendered in a suit duly heard and determined by
12 the court.

13 Sec. 110. Section 99A.6, unnumbered paragraph 2, Code
14 1995, is amended to read as follows:

15 Judicial review of actions of the issuing authorities may
16 be sought in accordance with the terms of the Iowa
17 administrative procedure Act. Municipalities acting as
18 issuing authorities shall be deemed state agencies solely for
19 the purposes of bringing their actions under this chapter
20 within the terms ~~of section 17A.19~~ for judicial review in
21 chapter 17A, article 5. If the licensee has not filed a
22 petition for judicial review in district court, revocation
23 shall date from the thirty-first day following the date of the
24 order of the issuing authority. If the licensee has filed a
25 petition for judicial review, revocation shall date from the
26 thirty-first day following entry of the order of the district
27 court, if action by the district court is adverse to the
28 licensee.

29 Sec. 111. Section 123.37, unnumbered paragraph 2, Code
30 1995, is amended to read as follows:

31 The administrator may compromise and settle doubtful and
32 disputed claims for taxes imposed under this chapter or for
33 taxes of doubtful collectibility, notwithstanding section
34 7D.9. The administrator may enter into informal settlements
35 as permitted pursuant to section 17A.10 17A.1106, to

1 compromise and settle doubtful and disputed claims for taxes
2 imposed under this chapter. The administrator may make a
3 claim under a licensee's or permittee's penal bond for taxes
4 of doubtful collectibility. Whenever a compromise or
5 settlement is made, the administrator shall make a complete
6 record of the case showing the tax assessed, reports and
7 audits, if any, the licensee's or permittee's grounds for
8 dispute or contest, together with all evidence of the dispute
9 or contest, and the amounts, conditions, and settlement or
10 compromise of the dispute or contest.

11 Sec. 112. Section 135.70, Code 1995, is amended to read as
12 follows:

13 135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.

14 The council's decision on an application for certificate of
15 need, when announced pursuant to section 135.69, is a final
16 decision. Any dissatisfied party who is an affected person
17 with respect to the application, and who participated or
18 sought unsuccessfully to participate in the formal review
19 procedure prescribed by section 135.66, may request a
20 rehearing reconsideration in accordance with ~~chapter 17A~~
21 section 17A.4218 and rules of the department. If a ~~rehearing~~
22 reconsideration is not requested or an affected party remains
23 dissatisfied after the request for ~~rehearing reconsideration~~,
24 an appeal may be taken in the manner provided by chapter 17A.
25 Notwithstanding the Iowa administrative procedure Act, chapter
26 17A, a request for ~~rehearing reconsideration~~ is not required,
27 prior to ~~appeal under section 17A.19~~ the filing of a petition
28 for judicial review as provided in chapter 17A, article 5.

29 Sec. 113. Section 135C.2, subsection 3, paragraph d, Code
30 Supplement 1995, is amended to read as follows:

31 d. Notwithstanding the limitations set out in this
32 subsection regarding rules for intermediate care facilities
33 for the mentally retarded, the department shall consider the
34 federal interpretive guidelines issued by the federal health
35 care financing administration when interpreting the

1 department's rules for intermediate care facilities for the
2 mentally retarded. This use of the guidelines is not subject
3 to the rulemaking provisions of sections ~~17A-4 and 17A-5~~
4 chapter 17A, article 3, but the guidelines shall be published
5 in the Iowa administrative bulletin and the Iowa
6 administrative code.

7 Sec. 114. Section 139C.2, subsection 3, Code 1995, is
8 amended to read as follows:

9 3. The department shall establish an expert review panel
10 to determine on a case-by-case basis under what circumstances,
11 if any, a health care provider determined to be infected with
12 HIV or HBV practicing outside the hospital setting or referred
13 to the panel by a hospital, may perform exposure-prone
14 procedures. If a health care provider determined to be
15 infected with HIV or HBV does not comply with the
16 determination of the expert review panel, the panel shall
17 report the noncompliance to the examining board with
18 jurisdiction over the health care provider. A determination
19 of an expert review panel pursuant to this section is a final
20 agency action ~~appealable~~ subject to judicial review pursuant
21 to ~~section 17A-19~~ chapter 17A, article 5.

22 Sec. 115. Section 147A.5, subsection 3, Code Supplement
23 1995, is amended to read as follows:

24 3. The department may deny an application for
25 authorization, or may place on probation, suspend, or revoke
26 existing authorization if the department finds reason to
27 believe the program has not been or will not be operated in
28 compliance with this subchapter and the rules adopted pursuant
29 to this subchapter, or that there is insufficient assurance of
30 adequate protection for the public. The denial or period of
31 probation, suspension, or revocation shall be effected and
32 judicial review may be appealed sought as provided by ~~section~~
33 ~~17A-12~~ for adjudicative proceedings under chapter 17A, article
34 5.

35 Sec. 116. Section 147A.7, subsection 2, Code Supplement

1 1995, is amended to read as follows:

2 2. If clinical issues are involved, the matter shall be
3 referred to the board for completion of the investigation and
4 the conduct of any disciplinary proceeding pursuant to chapter
5 17A. The findings of the board shall be the final decision
6 for purposes of section ~~17A:15~~ 17A.4215 and shall be enforced
7 by the department.

8 Sec. 117. Section 148C.6A, Code 1995, is amended to read
9 as follows:

10 148C.6A APPEAL TO BOARD OF MEDICAL EXAMINERS IN CONTESTED
11 CASES INVOLVING DISCIPLINE.

12 Pursuant to section ~~17A:15~~ 17A.4219, a decision of the
13 board in ~~a-contested-case~~ an adjudicative proceeding involving
14 discipline of a person licensed as a physician assistant may
15 be appealed to the board of medical examiners.

16 Sec. 118. Section 161A.4, subsection 1, unnumbered
17 paragraph 1, Code 1995, is amended to read as follows:

18 The soil conservation division is established within the
19 department to perform the functions conferred upon it in
20 chapters 161A through 161C, 207, 208, 467B, and 467C. The
21 division shall be administered in accordance with the policies
22 of the state soil conservation committee, which shall advise
23 the division and which shall approve administrative rules
24 proposed by the division for the administration of chapters
25 161A through 161C, 161E, 161F, 207, and 208 before the rules
26 are adopted pursuant to section ~~17A:5~~ 17A.3115. If a
27 difference exists between the committee and secretary
28 regarding the content of a proposed rule, the secretary shall
29 notify the chairperson of the committee of the difference
30 within thirty days from the committee's action on the rule.
31 The secretary and the committee shall meet to resolve the
32 difference within thirty days after the secretary provides the
33 committee with notice of the difference.

34 Sec. 119. Section 163.30, subsection 3, unnumbered
35 paragraph 3, Code 1995, is amended to read as follows:

1 A permittee shall not represent more than one dealer.
2 Failure of a licensee or permittee to comply with this chapter
3 or a rule made pursuant to this chapter is cause for
4 revocation by the secretary of the permit or license after
5 notice to the alleged offender and the holding of a hearing by
6 the secretary. Rules shall be made in accordance with chapter
7 17A. A rule, the violation of which is made the basis for
8 revocation, except temporary emergency rules, shall first have
9 been approved after public hearing as provided in section
10 ~~17A:4~~ 17A.3104 after giving twenty days' notice of the hearing
11 as follows:

12 Sec. 120. Section 169.5, subsection 9, paragraph e, Code
13 1995, is amended to read as follows:

14 e. Hold hearings on all matters properly brought before
15 the board and administer oaths, receive evidence, make the
16 necessary determinations, and enter orders consistent with the
17 findings. The board may require by subpoena the attendance
18 and testimony of witnesses and the production of papers,
19 records, or other documentary evidence and commission
20 depositions. An administrative law judge may be appointed
21 pursuant to ~~section-17A:11, subsection-3~~ chapter 17A, article
22 4, to perform those functions which properly repose in an
23 administrative law judge.

24 Sec. 121. Section 169.5, subsection 9, paragraph i, Code
25 1995, is amended to read as follows:

26 i. Adopt, amend, or repeal rules relating to the standards
27 of conduct for, testing of, and revocation or suspension of
28 certificates issued to veterinary assistants. However, a
29 certificate shall not be suspended or revoked by less than a
30 two-thirds vote of the entire board in a proceeding conducted
31 in compliance with ~~section-17A:12~~ chapter 17A, article 4.

32 Sec. 122. Section 169.15, Code 1995, is amended to read as
33 follows:

34 169.15 APPEAL.

35 Any party aggrieved by a decision of the board may appeal

1 ~~the-matter-to-the-district-court~~ petition for judicial review
2 as provided in ~~section-17A-19~~ chapter 17A, article 5.

3 Sec. 123. Section 172D.1, subsection 14, Code Supplement
4 1995, is amended to read as follows:

5 14. "Rule of the department" means a rule as defined in
6 section ~~17A-2~~ 17A.1102 which materially affects the operation
7 of a feedlot and which has been adopted by the department. The
8 term includes a rule which was in effect prior to July 1,
9 1975. Except as specifically provided in section 172D.3,
10 subsection 2, paragraph "b", subparagraph (5) and paragraph
11 "c", subparagraph (5) nothing in this chapter shall be deemed
12 to empower the department to make any rule.

13 Sec. 124. Section 200.3, subsection 20, Code 1995, is
14 amended to read as follows:

15 20. "Rule" means a rule as defined in section ~~17A-2~~
16 17A.1102 which materially affects the operation of an
17 anhydrous ammonia plant. The term includes a rule which was
18 in effect prior to July 1, 1984.

19 Sec. 125. Section 203C.10, unnumbered paragraph 2, Code
20 1995, is amended to read as follows:

21 If upon the filing of the information or complaint the
22 department finds that the licensee has failed to meet the
23 warehouse operator's obligation or otherwise has violated or
24 failed to comply with the provisions of this chapter or any
25 rule ~~promulgated~~ adopted under this chapter, and if the
26 department finds that the public health, safety or welfare
27 imperatively requires emergency action, then the department
28 without hearing may order a summary suspension of the license
29 in the manner provided in section ~~17A-18~~ 17A.4105. When so
30 ordered, a copy of the order of suspension shall be served
31 upon the licensee at the time the information or complaint is
32 served as provided in this section.

33 Sec. 126. Section 207.14, subsection 2, unnumbered
34 paragraph 2, Code 1995, is amended to read as follows:

35 If upon expiration of the time as fixed the administrator

1 finds in writing that the violation has not been abated, the
2 administrator, notwithstanding ~~section-17A-18~~ sections
3 17A.4105 and 17A.4501, shall immediately order a cessation of
4 coal mining and reclamation operations relating to the
5 violation until the order is modified, vacated, or terminated
6 by the administrator pursuant to procedures outlined in this
7 section. In the order of cessation issued by the
8 administrator under this subsection, the administrator shall
9 include the steps necessary to abate the violation in the most
10 expeditious manner possible.

11 Sec. 127. Section 207.15, subsection 5, unnumbered
12 paragraph 2, Code 1995, is amended to read as follows:

13 Notwithstanding section ~~17A-20~~ 17A.5118, an appeal bond
14 shall be required for an appeal of a judgment assessing a
15 civil penalty.

16 Sec. 128. Section 216.15, subsection 3, paragraph b, Code
17 Supplement 1995, is amended to read as follows:

18 b. For purposes of this chapter, an administrative law
19 judge issuing a determination of probable cause or no probable
20 cause under this section is exempt from ~~section-17A-17~~
21 sections 17A.4213 and 17A.4214.

22 Sec. 129. Section 216.17, subsection 1, unnumbered
23 paragraphs 2 and 3, Code 1995, are amended to read as follows:

24 For purposes of the time limit for filing a petition for
25 judicial review under the Iowa administrative procedure Act,
26 specified by section ~~17A-19~~ 17A.5108, the issuance of a final
27 decision of the commission under this chapter occurs on the
28 date notice of the decision is mailed by certified mail, to
29 the parties.

30 Notwithstanding the time limit provided in section ~~17A-19~~,
31 ~~subsection-3~~ 17A.5108, a petition for judicial review of no-
32 probable-cause decisions and other final agency actions which
33 are not of general applicability must be filed within thirty
34 days of the issuance of the final agency action.

35 Sec. 130. Section 216.17, subsection 6, Code 1995, is

1 amended to read as follows:

2 6. In the enforcement proceeding the court shall determine
3 its order on the same basis as it would in a proceeding
4 reviewing commission action under section ~~17A.19, subsection 8~~
5 17A.5117.

6 Sec. 131. Section 217.30, subsection 8, Code 1995, is
7 amended to read as follows:

8 8. The provisions of this section shall take precedence
9 over section ~~17A.12~~ 17A.4211, subsection 7 4.

10 Sec. 132. Section 225C.29, Code 1995, is amended to read
11 as follows:

12 225C.29 COMPLIANCE.

13 Except for a violation of section 225C.28B, subsection 2,
14 the sole remedy for violation of a rule adopted by the
15 commission to implement sections 225C.25 through 225C.28B
16 shall be by a proceeding for compliance initiated by request
17 to the division pursuant to chapter 17A. Any decision of the
18 division shall be in accordance with due process of law and is
19 subject to ~~appeal to the Iowa district court~~ judicial review
20 pursuant to ~~sections 17A.19 and 17A.20~~ chapter 17A, article 5,
21 and appeal pursuant to section 17A.5118 by any aggrieved
22 party. Either the division or a party in interest may apply
23 to the Iowa district court for an order to enforce the
24 decision of the division. Any rules adopted by the commission
25 to implement sections 225C.25 through 225C.28B do not create
26 any right, entitlement, property or liberty right or interest,
27 or private cause of action for damages against the state or a
28 political subdivision of the state or for which the state or a
29 political subdivision of the state would be responsible. Any
30 violation of section 225C.28B, subsection 2, shall solely be
31 subject to the enforcement by the commissioner of insurance
32 and penalties granted by chapter 507B for a violation of
33 section 507B.4, subsection 7.

34 Sec. 133. Section 229.23, subsection 3, Code 1995, is
35 amended to read as follows:

1 3. In addition to protection of the person's
2 constitutional rights, enjoyment of other legal, medical,
3 religious, social, political, personal and working rights and
4 privileges which the person would enjoy if the person were not
5 so hospitalized or detained, so far as is possible consistent
6 with effective treatment of that person and of the other
7 patients of the hospital. If the patient's rights are
8 restricted, the physician's direction to that effect shall be
9 noted on the patient's record. The department of human
10 services shall, in accordance with chapter 17A establish rules
11 setting forth the specific rights and privileges to which
12 persons so hospitalized or detained are entitled under this
13 ~~section, and the exceptions provided by section 17A-2,~~
14 ~~subsection 10, paragraphs "a" and "k", shall not be applicable~~
15 ~~to the rules so established.~~ The patient or the patient's
16 next of kin or friend shall be advised of these rules and be
17 provided a written copy upon the patient's admission to or
18 arrival at the hospital.

19 Sec. 134. Section 249A.3, subsection 11, paragraph b; Code
20 Supplement 1995, is amended to read as follows:

21 b. The department shall exercise the option provided in 42
22 U.S.C. § 1396p(c) to provide a period of ineligibility for
23 medical assistance due to a transfer of assets by a
24 noninstitutionalized individual or the spouse of a
25 noninstitutionalized individual. For noninstitutionalized
26 individuals, the number of months of ineligibility shall be
27 equal to the total, cumulative uncompensated value of all
28 assets transferred by the individual or the individual's
29 spouse on or after the look-back date specified in 42 U.S.C. §
30 1396p(c)(1)(B)(i), divided by the average monthly cost to a
31 private patient for nursing facility services in Iowa at the
32 time of application. The services for which
33 noninstitutionalized individuals shall be made ineligible
34 shall include any long-term care services for which medical
35 assistance is otherwise available. Notwithstanding section

1 ~~17A.4~~ sections 17A.3103 through 17A.3107, the department may
 2 adopt rules providing a period of ineligibility for medical
 3 assistance due to a transfer of assets by a
 4 noninstitutionalized individual or the spouse of a
 5 noninstitutionalized individual without notice of opportunity
 6 for public comment, to be effective immediately upon filing
 7 under section ~~17A.5~~ 17A.3115, subsection 2, paragraph "b",
 8 subparagraph (1).

9 Sec. 135. Section 252.27, unnumbered paragraph 2, Code
 10 1995, is amended to read as follows:

11 The board shall record its proceedings relating to the
 12 provision of assistance to specific persons under this
 13 chapter. A person who is aggrieved by a decision of the board
 14 may ~~appeal~~ seek judicial review of the decision as if it were
 15 ~~a-contested-case~~ an adjudicative proceeding before an agency
 16 and as if the person had exhausted administrative remedies in
 17 accordance with the procedures and standards ~~in-section~~
 18 ~~17A.19,--subsections-2-to-8-except-paragraphs-"b"-and-"c"-of~~
 19 ~~subsection-8,--and-section-17A.20~~ for judicial review in
 20 chapter 17A, article 5, except for section 17A.5116,
 21 subsection 3, paragraphs "b" and "g", and for appeal in
 22 section 17A.5118.

23 Sec. 136. Section 252J.8, subsection 4, paragraph d, Code
 24 Supplement 1995, is amended to read as follows:

25 d. If the licensing authority's rules and procedures
 26 conflict with the additional requirements of this section, the
 27 requirements of this section shall apply. Notwithstanding
 28 section ~~17A.18~~ 17A.4105, the obligor does not have a right to
 29 a hearing before the licensing authority to contest the
 30 authority's actions under this chapter but may request a court
 31 hearing pursuant to section 252J.9 within thirty days of the
 32 provision of notice under this section.

33 Sec. 137. Section 256B.6, unnumbered paragraph 3, Code
 34 1995, is amended to read as follows:

35 Notwithstanding ~~section-17A.11~~ chapter 17A, article 4, the

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

5 Sec. 138. Section 261B.3, unnumbered paragraph 2, Code
6 1995, is amended to read as follows:

7 The secretary may request additional information as
8 necessary to enable the secretary to determine the accuracy
9 and completeness of the information contained in the
10 registration application. If the secretary believes that
11 false, misleading, or incomplete information has been
12 submitted in connection with an application for registration,
13 the secretary may deny registration. The secretary shall
14 conduct a hearing on the denial if a hearing is requested by a
15 school. The secretary may withhold a certificate of
16 registration pending the outcome of the hearing. Upon a
17 finding after the hearing that information contained in the
18 registration application is false, misleading, or incomplete,
19 the secretary shall deny a certificate of registration to the
20 school. The decision of the secretary is subject to judicial
21 review in accordance with ~~section-17A-19~~ chapter 17A, article
22 5.

23 Sec. 139. Section 262.69, unnumbered paragraph 3, Code
24 1995, is amended to read as follows:

25 Notwithstanding the provisions of chapter 17A, a proceeding
26 conducted by the state board of regents or an institution
27 governed by the state board of regents to determine the
28 validity of an assessment of a violation of traffic control
29 and parking rules is not ~~a-contested-case~~ an adjudicative
30 proceeding as defined in section ~~17A-27-subsection-5~~ 17A.1102.

31 Sec. 140. Section 267.6, Code 1995, is amended to read as
32 follows:

33 267.6 IOWA ADMINISTRATIVE PROCEDURE ACT.

34 The provisions of chapter 17A shall not apply to the
35 council or any actions taken by it, except that any

1 recommendations adopted by the council pursuant to section
2 267.5, subsection 3, and any rules adopted by the council
3 shall be adopted, amended, or repealed only after compliance
4 with the provisions of ~~sections 17A:4, 17A:5, and 17A:6~~
5 chapter 17A, article 3.

6 Sec. 141. Section 272C.6, subsection 4, unnumbered
7 paragraphs 2 and 3, Code 1995, are amended to read as follows:

8 Pursuant to the provisions of section ~~17A:19, subsection 6~~
9 17A.5115, a licensing board upon ~~an appeal~~ seeking of judicial
10 review by the licensee of the decision by the licensing board,
11 shall transmit the entire record of the ~~contested case~~
12 adjudicative proceeding to the reviewing court.

13 Notwithstanding the provisions of section ~~17A:19,~~
14 ~~subsection 6~~ 17A.5115, if a waiver of privilege has been
15 involuntary and evidence has been received at a disciplinary
16 hearing, the court shall order withheld the identity of the
17 individual whose privilege was waived.

18 Sec. 142. Section 316.9, subsection 4, Code 1995, is
19 amended to read as follows:

20 4. A person aggrieved by a determination as to eligibility
21 for assistance or a payment authorized by this chapter, or the
22 amount of a payment, upon application may have the matter
23 reviewed. Rules governing reviews shall provide for a prompt
24 one-step uncomplicated fact-finding process. Such a review is
25 an appeal of an agency action as defined in section ~~17A:2,~~
26 ~~subsection 2~~ 17A.1102, and is not ~~a contested case~~ an
27 adjudicative proceeding. The decision rendered shall be the
28 displacing agency's final agency action.

29 Sec. 143. Section 321.52, subsection 3, unnumbered
30 paragraph 2, Code Supplement 1995, is amended to read as
31 follows:

32 However, upon application the department upon a showing of
33 good cause may issue a certificate of title after the
34 fourteen-day period for a junked vehicle for which a junking
35 certificate has been issued. For purposes of this subsection,

1 "good cause" means that the junking certificate was obtained
2 by mistake or inadvertence. If a person's application to the
3 department is denied, the person may make application for a
4 certificate of title under the bonding procedure as provided
5 in section 321.24, if the vehicle qualifies as an antique
6 vehicle under section 321.115, subsection 1, or the person may
7 seek judicial review as provided under ~~sections 17A-19 and~~
8 ~~17A-20~~ chapter 17A, article 5, and appellate review under
9 section 17A.5118.

10 Sec. 144. Section 321.253A, subsection 1, Code 1995, is
11 amended to read as follows:

12 1. The department shall place and maintain directional
13 signs upon primary highways which provide information about
14 historic sites which are located on land owned or managed by
15 an agency as defined in section ~~17A-2~~ 17A.1102. The signs
16 shall conform to the manual of uniform traffic devices.
17 However, the directional signs are not subject to requirements
18 applicable to tourist-oriented directional signs.

19 Sec. 145. Section 321.556, subsections 1 and 2, Code
20 Supplement 1995, are amended to read as follows:

21 1. If, upon review of the record of convictions of any
22 person, the department determines that the person appears to
23 be a habitual offender, the department shall immediately
24 notify the person in writing and afford the licensee an
25 opportunity for a hearing. The notice shall direct the person
26 named in the notice to appear for hearing and show cause why
27 the person should not be barred from operating a motor vehicle
28 on the highways of this state. The notice shall meet the
29 requirements of section ~~17A-12~~ 17A.4206 and shall be served in
30 the manner provided in that section. Service of notice on any
31 nonresident of this state may be made in the same manner as
32 provided in sections 321.498 through 321.506. A peace officer
33 stopping a person for whom a notice to appear for hearing has
34 been issued under the provisions of this section may
35 personally serve the notice upon forms approved by the

1 department to satisfy the notice requirements of this section.
2 A peace officer may confiscate the motor vehicle license of a
3 person if the license has been revoked or has been suspended
4 subsequent to a hearing and the person has not forwarded the
5 motor vehicle license to the department as required.

6 2. The hearing shall be conducted as provided ~~in section~~
7 ~~17A-12~~ for an adjudicative proceeding in chapter 17A, article
8 4, before the department in the county where the alleged
9 events occurred, unless the director and the person agree that
10 the hearing may be held in some other county, or the hearing
11 may be held by telephone conference at the discretion of the
12 agency conducting the hearing. The hearing shall be recorded
13 and its scope shall be limited to the issue of whether the
14 person notified is a habitual offender.

15 Sec. 146. Section 321.560, Code Supplement 1995, is
16 amended to read as follows:

17 321.560 PERIOD OF REVOCATION.

18 A license to operate a motor vehicle in this state shall
19 not be issued to any person declared to be a habitual offender
20 under section 321.555, subsection 1, for a period of not less
21 than two years nor more than six years from the date of the
22 final decision of the department under section ~~17A-19~~ 17A.4215
23 or the date on which the district court upholds the final
24 decision of the department, whichever occurs later. However,
25 a temporary restricted license may be issued to a person
26 declared to be a habitual offender under section 321.555,
27 subsection 1, paragraph "c", pursuant to section 321.215,
28 subsection 2. A license to operate a motor vehicle in this
29 state shall not be issued to any person declared to be a
30 habitual offender under section 321.555, subsection 2, for a
31 period of one year from the date of the final decision of the
32 department under section ~~17A-19~~ 17A.4215 or the date on which
33 the district court upholds the final decision of the
34 department, whichever occurs later. The department shall
35 adopt rules under chapter 17A which establish a point system

1 which shall be used to determine the period for which a person
2 who is declared to be a habitual offender under section
3 321.555, subsection 1, shall not be issued a license.

4 Sec. 147. Section 368.22, unnumbered paragraph 4, and
5 subsections 1, 2, and 3, Code 1995, are amended to read as
6 follows:

7 The judicial review provisions of this section and chapter
8 17A, article 5, shall be the exclusive means by which a person
9 or party who is aggrieved or adversely affected by agency
10 action may seek judicial review of that agency action. The
11 court's review on appeal of a decision is limited to questions
12 relating to jurisdiction, regularity of proceedings, and
13 whether the decision appealed from is arbitrary, unreasonable,
14 or without substantial supporting evidence. The court may
15 reverse and remand a decision of the board or a committee,
16 with appropriate directions. The following ~~portions of~~
17 ~~section 17A-19~~ provisions of chapter 17A are not applicable to
18 this chapter:

19 ~~1. The part of subsection 2 which relates to where~~
20 ~~proceedings for judicial review shall be instituted:~~ Section
21 17A.5104, subsection 2.

22 ~~2. Subsection 5:~~ Section 17A.5111.

23 ~~3. Subsection 8:~~ Section 17A.5116.

24 ~~4. Section 17A.5117.~~

25 Sec. 148. Section 421.17, subsection 20, unnumbered
26 paragraph 2, Code Supplement 1995, is amended to read as
27 follows:

28 The provisions of ~~sections 17A-10 to 17A-18~~ chapter 17A,
29 article 4, relating to ~~contested cases~~ adjudicative
30 proceedings shall not apply to any matters involving the
31 equalization of valuations of classes of property as
32 authorized by this chapter and chapter 441. This exemption
33 shall not apply to a hearing before the state board of tax
34 review.

35 Sec. 149. Section 422.21, unnumbered paragraph 5, Code

1 1995, is amended to read as follows:

2 The director shall determine for the 1989 and each
3 subsequent calendar year the annual and cumulative inflation
4 factors for each calendar year to be applied to tax years
5 beginning on or after January 1 of that calendar year. The
6 director shall compute the new dollar amounts as specified to
7 be adjusted in section 422.5 by the latest cumulative
8 inflation factor and round off the result to the nearest one
9 dollar. The annual and cumulative inflation factors
10 determined by the director are not rules as defined in section
11 ~~17A.27-subsection-10~~ 17A.1102. The director shall determine
12 for the 1990 calendar year and each subsequent calendar year
13 the annual and cumulative standard deduction factors to be
14 applied to tax years beginning on or after January 1 of that
15 calendar year. The director shall compute the new dollar
16 amounts of the standard deductions specified in section 422.9,
17 subsection 1, by the latest cumulative standard deduction
18 factor and round off the result to the nearest ten dollars.
19 The annual and cumulative standard deduction factors
20 determined by the director are not rules as defined in section
21 ~~17A.27-subsection-10~~ 17A.1102.

22 Sec. 150. Section 422.53, subsection 5, Code Supplement
23 1995, is amended to read as follows:

24 5. If the holder of a permit fails to comply with any of
25 the provisions of this division or any order or rule of the
26 department adopted under this division or is substantially
27 delinquent in the payment of a tax administered by the
28 department or the interest or penalty on the tax, or if the
29 person is a corporation and if any officer having a
30 substantial legal or equitable interest in the ownership of
31 the corporation owes any delinquent tax of the permit-holding
32 corporation, or interest or penalty on the tax, administered
33 by the department, the director may revoke the permit. The
34 director shall send notice by mail to a permit holder
35 informing that person of the director's intent to revoke the

1 permit and of the permit holder's right to a hearing on the
2 matter. If the permit holder petitions the director for a
3 hearing on the proposed revocation, after giving ten days'
4 notice of the time and place of the hearing in accordance with
5 section ~~17A:187-subsection-3~~ 17A.4105, the matter may be heard
6 and a decision rendered. The director may restore permits
7 after revocation. The director shall adopt rules setting
8 forth the period of time a retailer must wait before a permit
9 may be restored or a new permit may be issued. The waiting
10 period shall not exceed ninety days from the date of the
11 revocation of the permit.

12 Sec. 151. Section 424.5, subsection 6, Code 1995, is
13 amended to read as follows:

14 6. To revoke a permit the director shall serve notice as
15 required by section ~~17A:18~~ 17A.4105 to the permit holder
16 informing that person of the director's intent to revoke the
17 permit and of the permit holder's right to a hearing on the
18 matter. If the permit holder petitions the director for a
19 hearing on the proposed revocation, after giving ten days'
20 notice of the time and place of the hearing in accordance with
21 section ~~17A:187-subsection-3~~ 17A.4105, the matter may be heard
22 and a decision rendered. The director may restore permits
23 after revocation. The director shall adopt rules setting
24 forth the period of time a depositor must wait before a permit
25 may be restored or a new permit may be issued. The waiting
26 period shall not exceed ninety days from the date of the
27 revocation of the permit.

28 Sec. 152. Section 441.21, subsection 11, Code Supplement
29 1995, is amended to read as follows:

30 11. The percentage of actual value computed by the
31 director for agricultural property, residential property,
32 commercial property, industrial property and property valued
33 by the department of revenue and finance pursuant to chapters
34 428, 433, 434, 436, 437, and 438 and used to determine
35 assessed values of those classes of property does not

1 constitute a rule as defined in section ~~17A:27-subsection-10~~
2 17A.1102.

3 Sec. 153. Section 441.49, unnumbered paragraph 7, Code
4 1995, is amended to read as follows:

5 Tentative and final equalization orders issued by the
6 director of revenue and finance are not rules as defined in
7 section ~~17A:27-subsection-7~~ 17A.1102.

8 Sec. 154. Section 455B.105, subsection 9, Code 1995, is
9 amended to read as follows:

10 9. Upon request of at least four members of the commission
11 before adopting or modifying a rule, the director shall
12 prepare and publish with the notice required under section
13 ~~17A:4~~ 17A.3103, subsection 1, paragraph "a", a comprehensive
14 estimate of the economic impact of the proposed rule or
15 modification.

16 Sec. 155. Section 455B.446, subsection 4, Code 1995, is
17 amended to read as follows:

18 4. Notice of the hearing in the form provided in section
19 ~~17A:127-subsection-2~~, 17A.4206 shall be published in a
20 newspaper of general circulation in each city and county in
21 which the proposed site is located once a week for two
22 consecutive weeks with the second publication being at least
23 twenty days prior to the date of the hearing.

24 Sec. 156. Section 455G.4, subsection 3, paragraph b, Code
25 1995, is amended by striking the paragraph.

26 Sec. 157. Section 476.6, subsection 19, paragraph a, Code
27 1995, is amended to read as follows:

28 a. The board shall conduct ~~contested-case~~ adjudicative
29 proceedings for review of energy efficiency plans and budgets
30 filed by rate-regulated gas or electric utilities. The board
31 may approve, reject, or modify the plans and budgets.

32 Notwithstanding the provisions of section ~~17A:197-subsection-5~~
33 17A.5111, in an application for judicial review of the board's
34 decision concerning a utility's energy efficiency plan or
35 budget, the reviewing court shall not order a stay. Whenever

1 a request to modify an approved plan or budget is filed
2 subsequently by the office of consumer advocate or a rate-
3 regulated gas or electric public utility, the board shall
4 promptly initiate a formal proceeding if the board determines
5 that any reasonable ground exists for investigating the
6 request. The formal proceeding may be initiated at any time
7 by the board on its own motion. Implementation of board
8 approved plans or budgets shall be considered continuous in
9 nature and shall be subject to investigation at any time by
10 the board or the office of the consumer advocate.

11 Sec. 158. Section 476A.1, subsection 1, Code 1995, is
12 amended to read as follows:

13 1. "Agency" means an agency as defined in section ~~17A-27~~
14 ~~subsection-1~~ 17A.1102.

15 Sec. 159. Section 476A.4, subsection 3, Code 1995, is
16 amended to read as follows:

17 3. Notice of the proceeding in the form provided in
18 section ~~17A-127-subsection-27~~ 17A.4206 shall be published in a
19 newspaper of general circulation in each county in which the
20 proposed site is located once a week for two consecutive weeks
21 with the second publication being at least twenty days prior
22 to the date of the hearing. The board shall be responsible for
23 publication and delivery of notices required by this section.

24 Sec. 160. Section 479.29, subsection 1, Code Supplement
25 1995, is amended to read as follows:

26 1. The board shall, pursuant to chapter 17A, adopt rules
27 establishing standards for the protection of underground
28 improvements during the construction of pipelines, to protect
29 soil conservation and drainage structures from being
30 permanently damaged by pipeline construction and for the
31 restoration of agricultural lands after pipeline construction.
32 To ensure that all interested persons are informed of this
33 rulemaking procedure and are afforded a right to participate,
34 the board shall schedule an opportunity for oral presentations
35 on the proposed rulemaking, and, in addition to the

1 requirements of ~~section-17A-4~~ sections 17A.3103 and 17A.3104,
2 shall distribute copies of the notice of intended action and
3 opportunity for oral presentations to each county board of
4 supervisors. Any county board of supervisors may, under the
5 provisions of chapter 17A, and subsequent to the rulemaking
6 proceedings, petition under those provisions for additional
7 rulemaking to establish standards to protect soil conservation
8 practices, structures and drainage structures within that
9 county. Upon the request of the petitioning county the board
10 shall schedule a hearing to consider the merits of the
11 petition. Rules adopted under this section shall not apply
12 within the boundaries of a city, unless the land is used for
13 agricultural purposes.

14 Sec. 161. Section 479A.14, subsection 1, Code Supplement
15 1995, is amended to read as follows:

16 1. The board shall adopt rules establishing standards to
17 protect underground improvements during the construction of
18 pipelines, to protect soil conservation and drainage
19 structures from being permanently damaged by pipeline
20 construction, and for the restoration of agricultural lands
21 after pipeline construction. To ensure that all interested
22 persons are informed of this rulemaking procedure and are
23 afforded a right to participate, the board shall schedule an
24 opportunity for oral presentations on the proposed rulemaking
25 and, in addition to the requirements of ~~section-17A-4~~ sections
26 17A.3103 and 17A.3104, shall distribute copies of the notice
27 of intended action and opportunity for oral presentations to
28 each county board of supervisors. A county board of
29 supervisors may, under chapter 17A and subsequent to the
30 rulemaking proceedings, petition for additional rulemaking to
31 establish standards to protect soil conservation practices,
32 structures, and drainage structures within that county. Upon
33 the request of the petitioning county, the board shall
34 schedule a hearing to consider the merits of the petition.
35 Rules adopted under this section do not apply within the

1 boundaries of a city, unless the land is used for agricultural
2 purposes.

3 Sec. 162. Section 479B.20, subsection 1, Code Supplement
4 1995, is amended to read as follows:

5 1. The board, pursuant to chapter 17A, shall adopt rules
6 establishing standards for the protection of underground
7 improvements during the construction of pipelines or
8 underground storage facilities, to protect soil conservation
9 and drainage structures from being permanently damaged by
10 construction of the pipeline or underground storage facility,
11 and for the restoration of agricultural lands after pipeline
12 or underground storage facility construction. To ensure that
13 all interested persons are informed of this rulemaking
14 procedure and are afforded a right to participate, the board
15 shall schedule an opportunity for oral presentations on the
16 proposed rulemaking, and, in addition to the requirements of
17 ~~section-17A.4~~ sections 17A.3103 and 17A.3104, shall distribute
18 copies of the notice of intended action and opportunity for
19 oral presentations to each county board of supervisors. Any
20 county board of supervisors may, under the provisions of
21 chapter 17A, and subsequent to the rulemaking proceedings,
22 petition under those provisions for additional rulemaking to
23 establish standards to protect soil conservation practices,
24 structures, and drainage structures within that county. Upon
25 the request of the petitioning county, the board shall
26 schedule a hearing to consider the merits of the petition.
27 Rules adopted under this section shall not apply within the
28 boundaries of a city unless the land is used for agricultural
29 purposes.

30 Sec. 163. Section 514B.4A, subsection 2, Code 1995, is
31 amended to read as follows:

32 2. Rules proposed by the commissioner for adoption for the
33 direct provision of health care services by a health
34 maintenance organization, shall be forwarded by the
35 commissioner to the director of public health for review,

1 comment, and recommendation, prior to submission to the
2 administrative rules coordinator pursuant to section ~~17A-4~~
3 17A.3103.

4 Sec. 164. Section 519A.4, subsection 1, Code 1995, is
5 amended to read as follows:

6 1. The association shall submit a plan of operation to the
7 commissioner, together with any amendments necessary or
8 suitable to assure the fair, reasonable, and equitable
9 administration of the association consistent with sections
10 519A.2 to 519A.13. The plan of operation and any amendments
11 thereto shall become effective only after promulgation
12 adoption of the plan or amendment by the commissioner as a
13 rule pursuant to ~~section-17A-4~~ chapter 17A, article 3:
14 Provided that the initial plan may in the discretion of the
15 commissioner become effective immediately upon filing with the
16 secretary of state pursuant to section ~~17A-5~~ 17A.3115,
17 subsection 2, paragraph "b", subparagraph (1).

18 Sec. 165. Section 524.228, subsection 4, Code 1995, is
19 amended to read as follows:

20 4. A hearing provided for in this section shall be
21 presided over by an administrative law judge appointed in
22 accordance with ~~section-17A-11~~ chapter 17A, article 4. The
23 hearing shall be private, unless the superintendent determines
24 after full consideration of the views of the party afforded
25 the hearing, that a public hearing is necessary to protect the
26 public interest. After the hearing, and within thirty days
27 after the case has been submitted for decision, the
28 superintendent shall review the proposed order of the
29 administrative law judge and render a final decision,
30 including findings of fact upon which the decision is
31 predicated, and issue and serve upon each party to the
32 proceeding an order consistent with this section.

33 Sec. 166. Section 533.6A, subsection 4, Code 1995, is
34 amended to read as follows:

35 4. A hearing provided for in this section shall be

1 presided over by an administrative law judge appointed in
2 accordance with ~~section 17A-11~~ chapter 17A, article 4. The
3 hearing shall be private, unless the superintendent determines
4 after full consideration of the views of the party afforded
5 the hearing, that a public hearing is necessary to protect the
6 public interest. After the hearing, and within thirty days
7 after the case has been submitted for decision, the
8 superintendent shall review the proposed order of the
9 administrative law judge and render a final decision,
10 including findings of fact upon which the decision is
11 predicated, and issue and serve upon each party to the
12 proceeding an order consistent with this section.

13 Sec. 167. Section 534.405, unnumbered paragraph 7, Code
14 1995, is amended to read as follows:

15 Actions taken by the superintendent under this section are
16 not subject to section ~~17A-187-subsection-3~~ 17A.4105.

17 Sec. 168. Section 535B.7, subsection 2, unnumbered
18 paragraph 1, Code 1995, is amended to read as follows:

19 The administrator may order an emergency suspension of a
20 licensee's license pursuant to section ~~17A-187-subsection-3~~
21 17A.4501. A written order containing the facts or conduct
22 which warrants the emergency action shall be timely sent to
23 the licensee by restricted certified mail. Upon issuance of
24 the suspension order, the licensee must also be notified of
25 the right to an evidentiary hearing. A suspension proceeding
26 shall be promptly instituted and determined.

27 Sec. 169. Section 904.602, subsection 9, unnumbered
28 paragraph 2, Code 1995, is amended to read as follows:

29 These records are exempt from the public inspection
30 requirements in ~~section 17A-3~~ sections 17A.2101, 17A.2102, and
31 section 22.2.

32 Sec. 170. Section 906.3, Code 1995, is amended to read as
33 follows:

34 906.3 DUTIES OF PAROLE BOARD.

35 The board of parole shall adopt rules regarding a system of

1 paroles from correctional institutions, and shall direct,
2 control, and supervise the administration of the system of
3 paroles. The board of parole shall consult with the director
4 of the department of corrections on rules regarding a system
5 of work release and shall assist in the direction, control,
6 and supervision of the work release system. The board shall
7 determine which of those persons who have been committed to
8 the custody of the director of the Iowa department of
9 corrections, by reason of their conviction of a public
10 offense, shall be released on parole or work release. The
11 grant or denial of parole or work release is not a-contested
12 case an adjudicative proceeding as defined in section ~~17A-2~~
13 17A.1102.

14 Sec. 171. REPEAL.

15 1. Sections 17A.1 through 17A.5, 17A.7, and 17A.9 through
16 17A.33, Code 1995, are repealed.

17 2. Sections 17A.6 and 17A.8, Code Supplement 1995, are
18 repealed.

19 EXPLANATION

20 This bill repeals the current Iowa Administrative Procedure
21 Act under chapter 17A and replaces it with a new Iowa
22 Administrative Procedure Act. The new Act is based in part on
23 the 1981 Model State Administrative Procedures Act of the
24 national conference of commissioners on uniform state laws.
25 Like the current chapter 17A, the proposed new Act applies to
26 all state agencies and covers four main subjects: 1) public
27 access to agency law and policy; 2) agency rulemaking
28 procedure and the review of agency rules; 3) agency
29 adjudication; and 4) the judicial review of agency action.

30 The bill makes several changes from current law.

31 First, the bill imposes several new or additional
32 requirements concerning public access to agency law. New
33 section 17A.2101 requires each agency to compile, index, and
34 make available to the public, with some minor exceptions, all
35 agency policies of general applicability that are not required

1 to be published.

2 The bill also makes several changes concerning the adoption
3 and effectiveness of rules. The bill requires all agencies,
4 as soon as feasible and to the extent practicable, to make
5 their law through rules adopted after public rulemaking
6 proceedings in which all interested persons may participate
7 and which are subject to legislative and gubernatorial review.
8 The bill also requires each agency to maintain an up-to-date
9 public rulemaking docket containing all rules proposed by that
10 agency and in process and all rules currently under active
11 consideration within that agency for future proposal. New
12 section 17A.3105 requires an agency to prepare, in specified
13 circumstances, a detailed, structured, regulatory (cost-
14 benefit) analysis for a proposed rule that is available to the
15 general public. New section 17A.3107 specifies when a
16 variance between the text of a proposed rule and the text of
17 the adopted rule based on that proposed rule is sufficiently
18 substantial so that the agency must hold additional public
19 proceedings before it can adopt the rule. New section
20 17A.3109 authorizes agencies to omit usual rulemaking
21 procedures for wholly interpretive rules only if the rules
22 issued in reliance on that exemption are subject to de novo
23 judicial review for their correctness. Section 17A.3110
24 requires an explanatory statement for each adopted rule and
25 makes the reasons contained in that statement the sole basis
26 on which the agency may defend the legality of that rule.
27 Section 17A.3111 specifies the required contents, style, and
28 form for all adopted rules. Section 17A.3112 requires the
29 creation of a detailed public agency rulemaking record for
30 each adopted rule. Section 17A.3117 requires agencies, after
31 a petition therefor, to adopt, as soon as feasible and to the
32 extent practicable, a rule subject to public rulemaking
33 procedures superseding specified principles of law or policy
34 lawfully declared in individual cases.

35 Section 17A.3201 requires each agency to engage in a

1 formal, systematic, and periodic review of its rules to
2 facilitate the elimination or amendment of its unnecessary
3 rules. Sections 17A.3202 through 17A.3204 provide for the
4 powers of the governor and the administrative rules review
5 committee of the general assembly in reviewing agency rules.

6 Section 17A.4106 requires the waiver in individual cases of
7 a particular rule that is overbroad because its application in
8 those cases would not in actual practice serve any of the
9 purposes of the rule and authorizes the waiver of a particular
10 rule in individual cases where its application would cause
11 undue hardship, its waiver is consistent with the public
12 interest, and would not prejudice the rights of any other
13 person.

14 The bill also provides for the adjudicative process to be
15 applied in various situations. The bill replaces the current
16 reference to contested case proceedings with adjudicative
17 proceedings. The bill provides that the product of agency
18 adjudication (an "order") that is subject to the provisions of
19 the Act includes all agency action of particular applicability
20 defining the legal rights, duties, or privileges, of specified
21 persons. The bill requires agencies, with only few
22 exceptions, to conduct adjudicatory proceedings before issuing
23 an "order" and that agencies shall conduct a "formal
24 adjudicative hearing" as the process for issuing an order,
25 unless another statutory provision or a rule authorized by
26 this Act provides otherwise, and specifies all of the elements
27 of such a proceeding. Sections 17A.4204 and 17A.4205 provide
28 for and regulate prehearing conferences in formal adjudicative
29 hearings. Sections 17A.4206 through 17A.4208 provide for the
30 specificity of the notice, pleadings, and default requirements
31 applicable to formal adjudicative hearings. Section 17A.4209
32 provides for and regulates intervention in formal adjudicative
33 hearings. Section 17A.4210 requires notice to persons who are
34 the subject of an agency investigation of any subpoenas
35 related to that investigation that are directed at third

1 persons. Section 17A.4213 also imposes ex parte
2 communications prohibitions in formal adjudicative hearings
3 and additional remedies for their violation. Section 17A.4214
4 provides for separation of functions requirements and remedies
5 for their violation in formal adjudicative hearings, including
6 entirely new prohibitions on the combination of investigative
7 and subsequent decision-making functions and probable cause
8 finding and subsequent decision-making functions. Section
9 17A.4215 provides for the required contents of agency orders
10 and the burden of proof in formal adjudicative hearings.

11 Section 17A.4220 establishes an effective date for
12 adjudicatory orders in formal adjudicative hearings.

13 Section 17A.4301 establishes a wholly separate and
14 independent office of administrative hearings to house and
15 provide rules governing administrative law judges (ALJ)
16 including rules imposing on all persons who act as presiding
17 officers a code of administrative judicial conduct that is
18 similar to the Iowa code of judicial conduct; that section
19 also requires all newly hired ALJs who preside over formal
20 adjudicative hearings to be admitted to the bar of this state.

21 Sections 17A.4401 to 17A.4403 create and regulate a
22 conference adjudicative hearing of less formality, complexity,
23 and cost, than a formal adjudicative hearing, and establish
24 guidelines prescribing the precise and limited circumstances
25 in which agencies may use a conference adjudicative hearing.

26 The bill also creates and regulates very informal, summary,
27 low-cost adjudicative proceedings, called emergency and
28 summary adjudicative proceedings, and prescribes the limited
29 circumstances in which agencies may use those proceedings.

30 The bill also makes provision for the judicial review of
31 agency action. Section 17A.5102 statutorily defines the
32 distinction between "final" and "nonfinal" agency actions
33 which are subject to different requirements for judicial
34 review. Section 17A.5103 increases the grounds upon which
35 nonfinal agency action is reviewable. Section 17A.5106

1 confers standing to seek judicial review on specified classes
2 of persons and also lists three elements that must be
3 satisfied to qualify for standing under the "aggrieved and
4 adversely affected" standard. Section 17A.5107 increases the
5 grounds justifying a failure to exhaust administrative
6 remedies prior to filing a suit for judicial review of agency
7 action. Section 17A.5108 specifies in detail the time
8 requirements for review of various types of agency action.
9 Section 17A.5111 specifies a standard for the issuance by the
10 reviewing court of a stay of agency action pending judicial
11 review and clarifies the right of an agency to grant a stay
12 after a judicial review proceeding has commenced. Section
13 17A.5112 indicates the circumstances in which judicial review
14 may be obtained of issues that were not previously raised
15 before the agency. Section 17A.5114 specifies the
16 circumstances in which new evidence may be taken by the court
17 reviewing the agency action and in which that court may remand
18 the matter to the agency for the taking of additional
19 evidence. Section 17A.5116 greatly elaborates and increases
20 the specificity of the standards for judicial review,
21 expressly indicates when a reviewing court may and when it may
22 not substitute its judgment de novo for that of the agency,
23 and expressly prescribes the burden of persuasion with respect
24 to those standards. Section 17A.5117 provides for the various
25 types of relief available in proceedings for judicial review.
26 Section 17A.5118 codifies the appropriate standard for Iowa
27 supreme court review of a district court decision reviewing
28 agency action.

29 Additional conforming amendments to the Code may be
30 necessary to fully implement this bill.

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Vilsack
Giannetto
Neuhauser
Ruffers
McKeon

SSB: 2280

Judiciary

SENATE FILE HF 2404
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON GIANNETTO)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the Iowa administrative procedure Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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ARTICLE 1

GENERAL PROVISIONS

Section 1. NEW SECTION. 17A.1101 CITATION, STATEMENT OF PURPOSE, AND CONSTRUCTION.

1. This chapter may be cited as the "Iowa Administrative Procedure Act".

2. The purposes of this chapter are the following:

a. To provide legislative and gubernatorial oversight of powers and duties delegated to administrative agencies.

b. To increase the public accountability of administrative agencies.

c. To simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions.

d. To increase public access to information about agency law and policy.

e. To increase public participation in the formulation of administrative rules and the efficacy and acceptability of those rules.

f. To increase the fairness and efficiency of agencies in their conduct of adjudicatory proceedings.

g. To simplify the process of judicial review of agency action as well as to increase its availability and effectiveness.

3. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between the need for adequate protection of private rights and political control of agency processes and the need for efficient, economical, and effective government administration.

4. The coverage and requirements of this chapter shall be construed broadly to effectuate the purposes of this chapter and any exemptions from its requirements contained in this chapter or elsewhere shall be narrowly construed.

Sec. 2. NEW SECTION. 17A.1102 DEFINITIONS.

As used in this chapter, unless the context otherwise

1 requires:

2 1. "Adjudicative proceeding" means the process for
3 formulating and issuing an order.

4 2. "Agency" means a board, commission, department,
5 officer, or other administrative unit of this state, including
6 the agency head, and one or more members of the agency head or
7 agency employees or other persons directly or indirectly
8 purporting to act on behalf or under the authority of the
9 agency head. "Agency" does not mean the general assembly or
10 any of its components, the judicial department or any of its
11 components, the governor, or a political subdivision of the
12 state or any of the administrative units of a political
13 subdivision, but it does include a board, commission,
14 department, officer, or other administrative unit created or
15 appointed by joint or concerted action of an agency and one or
16 more political subdivisions of the state or any of their
17 administrative units. To the extent it purports to exercise
18 authority subject to any provision of this chapter, an
19 administrative unit otherwise qualifying as an "agency" must
20 be treated as a separate agency even if the administrative
21 unit is located within or subordinate to another agency.

22 3. "Agency action" means any one of the following:

23 a. The whole or a part of a rule or an order.

24 b. The failure to adopt a rule or issue an order.

25 c. An agency's performance of, or failure to perform, any
26 other duty, function, or activity, discretionary or otherwise.

27 4. "Agency head" means an individual or body of
28 individuals in whom the ultimate legal authority of the
29 agency, with respect to the matter at issue, is vested by any
30 provision of law.

31 5. "License" means a franchise, permit, certification,
32 approval, registration, charter, or similar form of
33 authorization required by law.

34 6. "Order" means an agency action of particular
35 applicability that determines the legal rights, duties,

1 privileges, immunities, or other legal interests of one or
2 more specific persons. The term does not include an
3 "executive order" issued by the governor pursuant to section
4 17A.1104 or 17A.3202.

5 7. "Party to agency proceedings" or "party" in context so
6 indicating, means any of the following:

7 a. A person to whom the agency action is specifically
8 directed.

9 b. A person named as a party to an agency proceeding or
10 allowed to intervene or participate as a party in the
11 proceeding.

12 8. "Party to judicial review or civil enforcement
13 proceeding" or "party" in context so indicating, means any of
14 the following:

15 a. A person who files a petition for judicial review or
16 civil enforcement.

17 b. A person named as a party in a proceeding for judicial
18 review or civil enforcement or allowed to participate as a
19 party in the proceeding.

20 9. "Person" means an individual, partnership, corporation,
21 association, governmental subdivision or unit thereof, or
22 public or private organization or entity of any character, and
23 includes another agency.

24 10. "Presiding officer" means an individual who presides
25 at any stage in an adjudicatory proceeding.

26 11. "Provision of law" means the whole or a part of the
27 federal or state constitution, or of any federal or state
28 statute, court rule, executive order, or rule of an agency.

29 12. "Rule" means the whole or a part of an agency
30 statement of general applicability that implements,
31 interprets, or prescribes law or policy, or the organization,
32 procedures, or practice requirements of an agency. The term
33 includes the amendment, repeal, or suspension of an existing
34 rule. Notwithstanding any other provision of law, "rule"
35 includes an executive order or directive of the governor which

1 creates an agency or establishes a program or which transfers
2 a program between agencies established by statute or rule.

3 13. "Rulemaking" means the process for formulating and
4 adopting a rule.

5 Sec. 3. NEW SECTION. 17A.1103 APPLICABILITY AND RELATION
6 TO OTHER LAW.

7 1. This chapter applies to all agencies and all
8 proceedings not expressly exempted, mentioning this chapter by
9 name or number.

10 2. This chapter creates only procedural rights and imposes
11 only procedural duties. The procedural rights and duties are
12 in addition to those created and imposed by other statutes.
13 To the extent that any other statute would diminish a right
14 created or duty imposed by this chapter, the other statute is
15 superseded by this chapter, unless the other statute expressly
16 provides otherwise, mentioning this chapter by name or number.

17 3. An agency may grant procedural rights to persons in
18 addition to those conferred by this chapter as long as rights
19 conferred upon other persons by any provision of law are not
20 substantially prejudiced.

21 Sec. 4. NEW SECTION. 17A.1104 SUSPENSION OF CHAPTER'S
22 PROVISIONS WHEN NECESSARY TO AVOID LOSS OF FEDERAL FUNDS OR
23 SERVICES.

24 1. To the extent necessary to avoid a denial of funds or
25 services from the United States which would otherwise be
26 available to the state, the governor by executive order may
27 suspend, in whole or in part, one or more provisions of this
28 chapter. The governor by executive order shall declare the
29 termination of a suspension as soon as it is no longer
30 necessary to prevent the loss of funds or services from the
31 United States.

32 2. An executive order issued under subsection 1 is subject
33 to the requirements applicable to the adoption and
34 effectiveness of a rule.

35 3. If any provision of this chapter is suspended pursuant

1 to this section, the governor shall promptly report the
2 suspension to the general assembly. The report must include
3 recommendations concerning any desirable legislation that may
4 be necessary to conform this chapter to federal law.

5 Sec. 5. NEW SECTION. 17A.1105 WAIVER.

6 Except to the extent precluded by another provision of law,
7 a person may waive any right conferred upon that person by
8 this chapter.

9 Sec. 6. NEW SECTION. 17A.1106 INFORMAL SETTLEMENTS.

10 Except to the extent precluded by another provision of law,
11 informal settlement of matters that may make unnecessary more
12 elaborate proceedings under this chapter is encouraged.
13 Agencies shall establish by rule specific procedures to
14 facilitate informal settlement of matters. This section does
15 not require any party or other person to settle a matter
16 pursuant to informal procedures.

17 Sec. 7. NEW SECTION. 17A.1107 CONVERSION OF PROCEEDINGS.

18 1. At any point in an agency proceeding the presiding
19 officer or other agency official responsible for the
20 proceeding may convert the proceeding to another type of
21 agency proceeding provided for by this chapter if the
22 conversion is appropriate under the particular circumstances,
23 is in the public interest, and does not prejudice the
24 substantial rights of any party. If required by any provision
25 of law, the presiding officer or other agency official
26 responsible for the proceeding shall convert the proceeding to
27 another type of agency proceeding provided by this chapter.

28 2. A conversion of a proceeding of one type to a
29 proceeding of another type may be effected only upon notice to
30 all parties to the original proceeding and an opportunity to
31 present argument on that issue. An order converting one type
32 of proceeding to another type of proceeding is a final order.

33 3. If the presiding officer or other agency official
34 responsible for the original proceeding would not have
35 authority over the new proceeding to which it is to be

1 converted, that officer or official, in accordance with agency
2 rules, shall secure the appointment of a successor to preside
3 over or be responsible for the new proceeding.

4 4. To the extent feasible and consistent with the rights
5 of parties and the requirements of this chapter pertaining to
6 the new proceeding, the record of the original agency
7 proceeding must be used in the new agency proceeding.

8 5. After a proceeding is converted from one type to
9 another, the presiding officer or other agency official
10 responsible for the new proceeding shall do all of the
11 following:

12 a. Give such additional notice to parties or other persons
13 as is necessary to satisfy the requirements of this chapter
14 pertaining to the new proceeding.

15 b. Dispose of the matters involved without further
16 proceedings if sufficient proceedings have already been held
17 to satisfy the requirements of this chapter pertaining to the
18 new proceeding.

19 c. Conduct or cause to be conducted any additional
20 proceedings necessary to satisfy the requirements of this
21 chapter pertaining to the new proceeding.

22 6. Each agency shall adopt rules to govern the conversion
23 of one type of proceeding to another. The rules must include
24 an enumeration of the factors to be considered in determining
25 whether and under what circumstances one type of proceeding
26 will be converted to another.

27 Sec. 8. NEW SECTION. 17A.1108 EFFECTIVE DATE.

28 This chapter takes effect on July 1, 1997, and does not
29 govern proceedings pending on that date. This chapter governs
30 all agency proceedings, and all proceedings for judicial
31 review or civil enforcement of agency action, commenced after
32 that date. This chapter also governs agency proceedings
33 conducted on a remand from a court or another agency after the
34 effective date of this chapter.

35

ARTICLE 2

1 PUBLIC ACCESS TO AGENCY LAW AND POLICY

2 Sec. 9. NEW SECTION. 17A.2101 PUBLICATION, COMPILATION,
3 INDEXING, AND PUBLIC INSPECTION OF RULES.

4 1. The administrative rules editor shall cause the "Iowa
5 Administrative Bulletin" to be published in pamphlet or
6 electronic form at least every other week containing all of
7 the following:

8 a. Notices of proposed rule adoption prepared in such a
9 manner so that the text of a proposed or adopted rule shows
10 the text of any existing rule being changed and the change
11 being made.

12 b. Newly filed adopted rules prepared so that the text of
13 the newly filed adopted rule shows the text of any existing
14 rule being changed and the change being made.

15 c. All proclamations and executive orders of the governor
16 which are general and permanent in nature.

17 d. Resolutions nullifying administrative rules passed by
18 the general assembly pursuant to article III, section 40 of
19 the Constitution of the State of Iowa.

20 e. Other materials deemed appropriate for such publication
21 by the administrative rules review committee or the
22 administrative rules coordinator.

23 2. Subject to the direction of the administrative rules
24 coordinator, the administrative rules editor shall cause the
25 "Iowa Administrative Code" to be compiled, indexed, and
26 published in loose-leaf or electronic form containing all
27 effective rules of each agency. The administrative rules
28 editor shall also cause loose-leaf or electronic supplements
29 to the Iowa administrative code to be published on a schedule
30 determined by the administrative rules coordinator and the
31 administrative rules review committee. Any such loose-leaf
32 supplements shall be in a form suitable for insertion in the
33 appropriate places in the permanent compilation, and any such
34 electronic supplements shall be wholly integrated into the
35 text of the permanent compilation. The administrative rules

1 coordinator shall devise a uniform numbering system for rules
2 and may renumber rules before publication to conform with the
3 system.

4 3. a. The administrative rules editor may omit from the
5 Iowa administrative bulletin or code any proposed or filed
6 adopted rule the publication of which would be unduly
7 cumbersome, expensive, or otherwise inexpedient, if all of the
8 following apply:

9 (1) The administrative rules editor and the administrative
10 rules coordinator determine that knowledge of the rule is
11 likely to be important to only a small class of persons.

12 (2) On application to the adopting agency, the proposed or
13 adopted rule in printed or electronic form is made available
14 at no more than its cost of reproduction.

15 (3) The administrative bulletin or code contains a notice
16 stating in detail the specific subject matter of the omitted
17 proposed or adopted rule and how a copy of the omitted
18 material may be obtained.

19 b. The administrative rules editor shall omit from the
20 Iowa administrative code any rule or portion of a rule
21 nullified by the general assembly pursuant to article III,
22 section 40 of the Constitution of the State of Iowa, any rule
23 or portion of a rule rescinded by the governor pursuant to
24 section 17A.3202, and any other rule that is no longer
25 effective.

26 4. The Iowa administrative bulletin and the Iowa
27 administrative code and its supplements shall be made
28 available upon request to all persons who subscribe to any of
29 them through the state printing division of the department of
30 general services. Copies of this code so made available shall
31 be kept current by the division.

32 Each agency shall also make available for public inspection
33 and copying in its principal office those portions of the Iowa
34 administrative bulletin and code containing all rules adopted
35 or used by the agency in the discharge of its functions, and

1 the index to those rules. An agency may satisfy the
2 requirements of this paragraph by making available for public
3 inspection and copying in its principal office a complete and
4 up-to-date set of the administrative bulletin and code.

5 5. All expenses incurred by the administrative rules
6 editor under this section shall be defrayed under section
7 2B.22.

8 6. a. The Iowa administrative code shall be cited as
9 (agency identification number) IAC, (chapter, rule, subrule,
10 lettered paragraph, or numbered subparagraph).

11 b. The Iowa administrative bulletin shall be cited as IAB
12 (volume), (number), (publication date), (page number), (ARC
13 number). "ARC number" means the identification number
14 assigned by the administrative rules coordinator to each
15 rulemaking document.

16 7. Except as otherwise required by law, subsections 1 and
17 2 do not apply to rules governed by section 17A.3116, and the
18 following provisions apply instead:

19 a. Each agency shall maintain an official, current, and
20 dated compilation that is indexed by subject, containing, to
21 the extent feasible and practicable, all of its rules within
22 the scope of section 17A.3116. Each addition to, change in,
23 or deletion from this official compilation must also be dated,
24 indexed, and a record thereof kept. All portions of the
25 compilation must be made available for public inspection and
26 copying at no more than the cost of reproduction; however, an
27 agency need not make available for public inspection and
28 copying those portions containing rules governed by section
29 17A.3116, subsection 2, except to the extent that such
30 inspection and copying is required by constitution or statute
31 or in discovery under the Iowa rules of civil or criminal
32 procedure. Certified copies of the full compilation must also
33 be furnished to the administrative rules coordinator and
34 members of the administrative rules review committee, and be
35 kept current by the agency at least every thirty days.

1 b. A rule subject to the requirements of this subsection
2 shall not be relied on by an agency to the detriment of any
3 person who does not have actual, timely knowledge of the
4 contents of the rule until the requirements of paragraph "a"
5 are satisfied. The burden of proving that knowledge or that
6 the failure to include a rule subject to this subsection in
7 the required compilation was justified because it was not
8 feasible or practicable to do so, is on the agency. This
9 provision is inapplicable to the extent necessary to avoid
10 imminent peril to the public health, safety, or welfare.

11 Sec. 10. NEW SECTION. 17A.2102 PUBLIC INSPECTION AND
12 INDEXING OF AGENCY ORDERS.

13 1. In addition to other requirements imposed by any
14 provision of law, each agency shall make all written final
15 orders, including settlement orders, available for public
16 inspection and copying at no more than the cost of
17 reproduction and index them by name and subject. When the
18 agency makes them available for public inspection and copying,
19 the agency shall delete from those orders identifying details
20 to the extent required by any provision of law or necessary to
21 prevent a clearly unwarranted invasion of privacy or release
22 of trade secrets. In each case the justification for the
23 deletion must be explained in writing and attached to the
24 order.

25 2. A written final order shall not be relied on as
26 precedent by an agency and shall not be invoked by an agency
27 for any purpose, to the detriment of any person, until it has
28 been made available for public inspection and indexed in the
29 manner described in subsection 1. This provision is
30 inapplicable to any person who has actual timely knowledge of
31 the order. The burden of proving that knowledge is on the
32 agency.

33 Sec. 11. NEW SECTION. 17A.2103 DECLARATORY ORDERS.

34 1. Any person may petition an agency for a declaratory
35 order as to the applicability to specified circumstances of a

1 statute, rule, or order within the primary jurisdiction of the
2 agency. An agency shall issue a declaratory order in response
3 to a petition for that order unless the agency determines that
4 issuance of the order under the circumstances would be
5 contrary to a rule adopted in accordance with subsection 2.
6 However, an agency shall not issue a declaratory order that
7 would substantially prejudice the rights of a person who would
8 be a necessary party and who does not consent in writing to
9 the determination of the matter by a declaratory order
10 proceeding.

11 2. Each agency shall adopt rules that provide for the
12 form, contents, and filing of petitions for declaratory
13 orders, the procedural rights of persons in relation to the
14 petitions, and the disposition of the petitions. The rules
15 must describe the classes of circumstances in which the agency
16 will not issue a declaratory order and must be consistent with
17 the public interest and with the general policy of this
18 chapter to facilitate and encourage agency issuance of
19 reliable advice.

20 3. Within fifteen days after receipt of a petition for a
21 declaratory order, an agency shall give notice of the petition
22 to all persons to whom notice is required by any provision of
23 law and may give notice to any other persons.

24 4. Persons who qualify under any applicable provision of
25 law as an intervenor and who file timely petitions for
26 intervention according to agency rules may intervene in
27 proceedings for declaratory orders. Other provisions of
28 article 4 of this chapter apply to agency proceedings for
29 declaratory orders only to the extent an agency so provides by
30 rule or order.

31 5. Within thirty days after receipt of a petition for a
32 declaratory order an agency, in writing, shall do one of the
33 following:

34 a. Issue an order declaring the applicability of the
35 statute, rule, or order in question to the specified

1 circumstances.

2 b. Set the matter for specified proceedings.

3 c. Agree to issue a declaratory order by a specified time.

4 d. Decline to issue a declaratory order, stating the
5 reasons for its action.

6 6. A copy of all orders issued in response to a petition
7 for a declaratory order must be mailed promptly to the
8 petitioner and any other parties.

9 7. A declaratory order has the same status and binding
10 effect as any other order issued in an agency adjudicative
11 proceeding. A declaratory order must contain the names of all
12 parties to the proceeding on which it is based, the particular
13 facts on which it is based, and the reasons for its
14 conclusion.

15 8. If an agency has not issued a declaratory order within
16 sixty days after receipt of a petition therefor, the petition
17 is deemed to have been denied.

18 Sec. 12. NEW SECTION. 17A.2104 REQUIRED RULEMAKING.

19 In addition to other rulemaking requirements imposed by
20 law, each agency shall do all of the following:

21 1. Adopt as a rule a description of the organization of
22 the agency which states the course and method of its
23 operations, the administrative subdivisions of the agency and
24 the programs implemented by each of them, a statement of the
25 mission of the agency and the methods by which and location
26 where the public may obtain information or make submissions or
27 requests.

28 2. Adopt rules of practice setting forth the nature and
29 requirements of all formal and informal procedures available
30 to the public, including a description of all forms and
31 instructions that are to be used by the public in dealing with
32 the agency.

33 3. As soon as feasible and to the extent practicable,
34 adopt rules, in addition to those otherwise required by this
35 chapter, embodying appropriate standards, principles, and

1 procedural safeguards that the agency will apply to the law it
2 administers.

3 ARTICLE 3

4 RULEMAKING

5 PART 1

6 ADOPTION AND EFFECTIVENESS OF RULES

7 Sec. 13. NEW SECTION. 17A.3101 ADVICE ON POSSIBLE RULES
8 BEFORE NOTICE OF PROPOSED RULE ADOPTION.

9 1. In addition to seeking information by other methods, an
10 agency, before publication of a notice of proposed rule
11 adoption under section 17A.3103, may solicit comments from the
12 public on a subject matter of possible rulemaking under active
13 consideration within the agency by causing notice to be
14 published in the administrative bulletin of the subject matter
15 and indicating where, when, and how persons may comment.

16 2. Each agency head may also appoint formal committees, as
17 determined by the agency head, to comment, before publication
18 of a notice of proposed rule adoption under section 17A.3103,
19 on the subject matter of a possible rulemaking under active
20 consideration within the agency. The membership of those
21 committees must be published at least annually in the
22 administrative bulletin.

23 Sec. 14. NEW SECTION. 17A.3102 PUBLIC RULEMAKING DOCKET.

24 1. Each agency shall maintain a current, public rulemaking
25 docket.

26 2. The rulemaking docket must contain a listing of the
27 precise subject matter of each possible rule currently under
28 active consideration within the agency for proposal under
29 section 17A.3103, the name and address of agency personnel
30 with whom persons may communicate with respect to the matter,
31 and an indication of the present status within the agency of
32 that possible rule. For the purposes of this subsection, each
33 agency shall define by rule the point at which a "possible
34 rule" is "currently under active consideration within the
35 agency for proposal under section 17A.3103." Failure to

1 include in the docket a possible rule currently under active
2 consideration shall not be grounds for the invalidation of
3 that rule after it is adopted if the agency can demonstrate
4 that its omission was in good faith.

5 3. The rulemaking docket must list each pending rulemaking
6 proceeding. A rulemaking proceeding is pending from the time
7 it is commenced, by publication of a notice of proposed rule
8 adoption, to the time it is terminated, by publication of a
9 notice of termination or the rule becoming effective. For
10 each rulemaking proceeding, the docket must indicate all of
11 the following:

12 a. The subject matter of the proposed rule.

13 b. A citation to all published notices relating to the
14 proceeding.

15 c. Where written submissions on the proposed rule may be
16 inspected.

17 d. The time during which written submissions may be made.

18 e. The names of persons who have made written requests for
19 an opportunity to make oral presentations on the proposed
20 rule, where those requests may be inspected, and where and
21 when oral presentations may be made.

22 f. Whether a written request for the issuance of a
23 regulatory analysis of the proposed rule has been filed,
24 whether that analysis has been issued, and where the written
25 request and analysis may be inspected.

26 g. The current status of the proposed rule and any agency
27 determinations with respect thereto.

28 h. Any known timetable for agency decisions or other
29 action in the proceeding.

30 i. The date of the rule's adoption.

31 j. The date or dates the rule is to be or was considered
32 by the Administrative Rules Review Committee and an indication
33 of any action taken by that committee on the rule.

34 k. The date of the rule's filing, indexing, and
35 publication.

1 1. When the rule will become effective.

2 Sec. 15. NEW SECTION. 17A.3103 NOTICE OF PROPOSED RULE
3 ADOPTION.

4 1. At least thirty-five days before the adoption of a
5 rule, an agency shall cause notice of its contemplated action
6 to be published in the administrative bulletin by submitting
7 five copies of the proposed rule to the administrative rules
8 coordinator, who shall assign an ARC number to each rulemaking
9 document and forward three copies to the administrative rules
10 editor for publication in the administrative bulletin. The
11 notice of proposed rule adoption must include all of the
12 following:

13 a. A short explanation of the purpose of the proposed
14 rule.

15 b. The specific legal authority authorizing the proposed
16 rule.

17 c. Subject to section 17A.2101, subsection 3, the text of
18 the proposed rule.

19 d. Where, when, and how persons may present their views on
20 the proposed rule.

21 e. Where, when, and how persons may demand an oral
22 proceeding on the proposed rule if the notice does not already
23 provide for one.

24 2. Within three days after its publication in the
25 administrative bulletin, the agency shall cause a copy of the
26 notice of proposed rule adoption to be mailed to each person
27 who has made a timely request to the agency for a mailed copy
28 of the notice. An agency may charge persons for the actual
29 cost of providing them with mailed copies. Failure to provide
30 copies as provided in this subsection shall not be grounds for
31 invalidation of a rule, unless that failure was deliberate on
32 the part of the agency or a result of gross negligence.

33 3. An agency may publish a notice of proposed rule
34 adoption and hold a rulemaking proceeding on the notice after
35 the enactment and before the effective date of a statute

1 authorizing it to adopt such a rule as long as any rule
2 adopted on the basis of that proceeding states that it will
3 not become effective until a specified date on or after the
4 effective date of the authorizing statute.

5 Sec. 16. NEW SECTION. 17A.3104 PUBLIC PARTICIPATION.

6 1. For at least twenty days after publication of the
7 notice of proposed rule adoption, an agency shall afford
8 persons the opportunity to submit in writing, argument, data,
9 and views on the proposed rule.

10 2. a. An agency shall schedule an oral proceeding on a
11 proposed rule if, within twenty days after the published
12 notice of proposed rule adoption, a written request for an
13 oral proceeding is submitted by the administrative rules
14 review committee, the administrative rules coordinator, a
15 political subdivision, an agency, or twenty-five persons. At
16 that proceeding, persons may present oral argument, data, and
17 views on the proposed rule.

18 b. An oral proceeding on a proposed rule, if required, may
19 not be held earlier than twenty days after notice of its
20 location and time is published in the administrative bulletin.

21 c. The agency head, a member of the agency head, or
22 another person designated by the agency, shall preside at a
23 required oral proceeding on a proposed rule. The person
24 presiding must have knowledge of the purpose and subject
25 matter of the proposed rule. If the agency does not preside,
26 the presiding officer shall prepare a memorandum for
27 consideration by the agency summarizing the contents of the
28 presentations made at the oral proceeding. Oral proceedings
29 must be open to the public and be recorded by stenographic or
30 other means.

31 d. Each agency shall adopt rules for the conduct of oral
32 rulemaking proceedings. Those rules may include provisions
33 calculated to prevent undue repetition in the oral
34 proceedings.

35 Sec. 17. NEW SECTION. 17A.3105 REGULATORY ANALYSIS.

1 1. An agency shall issue a regulatory analysis of a
2 proposed rule that complies with requirements of subsection 2,
3 paragraphs "a" and "b", if, within thirty-five days after the
4 published notice of proposed rule adoption, a written request
5 for the analysis is submitted to the agency by the
6 administrative rules review committee or the administrative
7 rules coordinator. An agency shall also issue a regulatory
8 analysis of a proposed rule that complies with subsection 2,
9 paragraphs "a" and "b", if that rule would have a substantial
10 impact on small business and if such a request is submitted to
11 the agency within the specified time period by at least
12 twenty-five persons signing that request who each qualify as a
13 small business or by an organization representing at least
14 twenty-five such persons. If a rule has been adopted without
15 prior notice and an opportunity for public participation in
16 reliance upon section 17A.3108, the written request for the
17 analysis may be made within seventy days of publication of
18 that rule.

19 2. a. Except to the extent that the written request
20 expressly waives one or more of the following, the regulatory
21 analysis must contain all of the following:

22 (1) A description of the classes of persons who probably
23 will be affected by the proposed rule, including classes that
24 will bear the costs of the proposed rule and classes that will
25 benefit from the proposed rule.

26 (2) A description of the probable quantitative and
27 qualitative impact of the proposed rule, economic or
28 otherwise, upon affected classes of persons, including a
29 description of the nature and amount of all of the different
30 kinds of costs that would be incurred in complying with the
31 proposed rule.

32 (3) The probable costs to the agency and to any other
33 agency of the implementation and enforcement of the proposed
34 rule and any anticipated effect on state revenues.

35 (4) A comparison of the probable costs and benefits of the

1 proposed rule to the probable costs and benefits of inaction.

2 (5) A determination of whether there are less costly
3 methods or less intrusive methods for achieving the purpose of
4 the proposed rule.

5 (6) A description of any alternative methods for achieving
6 the purpose of the proposed rule that were seriously
7 considered by the agency and the reasons why they were
8 rejected in favor of the proposed rule.

9 b. In the case of a rule that would have a substantial
10 impact on small business, the regulatory analysis must also
11 contain a discussion of whether it would be feasible and
12 practicable to do any of the following to reduce the impact of
13 the rule on small business:

14 (1) Establish less stringent compliance or reporting
15 requirements in the rule for small business.

16 (2) Establish less stringent schedules or deadlines in the
17 rule for compliance or reporting requirements for small
18 business.

19 (3) Consolidate or simplify the rule's compliance or
20 reporting requirements for small business.

21 (4) Establish performance standards to replace design or
22 operational standards in the rule for small business.

23 (5) Exempt small business from any or all requirements of
24 the rule.

25 c. The agency shall reduce the impact of the proposed rule
26 on small business by using a method discussed in paragraph "b"
27 if it finds that the method is legal and feasible in meeting
28 the statutory objectives which are the basis of the proposed
29 rule.

30 3. Each regulatory analysis must include quantifications
31 of the data to the extent practicable and must take account of
32 both short-term and long-term consequences.

33 4. Notwithstanding any other time period specified in this
34 chapter, a concise summary of the regulatory analysis must be
35 published in the administrative bulletin at least ten days

1 before the earliest of the following:

2 a. The end of the period during which persons may make
3 written submissions on the proposed rule.

4 b. The end of the period during which an oral proceeding
5 may be requested.

6 c. The date of any required oral proceeding on the
7 proposed rule.

8 In the case of a rule adopted without prior notice and an
9 opportunity for public participation in reliance upon section
10 17A.3108, the summary must be published within seventy days of
11 the request.

12 5. The published summary of the regulatory analysis must
13 also indicate where persons may obtain copies of the full text
14 of the regulatory analysis and where, when, and how persons
15 may present their views on the proposed rule and demand an
16 oral proceeding thereon if one is not already provided.

17 6. If the agency has made a good faith effort to comply
18 with the requirements of subsections 1 through 3, the rule may
19 not be invalidated on the ground that the contents of the
20 regulatory analysis are insufficient or inaccurate.

21 7. For the purpose of this section, "small business" means
22 any entity including but not limited to an individual,
23 partnership, corporation, joint venture, association, or
24 cooperative, to which all of the following apply:

25 a. It is not an affiliate or subsidiary of an entity
26 dominant in its field of operation.

27 b. It has either twenty or fewer full-time equivalent
28 positions or less than one million dollars in annual gross
29 revenues in the preceding fiscal year.

30 For purposes of this definition, "dominant in its field of
31 operation" means having more than twenty full-time equivalent
32 positions and more than one million dollars in annual gross
33 revenues, and "affiliate or subsidiary of an entity dominant
34 in its field of operation" means an entity which is at least
35 twenty percent owned by an entity dominant in its field of

1 operation, or by partners, officers, directors, majority
2 stockholders, or their equivalent, of an entity dominant in
3 that field of operation.

4 Sec. 18. NEW SECTION. 17A.3106 TIME AND MANNER OF RULE
5 ADOPTION.

6 1. An agency shall not adopt a rule until the period for
7 making written submissions and oral presentations has expired.

8 2. Within one hundred eighty days after the later of the
9 publication of the notice of proposed rule adoption, or the
10 end of oral proceedings thereon, an agency shall adopt a rule
11 pursuant to the rulemaking proceeding or terminate the
12 proceeding by publication of a notice to that effect in the
13 administrative bulletin.

14 3. Before the adoption of a rule, an agency shall consider
15 the written submissions, oral submissions or any memorandum
16 summarizing oral submissions, and any regulatory analysis,
17 provided for by this part.

18 4. Within the scope of its delegated authority, an agency
19 may use its own experience, technical competence, specialized
20 knowledge, and judgment, in the adoption of a rule.

21 Sec. 19. NEW SECTION. 17A.3107 VARIANCE BETWEEN ADOPTED
22 RULE AND NOTICE OF PROPOSED RULE ADOPTION.

23 1. The agency shall not adopt a rule that differs from the
24 rule proposed in the notice of proposed rule adoption on which
25 the rule is based unless all of the following apply:

26 a. The differences are within the scope of the matter
27 announced in the notice of proposed rule adoption and are in
28 character with the issues raised in that notice.

29 b. The differences are a logical outgrowth of the contents
30 of that notice of proposed rule adoption and the comments
31 submitted in response thereto.

32 c. The notice of proposed rule adoption provided fair
33 warning that the outcome of that rulemaking proceeding could
34 be the rule in question.

35 2. In determining whether the notice of proposed rule

1 adoption provided fair warning that the outcome of that rule-
2 making proceeding could be the rule in question the agency
3 shall consider all of the following factors:

4 a. The extent to which persons who will be affected by the
5 rule should have understood that the rulemaking proceeding on
6 which it is based could affect their interests.

7 b. The extent to which the subject matter of the rule or
8 issues determined by the rule are different from the subject
9 matter or issues contained in the notice of proposed rule
10 adoption.

11 c. The extent to which the effects of the rule differ from
12 the effects of the proposed rule contained in the notice of
13 proposed rule adoption.

14 Sec. 20. NEW SECTION. 17A.3108 GENERAL EXEMPTION FROM
15 PUBLIC RULEMAKING PROCEDURES.

16 1. To the extent an agency for good cause finds that any
17 requirements of sections 17A.3103 through 17A.3107 are
18 unnecessary, impracticable, or contrary to the public interest
19 in the process of adopting a particular rule, those
20 requirements do not apply. The agency shall incorporate the
21 required finding and a brief statement of its supporting
22 reasons in each rule adopted in reliance upon this subsection.
23 An agency shall not rely upon this subsection on the ground
24 that it has insufficient time to follow usual procedures to
25 adopt a rule, because adoption of the rule is required by a
26 statute that became effective only very recently, unless that
27 statute also requires the agency to adopt the rule by a
28 specified date and it would be impracticable to follow usual
29 procedures for adoption of the rule during the period between
30 the date of the enactment of the statute and the specified
31 date by which the agency must adopt the rule.

32 2. In an action contesting a rule adopted under subsection
33 1, the burden is upon the agency to demonstrate that any
34 omitted requirements of sections 17A.3103 through 17A.3107
35 were impracticable, unnecessary, or contrary to the public

1 interest in the particular circumstances involved.

2 3. Within two years after the effective date of a rule
3 adopted under subsection 1, the administrative rules review
4 committee or the governor may request the agency to hold a
5 rulemaking proceeding thereon according to the requirements of
6 sections 17A.3103 through 17A.3107. The request must be in
7 writing, filed in the office of the administrative rules
8 coordinator, and sent to the agency. The administrative rules
9 coordinator shall immediately forward to the administrative
10 rules editor a certified copy of the request. Notice of the
11 filing of the request must be published in the next issue of
12 the administrative bulletin. The rule in question ceases to
13 be effective one hundred eighty days after the request is
14 filed. However, an agency, after the filing of the request,
15 may subsequently adopt an identical rule in a rulemaking
16 proceeding conducted pursuant to the requirements of sections
17 17A.3103 through 17A.3107.

18 Sec. 21. NEW SECTION. 17A.3109 EXEMPTION FOR CERTAIN
19 RULES.

20 1. An agency need not follow the provisions of sections
21 17A.3103 through 17A.3108 in the adoption of a rule that only
22 defines the meaning of a statute or other provision of law or
23 precedent if the agency does not possess delegated authority
24 to bind the courts to any extent with its definition. A rule
25 adopted under this subsection must include a statement that it
26 was adopted under this subsection when it is published in the
27 administrative bulletin, and there must be an indication to
28 that effect in a footnote to the rule when it is published in
29 the administrative code.

30 2. A reviewing court shall determine wholly de novo the
31 validity of a rule within the scope of subsection 1 that is
32 adopted without complying with the provisions of sections
33 17A.3103 through 17A.3108.

34 Sec. 22. NEW SECTION. 17A.3110 CONCISE EXPLANATORY
35 STATEMENT.

1 1. At the time it adopts a rule, an agency shall issue a
2 concise explanatory statement containing all of the following:

3 a. A summary of the principal reasons urged for and
4 against the rule.

5 b. The agency's reasons for adopting the rule, including
6 the agency's reasons for overruling the considerations urged
7 against its adoption.

8 c. An indication of any change between the text of the
9 proposed rule contained in the published notice of proposed
10 rule adoption and the text of the rule as finally adopted,
11 with the reasons for any change.

12 2. Only the reasons contained in the concise explanatory
13 statement may be used by any party as justifications for the
14 adoption of the rule in any proceeding in which its validity
15 is at issue.

16 Sec. 23. NEW SECTION. 17A.3111 CONTENTS, STYLE, AND FORM
17 OF RULE.

18 1. Each rule adopted by an agency must contain the text of
19 the rule and all of the following:

20 a. The date the agency adopted the rule.

21 b. A concise statement of the purpose of the rule.

22 c. A reference to all rules repealed, amended, or
23 suspended by the rule.

24 d. A reference to the specific statutory or other
25 authority authorizing adoption of the rule.

26 e. Any findings required by any provisions of law as a
27 prerequisite to adoption or effectiveness of the rule.

28 f. The effective date of the rule if other than that
29 specified in section 17A.3115, subsection 1.

30 2. To the extent feasible, each rule should be written in
31 clear and concise language understandable to persons who may
32 be affected by it.

33 3. An agency may incorporate, by reference in its rules
34 and without publishing the incorporated matter in full, all or
35 any part of a code, standard, rule, or regulation that has

1 been adopted by an agency of the United States or of this
2 state, another state, or by a nationally recognized
3 organization or association, if incorporation of its text in
4 agency rules would be unduly cumbersome, expensive, or
5 otherwise inexpedient. The reference in the agency rules must
6 fully identify the incorporated matter by location, date, and
7 otherwise, and must state that the rule does not include any
8 later amendments or editions of the incorporated matter. An
9 agency may incorporate by reference such matter in its rules
10 only if the agency, organization, or association originally
11 issuing that matter makes copies of it readily available to
12 the public. The rules must state where copies of the
13 incorporated matter are available at cost from the agency
14 issuing the rule, and where copies are available from the
15 agency of the United States, this state, another state, or the
16 organization or association originally issuing that matter.
17 An agency which adopts standards by reference to another
18 publication shall purchase and provide a copy of the
19 publication containing the standards to the administrative
20 rules coordinator who shall deposit the copy in the state law
21 library where it shall be made available for inspection and
22 reference. In those cases where the purchase of an additional
23 copy would be an unreasonable expense, the administrative
24 rules coordinator may waive this requirement if the
25 publication can be temporarily and promptly obtained for
26 review by the state law library upon request.

27 Sec. 24. NEW SECTION. 17A.3112 AGENCY RULEMAKING RECORD.

28 1. An agency shall maintain for a period of five years an
29 official rulemaking record for each rule it adopts. The
30 record and materials incorporated by reference must be
31 available for public inspection.

32 2. The agency rulemaking record must contain all of the
33 following:

34 a. Copies of all publications in the administrative
35 bulletin with respect to the rule or the proceeding upon which

1 the rule is based.

2 b. Copies of any portions of the agency's public rule-
3 making docket containing entries relating to the rule or the
4 proceeding upon which the rule is based.

5 c. All written petitions, requests, submissions, and
6 comments received by the agency and all other written
7 materials that are unprivileged and that are not required by
8 statute to be kept confidential that were considered by the
9 agency in connection with the formulation, proposal, or
10 adoption of the rule or the proceeding upon which the rule is
11 based.

12 d. Any official transcript of oral presentations made in
13 the proceeding upon which the rule is based or, if not
14 transcribed, any tape recording or stenographic record of
15 those presentations, and any memorandum prepared by a
16 presiding officer summarizing the contents of those
17 presentations.

18 e. A copy of any regulatory analysis prepared for the
19 proceeding upon which the rule is based.

20 f. A copy of the rule and explanatory statement filed in
21 the office of the administrative rules coordinator.

22 g. All petitions for exceptions to, amendments of, or
23 repeal or suspension of, the rule.

24 h. A copy of any request filed pursuant to section
25 17A.3108, subsection 3.

26 i. A copy of any objection to the rule filed by the
27 administrative rules review committee pursuant to section
28 17A.3204, subsection 4, and the agency's response.

29 j. A copy of any filed executive order with respect to the
30 rule.

31 3. Upon judicial review, the record required by this
32 section constitutes the official agency rulemaking record with
33 respect to a rule. Except as provided in section 17A.3110,
34 subsection 2, or otherwise required by a provision of law, the
35 agency rulemaking record need not constitute the exclusive

1 basis for agency action on that rule or for judicial review
2 thereof.

3 Sec. 25. NEW SECTION. 17A.3113 INVALIDITY OF RULES NOT
4 ADOPTED ACCORDING TO CHAPTER -- TIME LIMITATIONS.

5 1. A rule adopted after the effective date of this Act is
6 invalid unless adopted in substantial compliance with the
7 provisions of sections 17A.3102 through 17A.3108 and sections
8 17A.3110 through 17A.3112.

9 2. An action to contest the validity of a rule on the
10 grounds of its noncompliance with any provision of sections
11 17A.3102 through 17A.3108 or sections 17A.3110 through
12 17A.3112 must be commenced within two years after the
13 effective date of the rule.

14 Sec. 26. NEW SECTION. 17A.3114 FILING OF RULES.

15 1. An agency shall file in the office of the
16 administrative rules coordinator three certified copies of
17 each rule it adopts and all existing rules that have not
18 previously been filed. The filing must be done as soon after
19 adoption of the rule as is practicable. At the time of
20 filing, each adopted rule must have attached to it the
21 explanatory statement required by section 17A.3110. The
22 administrative rules coordinator shall assign an ARC number to
23 each rule and shall affix to each rule and statement a
24 certification of the time and date of filing and keep a
25 permanent register open to public inspection of all filed
26 rules and attached explanatory statements. In filing a rule,
27 each agency shall use a standard form prescribed by the
28 administrative rules coordinator.

29 2. The administrative rules coordinator shall transmit to
30 the administrative rules editor, two certified copies of each
31 filed rule as soon after its filing as is practicable.

32 Sec. 27. NEW SECTION. 17A.3115 EFFECTIVE DATE OF RULES.

33 1. Except to the extent subsection 2 provides otherwise,
34 each adopted rule becomes effective thirty-five days after the
35 later of its filing in the office of the administrative rules

1 coordinator or its publication and indexing in the
2 administrative bulletin.

3 2. a. A rule becomes effective on a date later than that
4 established by subsection 1 if a later date is required by
5 another statute or specified in the rule.

6 b. A rule may become effective immediately upon its filing
7 or on any subsequent date earlier than that established by
8 subsection 1 if the agency establishes such an effective date
9 and finds that one or more of the following applies:

10 (1) The earlier effective date is required by
11 constitution, statute, or court order.

12 (2) The rule only confers a benefit or removes a
13 restriction on the public or some segment thereof.

14 (3) The rule only delays the effective date of another
15 rule that is not yet effective.

16 (4) The earlier effective date is necessary to avoid
17 immediate danger to the public health, safety, or welfare.

18 (5) The rule is wholly ministerial and does not alter the
19 existing legal rights of any person.

20 c. The finding and a brief statement of the reasons
21 therefor required by paragraph "b" must be made a part of the
22 rule. In any action contesting the effective date of a rule
23 made effective under paragraph "b", the burden is on the
24 agency to justify its finding.

25 d. Each agency shall make a reasonable effort to make
26 known to persons who may be affected by it a rule made
27 effective before publication and indexing under this
28 subsection.

29 3. This section does not relieve an agency from compliance
30 with any provision of law requiring that some or all of its
31 rules be approved by other designated officials or bodies
32 before they become effective.

33 Sec. 28. NEW SECTION. 17A.3116 SPECIAL PROVISION FOR
34 CERTAIN CLASSES OF RULES.

35 Except to the extent otherwise provided by any provision of

1 law, sections 17A.3102 through 17A.3115 are inapplicable to
2 all of the following:

3 1. A rule concerning only the internal management of an
4 agency which does not directly and substantially affect the
5 procedural or substantive rights or duties of any segment of
6 the public.

7 2. A rule that establishes criteria or guidelines to be
8 used by the staff of an agency in performing audits,
9 investigations, or inspections, settling commercial disputes,
10 negotiating commercial arrangements, or in the defense,
11 prosecution, or settlement of cases, if disclosure of the
12 criteria or guidelines would do any of the following:

13 a. Enable law violators to avoid detection.

14 b. Facilitate disregard of requirements imposed by law.

15 c. Give a clearly improper advantage to persons who are in
16 an adverse position to the state.

17 3. A rule that only establishes specific prices to be
18 charged for particular goods or services sold by an agency.

19 4. A rule concerning only the physical servicing,
20 maintenance, or care of agency owned or operated facilities or
21 property.

22 5. A rule relating only to the use of a particular
23 facility or property owned, operated, or maintained by the
24 state or any of its political subdivisions, if the substance
25 of the rule is adequately indicated by means of signs or
26 signals to persons who use the facility or property.

27 6. A rule concerning only inmates of a correctional or
28 detention facility, students enrolled in an educational
29 institution, or patients admitted to a hospital, if adopted by
30 that facility, institution, or hospital.

31 7. A form whose contents or substantive requirements are
32 prescribed by rule or statute, and instructions for the
33 execution or use of the form.

34 8. An agency budget.

35 9. An opinion of the attorney general.

1 10. The terms of a collective bargaining agreement.
2 Sec. 29. NEW SECTION. 17A.3117 PETITION FOR ADOPTION OF
3 RULE.

4 1. Any person may petition an agency requesting the
5 adoption of a rule. Each agency shall prescribe by rule the
6 form of the petition and the procedure for its submission,
7 consideration, and disposition. Within sixty days after
8 submission of a petition, the agency shall either deny the
9 petition in writing, stating its reasons therefor, initiate
10 rulemaking proceedings in accordance with this chapter or if
11 otherwise lawful, adopt a rule.

12 2. If a person petitions an agency requesting the adoption
13 of a rule superseding specified principles of law or policy
14 lawfully declared by the agency as the basis for its decisions
15 in particular cases, the agency shall initiate rulemaking
16 proceedings in accordance with this chapter and adopt such a
17 rule unless the agency finds, and incorporates in that finding
18 the reasons therefor, that the adoption of such a rule at this
19 time is infeasible or that such a rule is impracticable, and
20 provides a copy of that finding to the petitioner.

21 PART 2

22 REVIEW OF AGENCY RULES

23 Sec. 30. NEW SECTION. 17A.3201 REVIEW BY AGENCY.

24 Within each five-year period an agency shall review each of
25 its rules to determine whether each such rule should be
26 repealed or amended, or a new rule adopted instead. In
27 conducting that review, the agency shall prepare a written
28 report summarizing its findings, its supporting reasons, and
29 any proposed course of action. The report must include, for
30 each such rule, a concise statement of all of the following:

31 1. The rule's effectiveness in achieving its objectives,
32 including a summary of any available data supporting the
33 conclusions reached.

34 2. Criticisms of the rule received during the previous
35 five years, including a summary of any petitions for waiver of

1 the rule tendered to the agency or granted by the agency.

2 3. Alternative solutions to the criticisms and the reasons
3 they were rejected or the changes made in the rule in response
4 to those criticisms and the reasons for the changes.

5 A copy of the report must be sent to the administrative
6 rules review committee and the administrative rules
7 coordinator and be available for public inspection.

8 Sec. 31. NEW SECTION. 17A.3202 REVIEW BY GOVERNOR --
9 ADMINISTRATIVE RULES COORDINATOR.

10 1. To the extent the agency itself would have such
11 authority, the governor may rescind or suspend all or a
12 severable portion of a rule of an agency. In exercising this
13 authority, the governor shall act by an executive order. If
14 the rule in question has been effective for more than one
15 hundred eighty days, that executive order shall be subject to
16 the provisions of sections 17A.3103, 17A.3104, and 17A.3106
17 through 17A.3116 applicable to the adoption and effectiveness
18 of a rule.

19 2. The governor may summarily terminate any pending rule-
20 making proceeding by an executive order to that effect,
21 stating in the order the reasons for the action. The
22 executive order must be filed in the office of the
23 administrative rules coordinator, which shall promptly forward
24 a certified copy to the agency and the administrative rules
25 editor. An executive order terminating a rulemaking
26 proceeding becomes effective on the date it is filed and must
27 be published in the next issue of the administrative bulletin.

28 3. There is created, within the office of the governor, an
29 administrative rules coordinator to advise the governor in the
30 execution of the authority vested under this article. The
31 governor shall appoint the administrative rules coordinator
32 who shall serve at the pleasure of the governor.

33 Sec. 32. NEW SECTION. 17A.3203 ADMINISTRATIVE RULES
34 REVIEW COMMITTEE.

35 1. There is created an administrative rules review

1 committee. The committee shall be bipartisan and shall be
2 composed of the following members:

3 a. Five senators appointed by the majority leader of the
4 senate.

5 b. Five representatives appointed by the speaker of the
6 house.

7 2. Committee members shall be appointed prior to the
8 adjournment of a regular session convened in an odd-numbered
9 year. Member's terms of office shall be for four years
10 beginning May 1 of the year of appointment. However, a member
11 shall serve until a successor is appointed. A vacancy on the
12 committee shall be filled by the original appointing authority
13 for the remainder of the term. A vacancy shall exist whenever
14 a committee member ceases to be a member of the house from
15 which the member was appointed.

16 3. A committee member shall be paid the per diem specified
17 in section 2.10, subsection 6, for each day in attendance and
18 shall be reimbursed for actual and necessary expenses. There
19 is appropriated from money in the general fund not otherwise
20 appropriated an amount sufficient to pay costs incurred under
21 this section.

22 4. The committee shall choose a chairperson from its
23 membership and prescribe its rules of procedure. The
24 committee may employ a secretary or may appoint the
25 administrative rules editor or a designee to act as secretary.

26 5. A regular committee meeting shall be held at the seat
27 of government on the second Tuesday of each month. Unless
28 impracticable in advance of each such meeting the subject
29 matter to be considered shall be published in the Iowa
30 administrative bulletin. A special committee meeting may be
31 called by the chairperson at any place in the state and at any
32 time. Unless impracticable, in advance of each special
33 meeting notice of the time and place of such meeting and the
34 subject matter to be considered shall be published in the Iowa
35 administrative bulletin.

1 6. Notwithstanding section 13.7, the committee may employ
2 necessary legal and technical staff.

3 Sec. 33. NEW SECTION. 17A.3204 REVIEW BY ADMINISTRATIVE
4 RULES REVIEW COMMITTEE.

5 1. The administrative rules review committee shall
6 selectively review possible, proposed, or adopted rules and
7 prescribe appropriate committee procedures for that purpose.
8 The committee may receive and investigate complaints from
9 members of the public with respect to possible, proposed, or
10 adopted rules and hold public proceedings on those complaints.

11 2. Committee meetings must be open to the public. Subject
12 to procedures established by the committee, persons may
13 present oral argument, data, or views at those meetings. The
14 committee may require a representative of an agency whose
15 possible, proposed, or adopted rule is under examination to
16 attend a committee meeting and answer relevant questions. The
17 committee may also communicate to the agency its comments on
18 any possible, proposed, or adopted rule and require the agency
19 to respond to them in writing. Unless impracticable, in
20 advance of each committee meeting notice of the time and place
21 of the meeting and the specific subject matter to be
22 considered must be published in the administrative bulletin.

23 3. The committee may recommend enactment of a statute to
24 improve the operation of an agency. The committee may also
25 recommend that a particular rule be superseded in whole or in
26 part by statute. The speaker of the house and the president
27 of the senate shall refer those recommendations to the
28 appropriate standing committees. This subsection does not
29 preclude any committee of the general assembly from reviewing
30 a rule on its own motion or recommending that it be superseded
31 in whole or in part by statute.

32 4. a. If the committee objects to all or some portion of
33 a rule because the committee considers it to be beyond the
34 procedural or substantive authority delegated to the adopting
35 agency, the committee may file that objection in the office of

1 the administrative rules coordinator. The filed objection
2 must contain a concise statement of the committee's reasons
3 for its action.

4 b. The administrative rules coordinator shall affix to
5 each objection a certification of the date and time of its
6 filing and as soon thereafter as practicable shall transmit a
7 certified copy thereof to the agency issuing the rule in
8 question and the administrative rules editor. The
9 administrative rules coordinator shall also maintain a
10 permanent register open to public inspection of all objections
11 by the committee.

12 c. The administrative rules editor shall publish and index
13 an objection filed pursuant to this subsection in the next
14 issue of the administrative bulletin and indicate its
15 existence in a footnote to the rule in question when that rule
16 is published in the administrative code. In case of a filed
17 objection by the committee to a rule that is subject to the
18 requirements of section 17A.2101, subsection 7, the agency
19 shall indicate the existence of that objection adjacent to the
20 rule in the official compilation referred to in that
21 subsection.

22 d. Within thirty days after the filing of an objection by
23 the committee to a rule, the adopting agency shall respond in
24 writing to the committee. After receipt of the response, the
25 committee may withdraw or modify its objection.

26 e. After the filing of an objection by the committee that
27 is not subsequently withdrawn, the burden is upon the agency
28 in any proceeding for judicial review or for enforcement of
29 the rule to establish that the whole or portion of the rule
30 objected to is within the procedural and substantive authority
31 delegated to the agency. A court holding a rule in such a
32 proceeding to be invalid because it is outside the authority
33 delegated to the agency shall render judgment against the
34 agency for court costs. Court costs include a reasonable
35 attorney's fee and are payable by the treasurer of state from

1 the support appropriations of the agency that adopted the
2 rule.

3 f. The failure of the administrative rules review
4 committee to object to a rule is not an implied legislative
5 authorization of its procedural or substantive validity.

6 5. The committee may recommend to an agency that it adopt
7 a rule. The committee may also require an agency to publish
8 notice of the committee's recommendation as a proposed rule of
9 the agency and to allow public participation thereon,
10 according to the provisions of sections 17A.3103 and 17A.3104.
11 An agency is not required to adopt the proposed rule.

12 6. The committee may, by a two-thirds vote of the
13 committee members, delay the effective date of an adopted rule
14 that is not yet effective for any period designated by the
15 committee that would end no later than the next adjournment of
16 a regular session of the general assembly. When the committee
17 takes such action the committee shall state the reasons
18 therefor. If the general assembly has not disapproved the
19 rule by a joint resolution prior to the end of the period
20 during which its effectiveness has been delayed by the action
21 of the committee, the rule shall become effective. If the
22 rule is disapproved by the general assembly during that
23 period, the rule shall not become effective and the agency
24 shall summarily withdraw the rule.

25 7. The committee shall file an annual report with the
26 presiding officer of each house and the governor.

27 ARTICLE 4

28 ADJUDICATIVE PROCEEDINGS

29 PART 1

30 AVAILABILITY OF ADJUDICATIVE PROCEEDINGS --

31 APPLICATIONS -- LICENSES -- WAIVER OF RULE

32 Sec. 34. NEW SECTION. 17A.4101 ADJUDICATIVE PROCEEDINGS

33 -- WHEN REQUIRED -- EXCEPTIONS.

34 1. An agency shall conduct an adjudicative proceeding as
35 the process for formulating and issuing an order. However, an

1 agency need not conduct an adjudicative proceeding if the
2 order is a decision to do any of the following:

3 a. To issue or not to issue a complaint, summons, or
4 similar accusation.

5 b. To initiate or not to initiate an investigation,
6 prosecution, or other proceeding before the agency, another
7 agency, or a court.

8 c. Under section 17A.4103, not to conduct an adjudicative
9 proceeding.

10 This subsection does not preclude an agency from
11 establishing, subject to sections 17A.5107 and 17A.5112,
12 procedures that must be followed prior to the commencement of
13 an adjudicative proceeding, or from issuing an order prior to
14 conducting an adjudicative proceeding if any of the following
15 apply:

16 (1) The person subject to that order may, within a time
17 period specified by rule or in the order, file an application
18 for an adjudicatory proceeding, that application will
19 automatically dissolve the order from the time of its
20 issuance, and the substantial rights of the person subject to
21 that order are not prejudiced by the order in the interim
22 period prior to its automatic dissolution resulting from the
23 filing of an application for an adjudicatory proceeding.

24 (2) The order was properly issued in accordance with
25 section 17A.4501.

26 (3) The agency was expressly authorized by statute to
27 issue that order prior to conducting an adjudicatory
28 proceeding, in which case, the agency must proceed as quickly
29 as feasible after its issuance to complete any proceeding that
30 would be required if the statute had not authorized such
31 action in advance of any adjudicative proceeding.

32 2. This article applies to rulemaking proceedings only to
33 the extent that another statute expressly so requires.

34 Sec. 35. NEW SECTION. 17A.4102 ADJUDICATIVE PROCEEDINGS
35 -- COMMENCEMENT.

1 1. Subject to the requirements of other provisions of law,
2 an agency may commence an adjudicative proceeding at any time
3 with respect to a matter within the agency's jurisdiction.

4 2. An agency shall commence an adjudicative proceeding
5 upon the application of any person, unless any of the
6 following apply:

7 a. The agency lacks jurisdiction of the subject matter.

8 b. Resolution of the matter requires the agency to
9 exercise discretion within the scope of section 17A.4101,
10 subsection 1.

11 c. A statute vests the agency with discretion to conduct
12 or not to conduct an adjudicative proceeding before issuing an
13 order to resolve the matter and, in the exercise of that
14 discretion, the agency has determined not to conduct an
15 adjudicative proceeding.

16 d. Resolution of the matter does not require the agency to
17 issue an order that determines the applicant's legal rights,
18 duties, privileges, immunities, or other legal interests.

19 e. The matter was not timely submitted to the agency
20 according to any applicable provision of law.

21 f. The matter was not submitted in a form substantially
22 complying with any applicable provision of law.

23 3. Subject to other provisions of law, each agency may, by
24 rule, establish specified time limits for commencing various
25 classes of adjudicative proceedings that are within the
26 agency's jurisdiction.

27 4. An application for an agency to issue an order includes
28 an application for the agency to conduct appropriate
29 adjudicative proceedings, whether or not the applicant
30 expressly requests those proceedings.

31 5. An adjudicative proceeding commences when the agency or
32 a presiding officer does any of the following:

33 a. Notifies a party that a prehearing conference, hearing,
34 or other stage of an adjudicative proceeding will be
35 conducted.

1 b. Begins to take action on a matter that appropriately
2 may be determined by an adjudicative proceeding, unless this
3 action is one of the following:

4 (1) An investigation for the purpose of determining
5 whether an adjudicative proceeding should be conducted.

6 (2) A decision which, under section 17A.4101, subsection
7 1, the agency may make without conducting an adjudicative
8 proceeding.

9 Sec. 36. NEW SECTION. 17A.4103 DECISION NOT TO CONDUCT
10 ADJUDICATIVE PROCEEDING.

11 An agency that decides, pursuant to section 17A.4102,
12 subsection 2, not to conduct an adjudicative proceeding in
13 response to an application, shall furnish the applicant a copy
14 of its decision in writing, with a brief statement of the
15 agency's reasons and of any administrative review available to
16 the applicant.

17 Sec. 37. NEW SECTION. 17A.4104 AGENCY ACTION ON
18 APPLICATIONS.

19 1. Except to the extent that the time limits in this
20 subsection are inconsistent with limits established by another
21 statute for any stage of the proceedings, an agency shall
22 process an application for an order, other than a declaratory
23 order, as follows:

24 a. Within thirty days after receipt of the application,
25 the agency shall examine the application, notify the applicant
26 of any apparent errors or omissions, request any additional
27 information the agency wishes to obtain and is permitted by
28 law to require, and notify the applicant of the name, official
29 title, mailing address, and telephone number of any agency
30 member or employee who may be contacted regarding the
31 application.

32 b. Except in situations governed by paragraph "c", within
33 ninety days after receipt of the application or of the
34 response to a timely request made by the agency pursuant to
35 paragraph "a", the agency shall do one of the following:

1 (1) Approve or deny the application, in whole or in part,
2 on the basis of emergency or summary adjudicative proceedings,
3 if those proceedings are available under this chapter for
4 disposition of the matter.

5 (2) Commence a formal adjudicative hearing or a conference
6 adjudicative hearing in accordance with this chapter.

7 (3) Dispose of the application in accordance with section
8 17A.4103.

9 c. If the application pertains to subject matter that is
10 not available when the application is filed but may be
11 available in the future, including an application for housing
12 or employment at a time no vacancy exists, the agency may
13 proceed to make a determination of eligibility within the time
14 provided in paragraph "b". If the agency determines that the
15 applicant is eligible, the agency shall maintain the
16 application on the agency's list of eligible applicants as
17 provided by law and, upon request, shall notify the applicant
18 of the status of the application.

19 2. If a timely application has been made for renewal of a
20 license with reference to any activity of a continuing nature,
21 the existing license does not expire until the agency has
22 taken final action upon the application for renewal or, if the
23 agency's action is unfavorable, until the last day for seeking
24 judicial review of the agency's action or a later date fixed
25 by the reviewing court or agency.

26 Sec. 38. NEW SECTION. 17A.4105 AGENCY ACTION AGAINST
27 LICENSEES.

28 An agency shall not revoke, suspend, modify, annul,
29 withdraw, or amend a license unless the agency first gives
30 notice and an opportunity for an appropriate adjudicative
31 proceeding in accordance with this chapter or other statute.
32 This section does not preclude an agency from taking immediate
33 action to protect the public interest in accordance with
34 section 17A.4501 or adopting rules, otherwise within the scope
35 of its authority, pertaining to a class of licensees,

1 including rules affecting the existing licenses of a class of
2 licensees.

3 Sec. 39. NEW SECTION. 17A.4106 PETITION FOR WAIVER OF
4 RULE.

5 1. A person may file a petition with an agency requesting
6 a waiver, in whole or in part, of a rule of that agency on the
7 ground that the application of the rule to the particular
8 circumstances of that person would qualify for a waiver under
9 subsection 5. A petition filed under this provision must
10 specify the rule in question, the precise scope of the waiver
11 requested, the specific facts that would justify a waiver for
12 petitioner, and the reasons why the particular application of
13 the rule to petitioner for which the waiver is requested would
14 qualify for a waiver under subsection 5.

15 2. Each agency shall issue rules consistent with this
16 section concerning all of the following:

17 a. Governing the form, contents, and filing of petitions
18 for the waivers of rules.

19 b. Specifying the procedural rights of persons in relation
20 to such petitions.

21 c. Providing for the disposition of those petitions.

22 3. Within fifteen days after receipt of a petition for
23 waiver of a rule, the agency shall give notice of the petition
24 to all persons to whom notice is required by any provision of
25 law and may give notice to any other persons. Persons who
26 qualify under any applicable provision of law as an intervenor
27 and file timely petitions for intervention according to agency
28 rules may intervene in proceedings for waivers of a rule.
29 Other provisions of this article apply to agency proceedings
30 for waivers of a rule only to the extent an agency so provides
31 by rule or order.

32 4. An order granting or denying such a petition shall be
33 in writing and shall contain a statement of the relevant facts
34 and reasons supporting that action. An agency shall grant or
35 deny such a petition within ninety days of its receipt.

1 Failure of an agency to grant or deny such a petition within
2 ninety days of its receipt shall be deemed a denial of that
3 petition by the agency.

4 5. An agency shall issue an order granting a petition for
5 a waiver of a rule, in whole or in part, if application of the
6 rule to the petitioner on the basis of the particular facts
7 specified in the petition would not serve any of the purposes
8 of the rule. An agency may issue an order granting a petition
9 for waiver of a rule, in whole or in part, if application of
10 the rule to the petitioner would result in undue hardship,
11 waiver of the rule on the basis of the facts specified in the
12 petition would be consistent with the public interest, and
13 waiver of the rule as to petitioner would not prejudice the
14 substantial rights of any other person. An order granting
15 such a petition shall constitute a defense in any subsequent
16 proceeding where the applicability of that rule to petitioner
17 is at issue if petitioner proves in that subsequent proceeding
18 all of the relevant facts pertaining to petitioner upon which
19 that waiver order was based and that the particular
20 application of the rule at issue was within the scope of the
21 waiver order in question.

22 6. In an agency proceeding to enforce a rule of that
23 agency, a person resisting the enforcement of the rule may
24 defend successfully upon a demonstration that application of
25 the rule to the person would not serve any of the purposes of
26 the rule.

27 7. An agency may, on its own motion, waive the application
28 of one or more of its rules, in whole or in part, to a
29 specified person on the ground that the relevant facts
30 pertaining to that person would qualify that person for a
31 waiver under the provisions of subsection 5, by rendering an
32 order containing the facts and reasons justifying that waiver.

33 8. Any order issued under this section shall be
34 transmitted to petitioner or to the person as to whom the
35 waiver order pertains within seven days of its rendition.

1 9. An agency shall maintain a file for each of its rules
2 for which a waiver order has been issued containing all orders
3 waiving the application to any person of that rule.

4

PART 2

5

FORMAL ADJUDICATIVE HEARING

6 Sec. 40. NEW SECTION. 17A.4201 APPLICABILITY.

7 An adjudicative proceeding is governed by this part, except
8 as otherwise provided by any of the following:

9 1. A statute other than this chapter.

10 2. A rule that adopts the procedures for the conference
11 adjudicative hearing or summary adjudicative proceeding in
12 accordance with the standards provided in this chapter for
13 those proceedings.

14 3. Section 17A.4501 pertaining to emergency adjudicative
15 proceedings.

16 4. Section 17A.2103 pertaining to declaratory proceedings.

17 5. Section 17A.4106 pertaining to petitions for waiver of
18 rules.

19 Sec. 41. NEW SECTION. 17A.4202 PRESIDING OFFICER,
20 DISQUALIFICATION, SUBSTITUTION.

21 1. a. If the agency or an officer of the agency under
22 whose authority the adjudicative proceeding is to take place
23 is a named party to that proceeding or a real party in
24 interest to that proceeding, in the discretion of the agency
25 head, the presiding officer may be either the agency head, one
26 or more members of the agency head, or one or more
27 administrative law judges assigned by the office of
28 administrative hearings in accordance with the provisions of
29 section 17A.4301. However, the agency head shall designate as
30 the presiding officer an administrative law judge assigned by
31 the office of administrative hearings in accordance with the
32 provisions of section 17A.4301 if any person to whom the
33 agency action is specifically directed timely requests an
34 administrative law judge to preside at the proceeding.

35 b. If the agency or an officer of the agency under whose

1 authority the adjudicative proceeding is to take place is not
2 a named party to that proceeding or a real party in interest
3 to that proceeding, in the discretion of the agency head, the
4 presiding officer may be either the agency head, one or more
5 members of the agency head, an administrative law judge
6 assigned by the office of administrative hearings in
7 accordance with the provisions of section 17A.4301, or any
8 other person designated as a presiding officer by the agency
9 head. Any other person designated as a presiding officer by
10 the agency head may be employed by and officed in the agency
11 for which that person acts as a presiding officer, but such a
12 person shall not perform duties inconsistent with that
13 person's duties and responsibilities as a presiding officer
14 and shall be governed by the merit system provisions of
15 chapter 19A.

16 2. Any person serving or designated to serve alone or with
17 others as a presiding officer is subject to disqualification
18 for bias, prejudice, interest, or any other cause provided in
19 this chapter or for which a judge is or may be disqualified.

20 3. Any party may timely request the disqualification of a
21 person after receipt of notice indicating that the person will
22 preside or upon discovering facts establishing grounds for
23 disqualification, whichever is later.

24 4. A person whose disqualification is requested shall
25 determine whether to grant the request, stating facts and
26 reasons for the determination.

27 5. If a substitute is required for a person who is
28 disqualified or becomes unavailable for any other reason, the
29 substitute must be appointed by either of the following:

30 a. The governor, if the disqualified or unavailable person
31 is an elected official.

32 b. The appointing authority, if the disqualified or
33 unavailable person is an appointed official.

34 6. Any action taken by a duly-appointed substitute for a
35 disqualified or unavailable person is as effective as if taken

1 by the latter.

2 Sec. 42. NEW SECTION. 17A.4203 REPRESENTATION.

3 1. Any party may participate in the hearing in person or,
4 if the party is a corporation or other artificial person, by a
5 duly authorized representative.

6 2. Whether or not participating in person, any party may
7 be advised and represented at the party's own expense by
8 counsel or, if permitted by any provision of law, other
9 representative.

10 3. Any party may designate in writing with an agency an
11 authorized representative to act on behalf of that party in a
12 particular proceeding. An attorney licensed to practice in
13 this state who files an appearance or a pleading with an
14 agency on behalf of a party shall be deemed to be the
15 designated authorized representative of the party in that
16 proceeding. If an authorized representative has been
17 designated, notice to a party required under this article must
18 be satisfied by providing the notice to that representative.

19 Sec. 43. NEW SECTION. 17A.4204 PREHEARING CONFERENCE --
20 AVAILABILITY -- NOTICE.

21 The presiding officer designated to conduct the hearing may
22 determine, subject to the agency's rules, whether a pre-
23 hearing conference will be conducted. If the conference is
24 conducted the following apply:

25 1. The presiding officer shall promptly notify the agency
26 of the determination that a prehearing conference will be
27 conducted. If the presiding officer decides that another
28 presiding officer should conduct that conference, the agency
29 shall assign or request the office of administrative hearings
30 to assign a presiding officer for the prehearing conference,
31 exercising the same discretion as is provided by section
32 17A.4202 concerning the selection of a presiding officer for a
33 hearing.

34 2. The presiding officer for the prehearing conference
35 shall set the time and place of the conference and give

1 reasonable and timely written notice to all parties and to all
2 persons who have filed written petitions to intervene in the
3 matter. The agency shall also give such notice to other
4 persons entitled to notice under any provision of law.

5 3. The notice must include all of the following:

6 a. The names of all parties, and the mailing addresses of
7 all parties or the names and mailing addresses of their
8 designated representatives, and the names and mailing
9 addresses of all other persons to whom notice is being given
10 by the presiding officer.

11 b. The name, official title, mailing address, and
12 telephone number of any counsel or employee who has been
13 designated to appear for the agency.

14 c. The official file or other reference number, the name
15 of the proceeding, and a general description of the subject
16 matter.

17 d. A statement of the time, place, and nature of the
18 prehearing conference.

19 e. A statement of the legal authority and jurisdiction
20 under which the prehearing conference and the hearing are to
21 be held.

22 f. The name, official title, mailing address and telephone
23 number of the presiding officer for the prehearing conference.

24 g. A statement that at the prehearing conference the
25 proceeding, without further notice, may be converted into a
26 conference adjudicative hearing or a summary adjudicative
27 proceeding for disposition of the matter as provided by this
28 chapter.

29 h. A statement that a party who fails to attend or
30 participate in a prehearing conference, hearing, or other
31 stage of an adjudicative proceeding may be held in default
32 under this chapter.

33 4. The notice may include a statement that each party must
34 bring to the prehearing conference specified listed materials
35 or information, as determined by the presiding officer, and

1 that a failure to do so, without good cause, will preclude
2 that party from subsequently introducing those materials or
3 that information in the proceeding. The notice may also
4 include any other matters that the presiding officer considers
5 desirable to expedite the proceedings.

6 Sec. 44. NEW SECTION. 17A.4205 PREHEARING CONFERENCE --
7 PROCEDURE AND PREHEARING ORDER.

8 1. The presiding officer may conduct all or part of the
9 prehearing conference by telephone, videoconference, or other
10 electronic means if each participant in the conference has an
11 opportunity to participate in, to hear, and, if technically
12 feasible, to see the entire proceeding while it is taking
13 place.

14 2. The presiding officer shall conduct the prehearing
15 conference, as may be appropriate, to deal with such matters
16 as conversion of the proceeding to another type of proceeding,
17 exploration of settlement possibilities, waivers of any rights
18 conferred upon a party by this chapter that are relevant to
19 the proceeding, preparation of stipulations on any relevant
20 matter, clarification of issues, rulings on identity and
21 limitation of the number of witnesses, objections to proffers
22 of evidence, determination of the extent to which evidence
23 will be presented in written form, and the extent to which
24 telephone, videoconference, or other electronic means will be
25 used as a substitute for proceedings in person, order of
26 presentation of evidence and cross-examination, rulings
27 regarding issuance of subpoenas, discovery orders and
28 protective orders, and such other matters as will promote the
29 orderly and prompt conduct of the hearing. The presiding
30 officer shall issue a prehearing order incorporating the
31 matters determined at the prehearing conference and may
32 deviate from that order at the hearing only with the consent
33 of all parties or for good cause.

34 3. If a prehearing conference is not held, the presiding
35 officer for the hearing may issue a prehearing order, based on

1 the pleadings, to regulate the conduct of the proceedings.

2 Sec. 45. NEW SECTION. 17A.4206 NOTICE OF HEARING.

3 1. The presiding officer for the hearing, or another
4 person authorized to do so by rule of the agency, shall set
5 the time and place of the hearing and give reasonable and
6 timely written notice to all parties and to all persons who
7 have filed written petitions to intervene in the matter.

8 2. The notice must include a copy of any prehearing order
9 rendered in the matter unless the parties and persons who have
10 filed written petitions to intervene have already been
11 furnished with a copy of such an order.

12 3. To the extent not included in a prehearing order
13 accompanying it, the notice must include all of the following:

14 a. The names of all parties, and the mailing addresses of
15 all parties or the names and mailing addresses of their
16 designated representatives, and the names and mailing
17 addresses of all other persons to whom notice is being given.

18 b. The name, official title, mailing address and telephone
19 number of any counsel or employee who has been designated to
20 appear for the agency.

21 c. The official file or other reference number, the name
22 of the proceeding, and a general description of the subject
23 matter.

24 d. A statement of the time, place, and nature of the
25 hearing.

26 e. A statement of the legal authority and jurisdiction
27 under which the hearing is to be held.

28 f. The name, official title, mailing address, and
29 telephone number of the presiding officer.

30 g. To the extent known to the person giving notice, a
31 statement of the issues involved and of the matters asserted
32 by the parties.

33 h. A statement that a party who fails to attend or
34 participate in a prehearing conference, hearing, or other
35 stage of an adjudicative proceeding may be held in default

1 under this chapter.

2 4. The notice may include any other matters the presiding
3 officer considers desirable to expedite the proceedings.

4 5. The agency shall give notice to persons entitled to
5 notice under any provision of law who have not been given
6 notice by the presiding officer. Notice under this subsection
7 may include all types of information provided in subsections 1
8 through 4 or may consist of a brief statement indicating the
9 subject matter, parties, time, place, and nature of the
10 hearing, manner in which copies of the notice to the parties
11 may be inspected and copied, and name and telephone number of
12 the presiding officer.

13 Sec. 46. NEW SECTION. 17A.4207 PLEADINGS, BRIEFS,
14 MOTIONS, SERVICE.

15 1. The presiding officer, at appropriate stages of the
16 proceedings, shall give all parties full opportunity to file
17 pleadings, motions, and objections.

18 2. The presiding officer, at appropriate stages of the
19 proceedings, may give all parties full opportunity to file
20 briefs, proposed findings of fact and conclusions of law, and
21 proposed initial or final orders.

22 3. A party shall serve copies of any filed item on all
23 parties, by mail or any other means prescribed by agency rule.

24 Sec. 47. NEW SECTION. 17A.4208 DEFAULT.

25 1. If a party fails to attend or participate in a pre-
26 hearing conference, hearing, or other stage of an adjudicative
27 proceeding, the presiding officer may serve by certified mail
28 all parties written notice of a proposed default order,
29 including a statement of the grounds.

30 2. Within fifteen days or such longer period specified by
31 rule after the mailing by certified mail of a proposed default
32 order, the party against whom it was issued may file a written
33 motion requesting that the proposed default order be vacated
34 and stating the grounds relied upon. A proposed default order
35 may be vacated for any reason specified in the rules of civil

1 procedure or for any other reason specified by agency rule.
2 During the time within which a party may file a written motion
3 under this subsection, the presiding officer may adjourn the
4 proceedings or conduct them without the participation of the
5 party against whom a proposed default order was issued, having
6 due regard for the interests of justice and the orderly and
7 prompt conduct of the proceedings.

8 3. The presiding officer shall either issue or vacate the
9 default order promptly after expiration of the time within
10 which the party may file a written motion under subsection 2.

11 4. After issuing a default order, the presiding officer
12 shall conduct any further proceedings necessary to complete
13 the adjudication without the participation of the party in
14 default and shall determine all issues in the adjudication,
15 including those affecting the defaulting party.

16 Sec. 48. NEW SECTION. 17A.4209 INTERVENTION.

17 1. The presiding officer shall grant a petition for
18 intervention if all of the following apply:

19 a. The petition is submitted in writing to the presiding
20 officer, with copies mailed to all parties named in the
21 presiding officer's notice of the hearing, at least twenty
22 days before the hearing.

23 b. The petition states facts demonstrating that the
24 petitioner's legal rights, duties, privileges, immunities, or
25 other legal interests may be substantially affected by the
26 proceeding or that the petitioner qualifies as an intervenor
27 under any provision of law.

28 c. The presiding officer determines that the interests of
29 justice and the orderly and prompt conduct of the proceedings
30 will not be impaired by allowing the intervention.

31 2. The presiding officer may grant a petition for
32 intervention at any time, upon determining that the
33 intervention sought is in the interests of justice and will
34 not impair the orderly and prompt conduct of the proceedings.

35 3. If a petitioner qualifies for intervention, the

1 presiding officer may impose conditions upon the intervenor's
2 participation in the proceedings, either at the time that
3 intervention is granted or at any subsequent time. Conditions
4 may include any or all of the following:

5 a. Limiting the intervenor's participation to designated
6 issues in which the intervenor has a particular interest
7 demonstrated by the petition.

8 b. Limiting the intervenor's use of discovery, cross-
9 examination, and other procedures so as to promote the orderly
10 and prompt conduct of the proceedings.

11 c. Requiring two or more intervenors to combine their
12 presentations of evidence and argument, cross-examination,
13 discovery, and other participation in the proceedings.

14 4. The presiding officer shall issue an order granting or
15 denying each pending petition for intervention, specifying any
16 conditions, and briefly stating the reasons for the order.
17 The presiding officer may modify the order at any time,
18 stating the reasons for the modification. The presiding
19 officer shall promptly give notice of an order granting,
20 denying, or modifying intervention to the petitioner for
21 intervention and to all parties.

22 Sec. 49. NEW SECTION. 17A.4210 SUBPOENAS, DISCOVERY, AND
23 PROTECTIVE ORDERS.

24 1. Discovery procedures applicable to civil actions are
25 available to all parties in accordance with the rules of civil
26 procedure. Upon notice to all parties, the presiding officer
27 at the request of any party shall, and upon the presiding
28 officer's own motion may, administer oaths and issue
29 subpoenas, discovery orders, and protective orders, in
30 accordance with the rules of civil procedure.

31 2. Any party or person to whom the subpoena or similar
32 process is directed may object to the issuance of the subpoena
33 or process. The presiding officer and any reviewing district
34 court shall sustain the subpoena or similar process only to
35 the extent that it is found to be in accordance with the law

1 applicable to the issuance of subpoenas or discovery in civil
2 actions.

3 3. Subpoenas and orders issued under this section may be
4 enforced pursuant to article 5, part 2, of this chapter on
5 civil enforcement of agency action.

6 4. An agency that relies on a witness in an adjudicative
7 proceeding, whether or not an agency employee, who has made
8 prior statements or reports with respect to the subject matter
9 of the witness' testimony, shall, on request, make such
10 statements or reports available prior to hearing to parties
11 for use on cross-examination, unless those statements or
12 reports are otherwise expressly exempt from disclosure by
13 constitution or statute. Identifiable agency records that are
14 relevant to disputed material facts involved in an
15 adjudicative proceeding, shall, upon request, promptly be made
16 available to a party unless the requested records are
17 expressly exempt from disclosure by constitution or statute.

18 5. Unless provided otherwise by any applicable provision
19 of law, an agency authorized to issue an investigatory
20 subpoena for the purpose of determining whether to commence an
21 adjudicatory proceeding may do so only after giving notice of
22 the proposed issuance of the subpoena and an opportunity to
23 contest its issuance to the persons who are the subject of the
24 agency investigation. However, an agency may omit such notice
25 and opportunity if it obtains an order from a district court
26 approving that omission because of any of the following:

27 a. The whereabouts of the persons who are the subject of
28 the agency investigation are unknown and could not be
29 ascertained with reasonable efforts.

30 b. Such notice to the persons who are the subject of the
31 agency investigation would seriously interfere with the
32 agency's ability to obtain the evidence necessary to perform
33 its law enforcement responsibilities.

34 c. Such notice would result in imminent peril to the
35 health, safety, or welfare of any person or persons.

1 Sec. 50. NEW SECTION. 17A.4211 PROCEDURE AT HEARING.

2 At a hearing, all of the following apply:

3 1. The presiding officer shall regulate the course of the
4 proceedings in conformity with any prehearing order.

5 2. To the extent necessary for full disclosure of all
6 relevant facts and issues, the presiding officer shall afford
7 to all parties the opportunity to respond, present evidence
8 and argument, conduct cross-examination, and submit rebuttal
9 evidence, except as restricted by a limited grant of
10 intervention or by the prehearing order.

11 3. The presiding officer may conduct all or part of the
12 hearing by telephone, videoconference, or other electronic
13 means, if each participant in the hearing has an opportunity
14 to participate in, to hear, and, if technically feasible, to
15 see the entire proceeding while it is taking place.

16 4. The presiding officer shall cause the hearing to be
17 recorded at the agency's expense. The agency is not required,
18 at its expense, to prepare a transcript, unless required to do
19 so by a provision of law. Any party, at the party's expense,
20 may cause a reporter approved by the agency to prepare a
21 transcript from the agency's record, or cause additional
22 recordings to be made during the hearing if the making of the
23 additional recordings does not cause distraction or
24 disruption. The recording or stenographic notes of oral
25 proceedings or the transcription thereof shall be filed with
26 and maintained by the agency for at least five years from the
27 date of the final decision in that case.

28 5. The hearing is open to public observation, except for
29 the parts that the presiding officer states to be closed
30 pursuant to a provision of law expressly authorizing closure.
31 To the extent that a hearing is conducted by telephone, video-
32 conference, or other electronic means, and is not closed, the
33 availability of public observation is satisfied by giving
34 members of the public an opportunity to observe and hear that
35 communication at the location of any one of the participants,

1 as designated by the presiding officer, or if that is not
2 feasible, at reasonable times, to hear or inspect the agency's
3 record, and to inspect any transcript obtained by the agency.

4 Sec. 51. NEW SECTION. 17A.4212 EVIDENCE -- OFFICIAL
5 NOTICE.

6 1. Upon proper objection, the presiding officer shall
7 exclude evidence that is irrelevant, immaterial, unduly
8 repetitious, or excludable on constitutional or statutory
9 grounds or on the basis of evidentiary privilege recognized in
10 the courts of this state. In the absence of proper objection,
11 the presiding officer may exclude objectionable evidence after
12 notifying the parties of an intention to do so and providing
13 the parties with an opportunity to object to that exclusion.
14 Evidence shall not be excluded solely because it is hearsay.

15 2. All testimony of parties and witnesses must be made
16 under oath or affirmation.

17 3. Any part of the evidence may be received in written
18 form if doing so will expedite the hearing without substantial
19 prejudice to the interests of any party.

20 4. Documentary evidence may be received in the form of a
21 copy or excerpt. Upon request, parties must be given an
22 opportunity to compare the copy with the original if
23 available.

24 5. Official notice may be taken of any fact that could be
25 judicially noticed in the courts of this state, the record of
26 other proceedings before the agency, technical or scientific
27 matters within the agency's specialized knowledge, and codes
28 or standards that have been adopted by an agency of the United
29 States, of this state, or of another state, or by a nationally
30 recognized organization or association. Parties must be
31 notified before or during the hearing, or before the issuance
32 of any initial or final order that is based in whole or in
33 part on facts or material noticed, of the specific facts or
34 material noticed and the source thereof, including any staff
35 memoranda and data, and be afforded an opportunity to contest

1 and rebut the facts or material so noticed. However, if the
2 required notification of the parties is infeasible or
3 impracticable prior to the issuance of such an initial or
4 final order, the notification may first occur in that order
5 itself, as long as the parties are afforded, through the
6 granting of a motion for reconsideration timely filed with the
7 presiding officer, an opportunity, after the order is
8 rendered, to contest and rebut the facts or material so
9 noticed before that order becomes final.

10 Sec. 52. NEW SECTION. 17A.4213 EX PARTE COMMUNICATIONS.

11 1. Except as provided in subsection 2, or unless required
12 for the disposition of ex parte matters specifically
13 authorized by statute, a presiding officer serving in an
14 adjudicative proceeding shall not communicate, directly or
15 indirectly, regarding any issue in the proceeding other than
16 inquiries about scheduling, while the proceeding is pending,
17 with any party, with any person who has a direct or indirect
18 interest in the outcome of the proceeding, or with any person
19 who presided at a previous stage of the proceeding, without
20 notice and opportunity for all parties to participate in the
21 communication.

22 2. A member of a multi-member panel of presiding officers
23 may communicate with other members of the panel regarding a
24 matter pending before the panel, and any presiding officer may
25 receive aid from staff assistants if the assistants do not
26 receive ex parte communications of a type that the presiding
27 officer would be prohibited from receiving or that furnish,
28 augment, diminish, or modify the evidence in the record.

29 3. Unless required for the disposition of ex parte matters
30 specifically authorized by statute, a party to an adjudicative
31 proceeding, and a person who has a direct or indirect interest
32 in the outcome of the proceeding or who presided at a previous
33 stage of the proceeding, shall not communicate, directly or
34 indirectly, in connection with any issue in that proceeding
35 other than inquiries about scheduling, while the proceeding is

1 pending, with any person serving as presiding officer, without
2 notice and opportunity for all parties to participate in the
3 communication.

4 4. If, before serving as presiding officer in an
5 adjudicative proceeding, a person receives an ex parte
6 communication of a type that could not properly be received
7 while serving, the person, promptly after starting to serve,
8 shall disclose the communication in the manner prescribed in
9 subsection 5.

10 5. A presiding officer who receives an ex parte
11 communication in violation of this section shall place on the
12 record of the pending matter all written communications
13 received, all written responses to the communications, and a
14 memorandum stating the substance of all oral and other
15 communications received, all responses made, and the identity
16 of each person from whom the presiding officer received an ex
17 parte communication, and shall advise all parties that these
18 matters have been placed on the record. Any party desiring to
19 rebut the ex parte communication must be allowed to do so,
20 upon requesting the opportunity for rebuttal within ten days
21 after notice of the communication.

22 6. When necessary to eliminate the effect of an ex parte
23 communication received in violation of this section, a
24 presiding officer who receives the communication shall be
25 disqualified and the portions of the record pertaining to the
26 communication shall be sealed by protective order.

27 7. The agency and any party may report any violation of
28 this section to appropriate authorities for any disciplinary
29 proceedings provided by law. In addition, each agency by rule
30 may provide for appropriate sanctions, including default,
31 suspending or revoking a privilege to practice before the
32 agency, and for censuring, suspending, or dismissing agency
33 personnel, for any violations of this section.

34 8. In a proceeding for judicial review, the burden shall
35 be on the party seeking to uphold the validity of an order to

1 demonstrate that any violation of subsections 1 through 5
2 relating to the issuance of that order did not prejudice the
3 substantial rights of the party seeking its invalidation.

4 Sec. 53. NEW SECTION. 17A.4214 SEPARATION OF FUNCTIONS.

5 1. A person who has served personally as an investigator,
6 prosecutor, or advocate in an adjudicative proceeding or in
7 its pre-adjudicative stage shall not serve as presiding
8 officer or assist or advise a presiding officer in the same
9 proceeding.

10 2. A person who is subject to the authority, direction, or
11 discretion of one who has served personally as an
12 investigator, prosecutor, or advocate in an adjudicative
13 proceeding or in its pre-adjudicative stage shall not serve as
14 presiding officer or assist or advise a presiding officer in
15 the same proceeding.

16 3. A person who has participated in a determination of
17 probable cause or other equivalent preliminary determination
18 as to the sufficiency of the evidence to support the facts
19 alleged by any party in an adjudicative proceeding shall not
20 serve as presiding officer or assist or advise a presiding
21 officer in the same proceeding.

22 4. A person may serve as presiding officer at successive
23 stages of the same adjudicative proceeding, unless a party
24 demonstrates grounds for disqualification in accordance with
25 this section or section 17A.4202.

26 5. In a proceeding for judicial review, the burden shall
27 be on the party seeking to uphold the validity of an order to
28 demonstrate that any violation of this section relating to the
29 issuance of that order did not prejudice the substantial
30 rights of the party seeking its invalidation.

31 Sec. 54. NEW SECTION. 17A.4215 FINAL ORDER -- INITIAL
32 ORDER.

33 1. If the presiding officer is the agency head, the
34 presiding officer shall render a final order.

35 2. If the presiding officer is not the agency head, the

1 presiding officer shall render an initial order, which becomes
2 a final order unless reviewed in accordance with section
3 17A.4216.

4 3. A final order and an initial order must include the
5 date of its rendition and, separately stated, findings of
6 fact, conclusions of law, and policy reasons for the decision
7 if it is an exercise of the agency's discretion, for all
8 aspects of the order, including the remedy prescribed and, if
9 applicable, the action taken on a petition for stay of
10 effectiveness. The order must include an explanation of why
11 the evidence in the record supports each finding of fact and
12 why the evidence in the record that is contrary to a finding
13 does not preclude it. Findings of fact, if set forth in
14 language that is no more than mere repetition or paraphrase of
15 the relevant provision of law, must also be accompanied by a
16 concise and explicit statement of each of the underlying facts
17 in the record that support those findings. Each conclusion of
18 law must be supported by cited authority or by a reasoned
19 explanation. If a party has submitted proposed findings of
20 fact, conclusions of law, or policy reasons, the order must
21 include a ruling on the proposed findings. The order must
22 also include a statement of the available procedures and time
23 limits for seeking reconsideration or other administrative
24 relief from that final or initial order. An initial order
25 must include a statement of any circumstances under which the
26 initial order, without further notice, may become a final
27 order.

28 4. Findings of fact must be based exclusively upon the
29 evidence of record in the adjudicative proceeding and on
30 matters officially noticed in that proceeding. Findings must
31 be based upon the kind of evidence on which reasonably prudent
32 persons are accustomed to rely in the conduct of their serious
33 affairs and may be based upon such evidence even if it would
34 be inadmissible in a civil trial. The presiding officer's
35 experience, technical competence, and specialized knowledge

1 may be utilized in evaluating evidence, but only in accordance
2 with section 17A.4212, subsection 5. Unless provided
3 otherwise by another provision of law, findings of fact shall
4 be based upon a preponderance of the evidence and the burden
5 of proof shall be on the proponent of the agency action
6 requested.

7 5. If a person serving or designated to serve as presiding
8 officer becomes unavailable, for any reason, before rendition
9 of the final order or initial order, a substitute presiding
10 officer must be appointed as provided in section 17A.4202.
11 The substitute presiding officer shall use any existing record
12 and may conduct any further proceedings appropriate in the
13 interests of justice; but if demeanor of witnesses is a
14 substantial factor and the original presiding officer is
15 unavailable the portions of the hearing involving demeanor
16 heard by the original presiding officer shall be heard again
17 by the new presiding officer.

18 6. The presiding officer may allow the parties a
19 designated amount of time after conclusion of the hearing for
20 the submission of proposed findings.

21 7. A final order or initial order must be rendered in
22 writing within ninety days after conclusion of the hearing or
23 after submission of proposed findings in accordance with
24 subsection 6 unless this period is waived, extended with the
25 written consent of all parties, or extended for good cause
26 shown.

27 8. The presiding officer shall cause copies of the final
28 order or initial order to be mailed or otherwise delivered to
29 each party within two working days from the time the order is
30 rendered.

31 Sec. 55. NEW SECTION. 17A.4216 REVIEW OF INITIAL ORDER
32 -- EXCEPTIONS TO REVIEWABILITY.

33 1. The agency head, upon its own motion may, and upon
34 appeal by any party shall, review an initial order, except to
35 the extent that any of the following apply:

1 a. A provision of law precludes or limits agency review of
2 the initial order.

3 b. The agency head, in the exercise of discretion
4 conferred by a provision of law, does any of the following:

5 (1) Determines to review some but not all issues, or not
6 to exercise any review.

7 (2) Delegates its authority to review the initial order to
8 one or more persons.

9 (3) Authorizes one or more persons to review the initial
10 order, subject to further review by the agency head.

11 2. A petition for appeal from an initial order must be
12 filed with the agency head, or with any person designated for
13 this purpose by rule of the agency, within twenty days after
14 rendition of the initial order or within such longer time
15 period, not to exceed thirty days, as established by rule of
16 the agency. If the agency head on its own motion decides to
17 review an initial order, the agency head shall give written
18 notice of its intention to review the initial order within
19 twenty days after its rendition. The time period for a party
20 to file a petition for appeal or for the agency head to give
21 notice of its intention to review an initial order on the
22 agency head's own motion is tolled by the submission of a
23 timely petition for reconsideration of the initial order
24 pursuant to section 17A.4218, and a new time period starts to
25 run upon disposition of the petition for reconsideration. If
26 an initial order is subject both to a timely petition for
27 reconsideration and to a petition for appeal or to review by
28 the agency head on its own motion, the petition for
29 reconsideration must be disposed of first, unless the agency
30 head determines that action on the petition for
31 reconsideration has been unreasonably delayed.

32 3. The petition for appeal must state its basis. If the
33 agency head on its own motion gives notice of its intent to
34 review an initial order, the agency head shall identify the
35 issues that it intends to review.

1 4. The presiding officer for the review of an initial
2 order shall exercise all the decision-making power that the
3 presiding officer would have had to render a final order had
4 the presiding officer presided over the hearing, except to the
5 extent that the issues subject to review are limited by a
6 provision of law or by the presiding officer upon notice to
7 all parties.

8 5. The presiding officer shall afford each party an
9 opportunity to present briefs and may afford each party an
10 opportunity to present oral argument.

11 6. Before rendering a final order, the presiding officer
12 may cause a transcript to be prepared, at the agency's
13 expense, of such portions of the proceeding under review as
14 the presiding officer considers necessary.

15 7. The presiding officer may render a final order
16 disposing of the proceeding or may remand the matter for
17 further proceedings with instructions to the person who
18 rendered the initial order. Upon remanding a matter, the
19 presiding officer may order such temporary relief as is
20 authorized and appropriate.

21 8. A final order or an order remanding the matter for
22 further proceedings must be rendered in writing within sixty
23 days after receipt of briefs and oral argument unless that
24 period is waived, extended with the written consent of all
25 parties, extended for good cause shown, or extended by rule
26 for that class of cases for an additional period of not longer
27 than thirty days.

28 9. A final order or an order remanding the matter for
29 further proceedings under this section must identify any
30 difference between this order and the initial order and must
31 include, or incorporate by express reference to the initial
32 order, all the matters required by section 17A.4215,
33 subsection 3.

34 10. The presiding officer shall cause copies of the final
35 order or order remanding the matter for further proceedings to

1 be mailed or otherwise delivered to each party within two
2 working days from the time the order is rendered.

3 Sec. 56. NEW SECTION. 17A.4217 STAY.

4 A party may submit to the presiding officer a petition for
5 stay of effectiveness of an initial or final order within
6 twenty days after its rendition unless otherwise provided by
7 statute or stated in the initial or final order. The
8 presiding officer may take action on the petition for stay,
9 either before or after the effective date of the initial or
10 final order. A petition for a stay is deemed to have been
11 denied if the presiding officer does not dispose of it within
12 ten days after the filing of the petition.

13 Sec. 57. NEW SECTION. 17A.4218 RECONSIDERATION.

14 Unless otherwise provided by statute or rule the following
15 apply:

16 1. Any party, within twenty days after rendition of an
17 initial or final order, may file a petition for
18 reconsideration of that order, stating the specific grounds
19 upon which relief is requested. The filing of the petition is
20 not a prerequisite for seeking administrative or judicial
21 review. A copy of the application for reconsideration shall
22 be timely mailed by the presiding officer to all parties of
23 record not joining in the application.

24 2. The petition must be disposed of by the same person or
25 persons who rendered the initial or final order, if available.

26 3. The presiding officer shall render a written order
27 denying the petition, or granting the petition and dissolving
28 or modifying the initial or final order, or setting the matter
29 for further proceedings. The petition may be granted, in
30 whole or in part, only if the presiding officer states, in the
31 written order, findings of fact, conclusions of law, and
32 policy reasons for the decision if it is an exercise of the
33 agency's discretion, to justify the order. The petition is
34 deemed to have been denied if the presiding officer does not
35 dispose of it within twenty days after the filing of the

1 petition.

2 Sec. 58. NEW SECTION. 17A.4219 REVIEW BY SUPERIOR
3 AGENCY.

4 If, pursuant to statute, an agency may review the final
5 order of another agency, the review is deemed to be a
6 continuous proceeding as if before a single agency. The final
7 order of the first agency is treated as an initial order and
8 the second agency functions as though it were reviewing an
9 initial order in accordance with section 17A.4216.

10 Sec. 59. NEW SECTION. 17A.4220 EFFECTIVENESS OF ORDERS.

11 1. Unless a later date is stated in a final order or a
12 stay is granted, a final order is effective twenty days after
13 rendition, except for any of the following:

14 a. A party shall not be required to comply with a final
15 order unless the party has been served with or has actual
16 knowledge of the final order.

17 b. A final order shall not be invoked for any purpose
18 against any person unless the agency has made the final order
19 available for public inspection and copying or the person has
20 actual knowledge of the final order.

21 c. A final order may become effective on a specified date
22 stated in the order that is earlier than twenty days after its
23 rendition if any of the following exist:

24 (1) Another statute authorizes the agency to set an
25 earlier effective date for that order.

26 (2) The order only confers a benefit or relieves a
27 restriction on the parties other than the agency issuing the
28 order.

29 (3) The earlier effective date is necessary to avoid an
30 immediate danger to the public health, safety, or welfare.

31 2. Unless a later date is stated in an initial order or a
32 stay is granted, the time when an initial order becomes a
33 final order in accordance with section 17A.4215 is determined
34 as follows:

35 a. When the initial order is rendered, if administrative

1 review is unavailable.

2 b. When the agency head renders an order stating, after a
3 petition for appeal has been filed, that review will not be
4 exercised, if discretion is available to make a determination
5 to this effect.

6 c. Twenty days after rendition of the initial order, if no
7 party has filed a petition for appeal and the agency head has
8 not given written notice of its intention to exercise review.

9 3. Unless a later date is stated in an initial order or a
10 stay is granted, an initial order that becomes a final order
11 in accordance with subsection 2 and section 17A.4215 is
12 effective twenty days after becoming a final order, except for
13 any of the following:

14 a. A party shall not be required to comply with the final
15 order unless the party has been served with or has actual
16 knowledge of the initial order or of an order stating that
17 review will not be exercised.

18 b. An initial order shall not be invoked for any purpose
19 against any person unless the agency has made the initial
20 order available for public inspection and copying or the
21 person has actual knowledge of the initial order or of an
22 order stating that review will not be exercised.

23 c. An initial order that becomes a final order may become
24 effective on a specified date stated in the order that is
25 earlier than twenty days after it becomes a final order if it
26 satisfies the requirements of subsection 1, paragraph "a",
27 "b", or "c".

28 4. This section does not preclude an agency from taking
29 immediate action to protect the public interest in accordance
30 with section 17A.4501.

31 Sec. 60. NEW SECTION. 17A.4221 AGENCY RECORD.

32 1. An agency shall maintain an official record of each
33 adjudicative proceeding under this part.

34 2. The agency record consists only of all of the
35 following:

- 1 a. Notices of all proceedings.
 - 2 b. Any prehearing order.
 - 3 c. Any motions, pleadings, briefs, petitions, requests,
 - 4 and intermediate rulings.
 - 5 d. Evidence received or considered.
 - 6 e. A statement of matters officially noticed.
 - 7 f. Proffers of proof and objections and rulings thereon.
 - 8 g. Proposed findings, requested orders, and exceptions.
 - 9 h. The record prepared for the presiding officer at the
 - 10 hearing, together with any transcript of all or part of the
 - 11 hearing considered before final disposition of the proceeding.
 - 12 i. Any final order, initial order, or order on
 - 13 reconsideration.
 - 14 j. Staff memoranda or data submitted to the presiding
 - 15 officer, unless prepared and submitted by personal assistants
 - 16 and not inconsistent with section 17A.4213, subsection 2.
 - 17 k. Matters placed on the record after an ex parte
 - 18 communication.
- 19 3. Except to the extent that this chapter or another
- 20 statute provides otherwise, the agency record constitutes the
- 21 exclusive basis for agency action in adjudicative proceedings
- 22 under this part and for judicial review thereof.

23 PART 3

24 OFFICE OF ADMINISTRATIVE HEARINGS

25 Sec. 61. NEW SECTION. 17A.4301 OFFICE OF ADMINISTRATIVE

26 HEARINGS -- CREATION, POWERS, DUTIES.

27 1. An independent office of administrative hearings is

28 created to be headed by a director appointed by the governor

29 and confirmed by the senate. The director serves at the

30 pleasure of the governor.

31 2. The office shall employ administrative law judges as

32 necessary to conduct proceedings required by this chapter or

33 any other provision of law. Administrative law judges

34 employed by the office shall not perform duties inconsistent

35 with their duties and responsibilities as administrative law

1 judges and shall not be located in offices within the agencies
2 for which they act as presiding officers. Administrative law
3 judges shall be covered by the merit system provisions of
4 chapter 19A. Subject to the approval of the department of
5 personnel, the office shall, insofar as practicable, provide
6 for different classes of administrative law judges with
7 different salary scales. The office shall also facilitate,
8 insofar as practicable, specialization by its administrative
9 law judges so that particular judges may become expert in
10 presiding over cases in particular agencies.

11 3. If the office cannot furnish one of its administrative
12 law judges in response to an agency request, the director
13 shall designate in writing a full-time employee of an agency
14 other than the requesting agency to serve as administrative
15 law judge for the proceeding, but only with the consent of the
16 employing agency. The designee must possess the same
17 qualifications required of administrative law judges employed
18 by the office.

19 4. The director may furnish administrative law judges on a
20 contract basis to any governmental entity to conduct any
21 proceeding not subject to this chapter.

22 5. After the effective date of this Act, a person shall
23 not be newly employed by the office as an administrative law
24 judge to preside over formal adjudicative hearings unless that
25 person has a license to practice law in this state.

26 6. The office shall adopt rules pursuant to this chapter
27 to do all of the following:

28 a. To establish qualifications for administrative law
29 judges employed by the office, and, subject to the approval of
30 the department of personnel, procedures by which candidates
31 for a position as an administrative law judge in the office
32 will be considered for employment and the manner in which
33 public notice of vacancies for positions as administrative
34 law judges in the office will be given.

35 b. To establish procedures for agencies to request and for

1 the director to assign administrative law judges employed by
2 the office; however, an agency shall not select or reject any
3 individual administrative law judge for any proceeding except
4 in accordance with this chapter.

5 c. To establish procedures and adopt forms, consistent
6 with this chapter and other provisions of law, to govern
7 administrative law judges employed by the office, but any
8 rules adopted under this paragraph shall be applicable to a
9 particular adjudicatory proceeding only to the extent that
10 they are not inconsistent with the rules of the agency under
11 whose authority that proceeding is conducted.

12 d. To establish standards and procedures for the
13 evaluation, training, promotion, and discipline by the office
14 of administrative law judges employed by the office.

15 e. To establish, consistent with the provisions of this
16 chapter, a code of administrative judicial conduct that is
17 similar in function and substantially equivalent to the Iowa
18 code of judicial conduct, to govern the actions of all persons
19 who act as presiding officers under the authority of section
20 17A.4202, subsection 1.

21 f. To facilitate the performance of the responsibilities
22 conferred upon the office by this chapter.

23 7. The director may do all of the following:

24 a. Maintain a staff of reporters and other personnel.

25 b. Administer the provisions of this section and rules
26 adopted under its authority.

27 8. The office may charge agencies for services rendered
28 and the payment received shall be considered repayment
29 receipts as defined in section 8.2.

30

PART 4

31

CONFERENCE ADJUDICATIVE HEARING

32 Sec. 62. NEW SECTION. 17A.4401 CONFERENCE ADJUDICATIVE
33 HEARING -- APPLICABILITY.

34 A conference adjudicative hearing may be used if its use in
35 the circumstances does not violate any provision of law and

1 the matter is entirely within one or more categories for which
2 the agency by rule has adopted this part. However, those
3 categories may include only the following:

4 1. A matter in which there is no disputed issue of
5 material fact.

6 2. A matter in which there is a disputed issue of material
7 fact, if the matter involves one or more of the following:

8 a. A monetary amount of not more than one thousand
9 dollars. In determining whether a matter involves only a
10 monetary amount of one thousand dollars or less, a presumption
11 arises that, if a claimant prevails on the merits, the
12 claimant will subsequently be qualified for and entitled to
13 the amount of any periodic payments claimed for the maximum
14 period allowed by law and that claimant may aggregate the
15 amount of those subsequent payments for purposes of
16 determining the monetary amount involved in the matter at
17 issue.

18 b. A disciplinary sanction against an inmate.

19 c. A disciplinary sanction against a student which does
20 not involve expulsion or suspension for more than ten days
21 from an educational institution.

22 d. A disciplinary sanction against a public employee which
23 does not involve discharge or suspension for more than ten
24 days from employment.

25 e. A disciplinary sanction against a licensee which does
26 not involve revocation, suspension, annulment, withdrawal, or
27 amendment of a license, or a reprimand or warning against an
28 occupational or professional licensee which may reasonably be
29 deemed to affect the economic or professional status or
30 reputation of that licensee.

31 Sec. 63. NEW SECTION. 17A.4402 CONFERENCE ADJUDICATIVE
32 HEARING -- PROCEDURES.

33 The procedures of this chapter pertaining to formal
34 adjudicative hearings apply to a conference adjudicative
35 hearing, except to the following extent:

1 1. If a matter is initiated as a conference adjudicative
2 hearing, a prehearing conference shall not be held.

3 2. The provisions of section 17A.4210 do not apply to
4 conference adjudicative hearings insofar as those provisions
5 authorize the issuance and enforcement of subpoenas and
6 discovery orders, but do apply to conference adjudicative
7 hearings insofar as those provisions authorize the presiding
8 officer to issue protective orders at the request of any party
9 or upon the presiding officer's motion.

10 3. Section 17A.4211, subsections 1 and 2, do not apply
11 except for the following:

12 a. The presiding officer shall regulate the course of the
13 proceedings.

14 b. Only the parties may testify and present written
15 exhibits.

16 c. The parties may offer comments on the issues and cross
17 examine each other with respect to any factual disputes.

18 4. The provisions of section 17A.4215, subsection 4,
19 requiring findings of fact to be based exclusively on the
20 evidence of record and on matters officially noticed, and
21 section 17A.4221 do not apply; instead, the provisions of
22 section 17A.4506 apply.

23 Sec. 64. NEW SECTION. 17A.4403 CONFERENCE ADJUDICATIVE
24 HEARING -- PROPOSED PROOF.

25 1. If the presiding officer has reason to believe that
26 material facts are in dispute, the presiding officer may
27 require any party to state the identity of the witnesses or
28 other sources through whom the party would propose to present
29 proof if the proceeding were converted to a formal
30 adjudicative hearing, but if disclosure of any fact,
31 allegation, or source is privileged or expressly prohibited by
32 any provision of law, the presiding officer may require the
33 party to indicate that confidential facts, allegations, or
34 sources are involved, but not to disclose the confidential
35 facts, allegations, or sources.

1 2. If a party has reason to believe that essential facts
2 must be obtained in order to permit an adequate presentation
3 of the case, the party may inform the presiding officer
4 regarding the general nature of the facts and the sources from
5 which the party would propose to obtain those facts if the
6 proceeding were converted to a formal adjudicative hearing.

7 PART 5

8 EMERGENCY AND SUMMARY ADJUDICATIVE PROCEEDINGS

9 Sec. 65. NEW SECTION. 17A.4501 EMERGENCY ADJUDICATIVE
10 PROCEEDINGS.

11 1. An agency may use emergency adjudicative proceedings in
12 a situation involving an immediate danger to the public
13 health, safety, or welfare requiring immediate agency action.

14 2. The agency may take only such action as is necessary to
15 prevent or avoid the immediate danger to the public health,
16 safety, or welfare that justifies use of emergency
17 adjudication.

18 3. The agency shall render an order, including a brief
19 statement of findings of fact, conclusions of law, and policy
20 reasons for the decision if it is an exercise of the agency's
21 discretion, to justify the determination of an immediate
22 danger and the agency's decision to take the specific action.

23 4. The agency shall give such notice as is practicable to
24 persons who are required to comply with the order. The order
25 is effective when rendered.

26 5. After issuing an order pursuant to this section, the
27 agency shall proceed as quickly as feasible to complete any
28 proceedings that would be required if the matter did not
29 involve an immediate danger.

30 6. The agency record consists of any documents regarding
31 the matter that were considered or prepared by the agency.
32 The agency shall maintain these documents as its official
33 record.

34 7. Unless otherwise required by a provision of law, the
35 agency record need not constitute the exclusive basis for

1 agency action in emergency adjudicative proceedings or for
2 judicial review thereof.

3 Sec. 66. NEW SECTION. 17A.4502 SUMMARY ADJUDICATIVE
4 PROCEEDINGS -- APPLICABILITY.

5 An agency may use summary adjudicative proceedings if all
6 of the following apply:

7 1. The use of those proceedings in the circumstances does
8 not violate any provision of law.

9 2. The protection of the public interest does not require
10 the agency to give notice and an opportunity to participate to
11 persons other than the parties.

12 3. The matter is entirely within one or more categories
13 for which the agency by rule has adopted this section and
14 sections 17A.4503 to 17A.4506; however, those categories may
15 include only the following:

16 a. A monetary amount of not more than one hundred dollars.

17 b. A reprimand, warning, disciplinary report, or other
18 purely verbal sanction without continuing impact against an
19 inmate, student, or public employee.

20 c. The denial of an application after the applicant has
21 abandoned the application.

22 d. The denial of an application for admission to an
23 educational institution or for employment by an agency.

24 e. The denial, in whole or in part, of an application if
25 the applicant has an opportunity for administrative review in
26 accordance with section 17A.4504.

27 f. A matter that is resolved on the sole basis of
28 inspections, examinations, or tests.

29 g. The acquisition, leasing, or disposal of property or
30 the procurement of goods or services by contract.

31 Sec. 67. NEW SECTION. 17A.4503 SUMMARY ADJUDICATIVE
32 PROCEEDINGS -- PROCEDURES.

33 1. The agency head, one or more members of the agency
34 head, one or more administrative law judges assigned by the
35 office of administrative hearings in accordance with section

1 17A.4301, or, unless prohibited by law, one or more other
2 persons designated by the agency head in the discretion of the
3 agency head, may be the presiding officer. Unless prohibited
4 by law, a person exercising authority over the matter is the
5 presiding officer.

6 2. If the proceeding involves a monetary matter or a
7 reprimand, warning, disciplinary report, or other sanction,
8 all of the following apply:

9 a. The presiding officer, before taking action, shall give
10 each party an opportunity to be informed of the agency's view
11 of the matter and to explain the party's view of the matter.

12 b. The presiding officer, at the time any unfavorable
13 action is taken, shall give each party a brief statement of
14 the reasons for the action.

15 3. An order rendered in a proceeding that involves a
16 monetary matter must be in writing. An order in any other
17 summary adjudicative proceeding may be oral or written.

18 4. The agency, by reasonable means, shall furnish to each
19 party notification of the order in a summary adjudicative
20 proceeding. Notification must at least include a statement of
21 the agency's action.

22 Sec. 68. NEW SECTION. 17A.4504 ADMINISTRATIVE REVIEW OF
23 SUMMARY ADJUDICATIVE PROCEEDINGS -- APPLICABILITY.

24 Except to the extent prohibited by any provision of law, an
25 agency, on its own motion, may conduct an administrative
26 review of an order resulting from summary adjudicative
27 proceedings, and shall conduct this review upon the written or
28 oral request of a party if the agency receives the request
29 within ten days after furnishing notification under section
30 17A.4503, subsection 4.

31 Sec. 69. NEW SECTION. 17A.4505 ADMINISTRATIVE REVIEW OF
32 SUMMARY ADJUDICATIVE PROCEEDINGS -- PROCEDURES.

33 Unless otherwise provided by statute:

34 1. An agency need not furnish notification of the pendency
35 of administrative review to any person who did not request the

1 review, but the agency shall not take any action on review
2 less favorable to any party than the original order without
3 giving that party notice and an opportunity to explain that
4 party's view of the matter.

5 2. The reviewing officer, in the discretion of the agency
6 head, may be any person who could have presided at the summary
7 adjudicative proceeding, but the reviewing officer must be one
8 who is authorized to grant appropriate relief upon review.

9 3. The reviewing officer shall give each party an
10 opportunity to explain the party's view of the matter unless
11 the party's view is apparent from the written materials in the
12 file submitted to the reviewing officer. The reviewing
13 officer shall make any inquiries necessary to ascertain
14 whether the proceeding must be converted to a conference
15 adjudicative hearing or a formal adjudicative hearing.

16 4. The reviewing officer may render an order disposing of
17 the proceeding in any manner that was available to the
18 presiding officer at the summary adjudicative proceeding or
19 the reviewing officer may remand the matter for further
20 proceedings, with or without conversion to a conference
21 adjudicative hearing or a formal adjudicative hearing.

22 5. If the order under review is or should have been in
23 writing, the order on review must be in writing, including a
24 brief statement of findings of fact, conclusions of law, and
25 policy reasons for the decision if it is an exercise of the
26 agency's discretion, to justify the order, and a notice of any
27 further available administrative review.

28 6. A request for administrative review is deemed to have
29 been denied if the reviewing officer does not dispose of the
30 matter or remand it for further proceedings within twenty days
31 after the request is submitted.

32

PART 6

33 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDING RECORDS

34 Sec. 70. NEW SECTION. 17A.4601 AGENCY RECORD OF

35 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDINGS AND

1 ADMINISTRATIVE REVIEW.

2 1. The agency record consists of any documents regarding
3 the matter that were submitted by a party to, or were
4 considered or prepared by the presiding officer for, that
5 conference or summary adjudicative proceeding or by the
6 presiding or reviewing officer for any subsequent agency
7 review. The agency shall maintain these documents as its
8 official record.

9 2. Unless otherwise required by a provision of law, the
10 agency record need not constitute the exclusive basis for
11 agency action in conference or summary adjudicative
12 proceedings or for judicial review thereof.

13 ARTICLE 5

14 JUDICIAL REVIEW AND CIVIL ENFORCEMENT

15 PART 1

16 JUDICIAL REVIEW

17 Sec. 71. NEW SECTION. 17A.5101 EXCLUSIVITY OF JUDICIAL
18 REVIEW PROVISIONS -- RELATIONSHIP BETWEEN JUDICIAL REVIEW
19 PROVISIONS OF THIS CHAPTER AND ANCILLARY PROCEDURAL
20 REQUIREMENTS OF OTHER LAW AND SUPERIOR JUDICIAL REMEDIES.

21 Except as expressly provided otherwise by another statute
22 referring to this chapter by name or number, this chapter
23 establishes the exclusive means of judicial review of agency
24 action, except for any of the following:

25 1. The provisions of this chapter for judicial review do
26 not apply to litigation in which the sole issue is a claim for
27 money damages or compensation and the agency whose action is
28 at issue does not have statutory authority to determine the
29 claim.

30 2. Ancillary procedural matters, including intervention,
31 class actions, consolidation, joinder, severance, transfer,
32 protective orders, and other relief from disclosure of
33 privileged or confidential material, are governed, to the
34 extent not inconsistent with this chapter, by other applicable
35 law.

1 3. If the relief available under other sections of this
2 chapter is not equal or substantially equivalent to the relief
3 otherwise available under law, the relief otherwise available
4 and the related procedures supersede and supplement this
5 chapter to the extent necessary for their effectuation. The
6 applicable provisions of this chapter and other law must be
7 combined to govern a single proceeding or, if the court
8 orders, two or more separate proceedings, with or without
9 transfer to other courts, but no type of relief may be sought
10 in a combined proceeding after expiration of the time limit
11 for doing so.

12 Sec. 72. NEW SECTION. 17A.5102 FINAL AGENCY ACTION
13 REVIEWABLE.

14 1. A person who qualifies under this chapter regarding
15 standing in section 17A.5106, exhaustion of administrative
16 remedies in section 17A.5107, and time for filing the petition
17 for review in section 17A.5108, and other applicable
18 provisions of law regarding bond, compliance, and other
19 preconditions is entitled to judicial review of final agency
20 action, whether or not the person has sought judicial review
21 of any related nonfinal agency action.

22 2. For purposes of this section and section 17A.5103:

23 a. "Final agency action" means the whole or a part of any
24 agency action other than nonfinal agency action.

25 b. "Nonfinal agency action" means the whole or a part of
26 an agency determination, investigation, proceeding, hearing,
27 conference, or other process that the agency intends or is
28 reasonably believed to intend to be preliminary, preparatory,
29 procedural, or intermediate with regard to subsequent agency
30 action of that agency or another agency.

31 Sec. 73. NEW SECTION. 17A.5103 NONFINAL AGENCY ACTION
32 REVIEWABLE.

33 A person is entitled to judicial review of nonfinal agency
34 action only if all of the following apply:

35 1. It appears likely that the person will qualify under

1 section 17A.5102 for judicial review of the related final
2 agency action.

3 2. Postponement of judicial review would result in an
4 inadequate remedy or irreparable harm disproportionate to the
5 public benefit derived from postponement.

6 Sec. 74. NEW SECTION. 17A.5104 JURISDICTION -- VENUE.

7 1. The district court shall conduct judicial review.

8 2. Venue shall be in the Polk county district court or the
9 district court for the county in which the petitioner resides
10 or has its principal place of business. When a proceeding for
11 judicial review has been commenced, a court may, in the
12 interest of justice, transfer the proceeding to the district
13 court for another county.

14 Sec. 75. NEW SECTION. 17A.5105 FORM OF ACTION -- SERVICE
15 -- CONTENTS OF PETITION.

16 Judicial review is initiated by filing a petition for
17 review in the appropriate district court. A petition may seek
18 any type of relief available under section 17A.5101,
19 subsection 3, and section 17A.5117.

20 Sec. 76. NEW SECTION. 17A.5106 STANDING.

21 1. The following persons have standing to obtain judicial
22 review of final or nonfinal agency action:

23 a. A person to whom the agency action is specifically
24 directed.

25 b. A person who was a party to the agency proceedings that
26 led to the agency action.

27 c. If the challenged agency action is a rule, a person
28 subject to that rule.

29 d. A person eligible for standing under another provision
30 of law.

31 e. A person otherwise aggrieved or adversely affected by
32 the agency action. For purposes of this paragraph, a person
33 does not have standing as one otherwise aggrieved or adversely
34 affected unless all of the following apply:

35 (1) The agency action has prejudiced or is likely to

1 prejudice that person.

2 (2) That person's asserted interests are among those that
3 the agency was required by law to consider when it engaged in
4 the agency action challenged.

5 (3) A judgment in favor of that person would substantially
6 eliminate or redress the prejudice to that person caused or
7 likely to be caused by the agency action.

8 2. The administrative rules review committee of the
9 general assembly, which is required to exercise general and
10 continuing oversight over administrative rules, may petition
11 for judicial review of any rule.

12 Sec. 77. NEW SECTION. 17A.5107 EXHAUSTION OF
13 ADMINISTRATIVE REMEDIES.

14 A person may file a petition for judicial review under this
15 chapter only after exhausting all administrative remedies
16 available within the agency whose action is being challenged
17 and within any other agency authorized to exercise
18 administrative review, except for any of the following:

19 1. A petitioner for judicial review of a rule need not
20 have participated in the rulemaking proceeding upon which that
21 rule is based, or have petitioned for its amendment or repeal.

22 2. A petitioner for judicial review need not exhaust
23 administrative remedies to the extent that this chapter or any
24 other statute states that exhaustion is not required.

25 3. The court may relieve a petitioner of the requirement
26 to exhaust any or all administrative remedies, to the extent
27 that the administrative remedies are inadequate, or requiring
28 their exhaustion would result in irreparable harm
29 disproportionate to the public benefit derived from requiring
30 exhaustion.

31 Sec. 78. NEW SECTION. 17A.5108 TIME FOR FILING PETITION
32 FOR REVIEW.

33 Subject to other requirements of this chapter or of another
34 statute:

35 1. A petition for judicial review of a rule may be filed

1 at any time, except as limited by section 17A.3113, subsection
2 2.

3 2. A petition for judicial review of an order is not
4 timely unless filed within thirty days after rendition of the
5 order, but the time is extended during the pendency of the
6 petitioner's timely attempts to exhaust administrative
7 remedies, if the attempts are not clearly frivolous or
8 repetitious.

9 3. A petition for judicial review of agency action other
10 than a rule or order is not timely unless filed within thirty
11 days after the agency action, but the time is extended if any
12 of the following apply:

13 a. During the pendency of the petitioner's timely attempts
14 to exhaust administrative remedies, if the attempts are not
15 clearly frivolous or repetitious.

16 b. During any period that the petitioner did not know and
17 was under no duty to discover, or did not know and was under a
18 duty to discover but could not reasonably have discovered,
19 that the agency had taken the action or that the agency action
20 had a sufficient effect to confer standing upon the petitioner
21 to obtain judicial review under this chapter.

22 Sec. 79. NEW SECTION. 17A.5109 PETITION FOR REVIEW --
23 FILING AND CONTENTS.

24 1. A petition for review must be filed with the clerk of
25 the district court and must name the agency as respondent.

26 2. A petition for review must set forth all of the
27 following:

28 a. The name and mailing address of the petitioner.

29 b. The name and mailing address of the agency whose action
30 is at issue.

31 c. Identification of the specific agency action at issue,
32 together with a duplicate copy, summary, or brief description
33 of the agency action.

34 d. Identification of persons who were parties in any
35 adjudicative proceedings that led to the agency action.

1 e. Facts to demonstrate that the petitioner is entitled to
2 obtain judicial review.

3 f. Facts on which venue is based.

4 g. The specific grounds on which relief is sought and the
5 petitioner's reasons for believing that relief should be
6 granted.

7 h. A request for relief, specifying the type and extent of
8 relief requested.

9 A petition for review that is in substantial compliance
10 with the requirements of this subsection shall not be
11 dismissed solely for failure to satisfy its requirements.

12 Sec. 80. NEW SECTION. 17A.5110 PETITION FOR REVIEW --
13 SERVICE AND NOTIFICATION -- NOTICE OF INTERVENTION.

14 1. Within ten days after the filing of a petition for
15 judicial review of agency action, the petitioner shall serve a
16 file stamped copy of the petition upon the agency in the
17 manner provided by the rules of civil procedure for the
18 personal service of an original notice or shall mail a file
19 stamped copy of the petition to the agency by restricted
20 certified mail.

21 2. Within ten days after the filing of a petition for
22 judicial review of agency action in an adjudicative
23 proceeding, the petitioner shall also give notice of the
24 petition for review to each other party of record in that
25 adjudicative proceeding either by serving a file stamped copy
26 of the petition upon that party in the manner provided by the
27 rules of civil procedure for the personal service of an
28 original notice or by restricted certified mail.

29 3. The personal service or mailing required by this
30 section shall be jurisdictional and may be made on the party
31 or the party's attorney of record in the proceeding before the
32 agency. A mailing shall be addressed to the parties or their
33 attorneys of record at their last known mailing address.
34 Proof of mailing shall be by the return receipt from the
35 restricted certified mail.

1 4. Any party of record in an adjudicative proceeding
2 before an agency who wishes to intervene and participate in
3 the judicial review proceeding must file an appearance in the
4 court indicating that intention within forty-five days from
5 the date the petition is filed.

6 Sec. 81. NEW SECTION. 17A.5111 STAY AND OTHER TEMPORARY
7 REMEDIES PENDING FINAL DISPOSITION.

8 1. Unless precluded by law, the agency may grant a stay on
9 appropriate terms or other temporary remedies during the
10 pendency of judicial review.

11 2. A party may file a motion in the reviewing court,
12 during the pendency of judicial review, seeking interlocutory
13 review of the agency's action on an application for stay or
14 other temporary remedies.

15 3. If the agency has found that its action on an
16 application for stay or other temporary remedies is justified
17 to protect against a substantial threat to the public health,
18 safety, or welfare, the court may grant relief only upon a
19 finding that all of the following apply:

20 a. The applicant is likely to prevail when the court
21 finally disposes of the matter.

22 b. Without relief the applicant will suffer irreparable
23 injury.

24 c. The grant of relief to the applicant will not
25 substantially harm other parties to the proceedings.

26 d. The type of threat to the public health, safety, or
27 welfare relied on by the agency is not sufficiently serious to
28 justify the agency's action in the circumstances.

29 4. If subsection 3 does not apply, the court shall grant
30 relief if it finds that the agency's action on the application
31 for stay or other temporary remedies was unreasonable in the
32 circumstances.

33 5. If the court determines that relief should be granted
34 from the agency's action on an application for stay or other
35 temporary remedies, the court may remand the matter to the

1 agency with directions to deny a stay, to grant a stay on
2 appropriate terms, or to grant other temporary remedies, or
3 the court may issue an order denying a stay, granting a stay
4 on appropriate terms, or granting other temporary remedies.

5 Sec. 82. NEW SECTION. 17A.5112 LIMITATION ON NEW ISSUES.

6 A person may obtain judicial review of an issue that was
7 not raised before the agency, only to the extent of any of the
8 following:

9 1. The agency did not have authority to grant an adequate
10 remedy based on a determination of the issue involved because
11 the issue or remedy was not within the jurisdiction of the
12 agency.

13 2. The person did not know and was under no duty to
14 discover, or did not know and was under a duty to discover but
15 could not reasonably have discovered, facts giving rise to the
16 issue.

17 3. The agency action subject to judicial review is a rule
18 and the person is challenging only the validity of that rule
19 and has not been a party in adjudicative proceedings which
20 provided an adequate opportunity to raise the issue.

21 4. The agency action subject to judicial review is an
22 order and the person was not notified of the adjudicative
23 proceeding in compliance with any provision of law or was
24 notified but was not permitted to participate in that
25 adjudicative proceeding.

26 5. The interests of justice would be served by judicial
27 resolution of an issue arising from any of the following:

28 a. A change in controlling law occurring after the agency
29 action.

30 b. Agency action occurring after the person exhausted the
31 last feasible opportunity for seeking relief from the agency.

32 Sec. 83. NEW SECTION. 17A.5113 JUDICIAL REVIEW OF FACTS
33 CONFINED TO RECORD FOR JUDICIAL REVIEW AND ADDITIONAL EVIDENCE
34 TAKEN PURSUANT TO THIS CHAPTER.

35 Judicial review of disputed issues of fact must be confined

1 to the agency record for judicial review as defined in this
2 chapter, supplemented by additional evidence taken pursuant to
3 this chapter.

4 Sec. 84. NEW SECTION. 17A.5114 NEW EVIDENCE TAKEN BY
5 COURT OR AGENCY BEFORE FINAL DISPOSITION.

6 1. The court may receive evidence, in addition to that
7 contained in the agency record for judicial review, only if it
8 relates to the validity of the agency action at the time it
9 was taken and is needed to decide disputed issues regarding
10 any of the following:

11 a. Improper constitution as a decision-making body, or
12 improper motive or grounds for disqualification, of those
13 taking the agency action.

14 b. Unlawfulness of procedure or of decision-making
15 process.

16 c. Any material fact that was not required by provision of
17 law to be determined exclusively on an agency record of a type
18 reasonably suitable for judicial review.

19 2. The court may remand a matter to the agency, before
20 final disposition of a petition for review, with directions
21 that the agency conduct fact-finding and other proceedings the
22 court considers necessary and that the agency take such
23 further action on the basis thereof as the court directs, if
24 any of the following apply:

25 a. The agency was required by this chapter or any other
26 provision of law to base its action exclusively on a record of
27 a type reasonably suitable for judicial review, but the agency
28 failed to prepare or preserve an adequate record.

29 b. The court finds that all of the following apply:

30 (1) New evidence has become available that relates to the
31 validity of the agency action at the time it was taken, that
32 one or more of the parties did not know and was under no duty
33 to discover, or did not know and was under a duty to discover
34 but could not reasonably have discovered, until after the
35 agency action.

1 (2) The interests of justice would be served by remand to
2 the agency.

3 c. The agency improperly excluded or omitted evidence from
4 the record.

5 d. A relevant provision of law changed after the agency
6 action and the court determines that the new provision may
7 control the outcome.

8 Sec. 85. NEW SECTION. 17A.5115 AGENCY RECORD FOR
9 JUDICIAL REVIEW -- CONTENTS, PREPARATION, TRANSMITTAL, COST.

10 1. Within thirty days after service of the petition, or
11 within further time allowed by the court or by other provision
12 of law, the agency shall transmit to the court the original or
13 a certified copy of the agency record for judicial review of
14 the agency action, consisting of any agency documents
15 expressing the agency action, other documents identified by
16 the agency as having been considered by it before its action
17 and used as a basis for its action, and any other material
18 described in this chapter as the agency record for the type of
19 agency action at issue, subject to the provisions of this
20 section.

21 2. If part of the record has been preserved without a
22 transcript, the agency shall prepare a transcript for
23 inclusion in the record transmitted to the court, except for
24 portions that the parties stipulate to omit in accordance with
25 subsection 4.

26 3. The agency may charge the petitioner with the
27 reasonable cost of preparing any necessary copies and
28 transcripts for transmittal to the court. A failure by the
29 petitioner to pay any of this cost to the agency does not
30 relieve the agency from the responsibility for timely
31 preparation of the record and transmittal to the court.

32 4. By stipulation of all parties to the review
33 proceedings, the record may be shortened, summarized, or
34 organized.

35 5. The court may tax the cost of preparing transcripts and

1 copies for the record in accordance with any of the following:

2 a. Against a party who unreasonably refuses to stipulate
3 to shorten, summarize, or organize the record.

4 b. As provided by section 17A.5117.

5 c. In accordance with any other provision of law.

6 6. Additions to the record pursuant to section 17A.5114
7 must be made as ordered by the court.

8 7. The court may require or permit subsequent corrections
9 or additions to the record.

10 Sec. 86. NEW SECTION. 17A.5116 SCOPE OF REVIEW --

11 GROUNDS FOR INVALIDITY.

12 1. Except to the extent that this chapter provides
13 otherwise, in suits for judicial review of agency action all
14 of the following apply:

15 a. The burden of demonstrating the required prejudice and
16 the invalidity of agency action is on the party asserting
17 invalidity.

18 b. The validity of agency action must be determined in
19 accordance with the standards of review provided in this
20 section, as applied to the agency action at the time that
21 action was taken.

22 2. The court shall make a separate and distinct ruling on
23 each material issue on which the court's decision is based.

24 3. The court shall grant relief from agency action if it
25 determines that substantial rights of the person seeking
26 judicial relief have been prejudiced because the agency action
27 is any of the following:

28 a. Unconstitutional on its face or as applied or is based
29 upon a provision of law that is unconstitutional on its face
30 or as applied.

31 b. Beyond the authority conferred upon the agency by any
32 provision of law or in violation of any provision of law.

33 c. Based upon an erroneous interpretation of a provision
34 of law whose interpretation has not clearly been delegated to
35 the discretion of the agency.

1 d. Based upon a procedure or decision-making process
2 prohibited by law or was taken without following the
3 prescribed procedure or decision-making process.

4 e. The product of decision making undertaken by persons
5 who were improperly constituted as a decision-making body,
6 were motivated by an improper purpose, or were subject to
7 disqualification.

8 f. Based upon a determination of fact clearly delegated to
9 the discretion of the agency that is not supported by
10 substantial evidence in the record before the court when that
11 record is viewed as a whole. For purposes of this paragraph
12 the following terms have the following meanings:

13 (1) "Substantial evidence" means the quantity and quality
14 of evidence that would be deemed sufficient by a neutral,
15 detached, and reasonable person, to establish the fact at
16 issue when the consequences resulting from the establishment
17 of that fact are understood to be serious and of great
18 importance.

19 (2) "Record before the court" means the agency record for
20 judicial review, as defined by this chapter, supplemented by
21 any additional evidence received by the court under the
22 provisions of this chapter.

23 (3) "When that record is viewed as a whole" means that the
24 adequacy of the evidence in the record before the court to
25 support a particular finding of fact must be judged in light
26 of all the relevant evidence in the record that detracts from
27 that finding as well as all of the relevant evidence that
28 supports it, including any determinations of veracity by the
29 presiding officer who personally observed the demeanor of the
30 witnesses and the agency's explanation of why the evidence in
31 the record supports its finding of fact and why the evidence
32 in the record that is contrary to its finding does not
33 preclude that finding.

34 g. Action other than a rule that is inconsistent with a
35 rule of the agency.

1 h. Action other than a rule that is inconsistent with the
2 agency's prior practice or precedents, unless the agency has
3 justified that inconsistency by stating credible reasons
4 sufficient to indicate a fair and rational basis for the
5 inconsistency.

6 i. The product of reasoning that is so illogical as to
7 render it wholly irrational.

8 j. The product of a decision-making process in which the
9 agency did not consider a relevant and important matter
10 relating to the propriety or desirability of the action in
11 question that a rational decision maker in similar
12 circumstances would have considered prior to taking that
13 action.

14 k. Not required by law and its negative impact on the
15 private rights affected is so grossly disproportionate to the
16 benefits accruing to the public interest from that action that
17 it must necessarily be deemed to lack any foundation in
18 rational agency policy.

19 l. Based upon an irrational, illogical, or wholly
20 unjustifiable interpretation of a provision of law whose
21 interpretation has clearly been delegated to the discretion of
22 the agency.

23 m. Based upon an irrational, illogical, or wholly
24 unjustifiable application of law to fact that has clearly been
25 delegated to the discretion of the agency..

26 n. Otherwise unreasonable, arbitrary, capricious, or an
27 abuse of discretion.

28 In making the determinations required by this subsection,
29 the court is not required to give any deference to the view of
30 the agency with respect to whether particular matters have
31 been delegated to the discretion of the agency and with
32 respect to the validity of agency action relating to matters
33 that have not been delegated to the discretion of the agency.
34 However, the court must give appropriate deference to the view
35 of the agency with respect to the validity of agency action

1 relating to matters that have been delegated to the discretion
2 of the agency.

3 Sec. 87. NEW SECTION. 17A.5117 TYPE OF RELIEF.

4 1. The court may award damages or compensation only to the
5 extent expressly authorized by another provision of law.

6 2. The court may grant other appropriate relief, whether
7 mandatory, injunctive, or declaratory; preliminary or final;
8 temporary or permanent; equitable or legal. In granting
9 relief, the court may order agency action required by law,
10 order agency exercise of discretion required by law, set aside
11 or modify agency action, enjoin or stay the effectiveness of
12 agency action, remand the matter for further proceedings,
13 render a declaratory judgment, or take any other action that
14 is authorized and appropriate.

15 3. The court may also grant necessary ancillary relief to
16 redress the effects of agency action wrongfully taken or
17 withheld, including the taxation of costs, but the court may
18 award attorney's fees or witness fees only to the extent
19 expressly authorized by other law.

20 4. If the court sets aside or modifies agency action or
21 remands the matter to the agency for further proceedings, the
22 court may make any interlocutory order it finds necessary to
23 preserve the interests of the parties and the public pending
24 further proceedings or agency action.

25 Sec. 88. NEW SECTION. 17A.5118 REVIEW BY HIGHER COURT.

26 Final decisions of the district court on petitions for
27 review of agency action are reviewable by appeal to the
28 supreme court as in other civil cases although the appeal may
29 be taken regardless of the amount involved. On appeal, the
30 supreme court, or court of appeals if the case is referred by
31 the supreme court to the court of appeals, shall reverse,
32 modify, or vacate the decision of the district court only if
33 the reviewing court determines that the district court applied
34 an incorrect legal standard or unreasonably applied a correct
35 legal standard.

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PART 2

CIVIL ENFORCEMENT

Sec. 89. NEW SECTION. 17A.5201 PETITION BY AGENCY FOR CIVIL ENFORCEMENT OF RULE OR ORDER.

1. In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the district court.

2. The petition must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

3. Venue shall be in the district court for the county in which defendant resides or has its principal place of business, or with the consent of the defendant, in the Polk County district court. When a proceeding for enforcement has been commenced, the court may, in the interest of justice, transfer the proceeding to a district court for another county.

4. A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing.

Sec. 90. NEW SECTION. 17A.5202 PETITION BY QUALIFIED PERSON FOR CIVIL ENFORCEMENT OF AGENCY'S ORDER.

1. Any person who would qualify under this chapter as having standing to obtain judicial review of an agency's failure to enforce its order may file a petition for civil enforcement of that order, but the action shall not be commenced until or under any of the following circumstances:

a. Until at least sixty days after the petitioner has given notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the agency head concerned, to the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement.

b. If the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the

1 same defendant.

2 c. If a petition for review of the same order has been
3 filed and is pending in court.

4 2. The petition must name, as defendants, the agency whose
5 order is sought to be enforced and each alleged violator
6 against whom the petitioner seeks civil enforcement.

7 3. The agency whose order is sought to be enforced may
8 move to dismiss on the grounds that the petition fails to
9 qualify under this section or that enforcement would be
10 contrary to the policy of the agency. The court shall grant
11 the motion to dismiss unless the petitioner demonstrates that
12 the petition qualifies under this section and the agency's
13 failure to enforce its order is based on an exercise of
14 discretion that is improper on one or more of the grounds
15 provided in section 17A.5116, subsection 3, paragraph "h".

16 4. Except to the extent expressly authorized by any
17 provision of law, a petition for civil enforcement filed under
18 this section shall not request, and the court shall not grant,
19 any monetary payment apart from taxable costs.

20 Sec. 91. NEW SECTION. 17A.5203 DEFENSES -- LIMITATION ON
21 NEW ISSUES AND NEW EVIDENCE.

22 A defendant may assert, in a proceeding for civil
23 enforcement any of the following:

24 1. That the rule or order sought to be enforced is invalid
25 on any of the grounds stated in section 17A.5116. If that
26 defense is raised, the court may consider issues and receive
27 evidence only within the limitations provided by sections
28 17A.5112, 17A.5113, and 17A.5114.

29 2. Any of the following defenses on which the court, to
30 the extent necessary for the determination of the matter, may
31 consider new issues or take new evidence:

32 a. The rule or order does not apply to the party.

33 b. The party has not violated the rule or order.

34 c. The party has violated the rule or order but has
35 subsequently complied, but a party who establishes this

1 defense is not necessarily relieved from any sanction provided
2 by law for past violations.

3 d. Any other defense allowed by law.

4 Sec. 92. NEW SECTION. 17A.5204 INCORPORATION OF CERTAIN
5 PROVISIONS ON JUDICIAL REVIEW.

6 Proceedings for civil enforcement are governed by section
7 17A.5101, subsection 2, and section 17A.5115 concerning
8 judicial review, as modified where necessary to adapt them to
9 those proceedings.

10 Sec. 93. NEW SECTION. 17A.5205 REVIEW BY HIGHER COURT.

11 Final decisions of the district court on petitions for
12 civil enforcement of agency action are reviewable by appeal to
13 the supreme court as in other civil cases, although the appeal
14 may be taken regardless of the amount involved. On appeal,
15 the supreme court, or court of appeals if the case is referred
16 by the supreme court to the court of appeals, shall reverse,
17 modify, or vacate the decision of the district court only if
18 the reviewing court determines that the district court applied
19 an incorrect legal standard or unreasonably applied a correct
20 legal standard.

21 Sec. 94. Section 2B.17, subsection 4, Code 1995, is
22 amended to read as follows:

23 4. The Iowa administrative code and the Iowa
24 administrative bulletin shall be cited as provided in section
25 ~~17A-6~~ 17A.2101.

26 Sec. 95. Section 2C.9, subsection 1, Code 1995, is amended
27 to read as follows:

28 1. Investigate, on complaint or on the citizens' aide's
29 own motion, any administrative action of any agency, without
30 regard to the finality of the administrative action, except
31 that the citizens' aide shall not investigate the complaint of
32 an employee of an agency in regard to that employee's
33 employment relationship with the agency. A communication or
34 receipt of information made pursuant to the powers prescribed
35 in this chapter shall not be considered an ex parte

1 communication as described in the provisions of section ~~17A-17~~
2 17A.4213.

3 Sec. 96. Section 10A.601, subsection 7, Code 1995, is
4 amended to read as follows:

5 7. An application for ~~rehearing~~ reconsideration before the
6 appeal board shall be filed pursuant to section ~~17A-16~~
7 17A.4218, unless otherwise provided in chapter 19A, 80, 88,
8 89A, 91C, 96, or 97B. A petition for judicial review of a
9 decision of the appeal board shall be filed pursuant to
10 ~~section-17A-19~~ the provisions for judicial review in chapter
11 17A, article 5. The appeal board may be represented in any
12 such judicial review by an attorney who is a regular salaried
13 employee of the appeal board or who has been designated by the
14 appeal board for that purpose, or at the appeal board's
15 request, by the attorney general. Notwithstanding the
16 petitioner's residency requirement in section ~~17A-197~~
17 ~~subsection-2~~ 17A.5104, a petition for judicial review may be
18 filed in the district court of the county in which the
19 petitioner was last employed or resides, provided that if the
20 petitioner does not reside in this state, the action shall be
21 brought in the district court of Polk county, Iowa, and any
22 other party to the proceeding before the appeal board shall be
23 named in the petition. Notwithstanding the thirty-day
24 requirement in section ~~17A-197-subsection-6~~ 17A.5115, the
25 appeal board shall, within sixty days after filing of the
26 petition for judicial review or within a longer period of time
27 allowed by the court, transmit to the reviewing court the
28 original or a certified copy of the entire records of a
29 contested case. The appeal board may also certify to the
30 court, questions of law involved in any decision by the appeal
31 board. Petitions for judicial review and the questions so
32 certified shall be given precedence over all other civil cases
33 except cases arising under the workers' compensation law of
34 this state. No bond shall be required for entering an appeal
35 from any final order, judgment, or decree of the district

1 court to the supreme court.

2 Sec. 97. Section 21.6, subsection 1, Code 1995, is amended
3 to read as follows:

4 1. The remedies provided by this section against state
5 governmental bodies shall be in addition to those provided by
6 ~~section 17A-19~~ 17A.5117. Any aggrieved person, taxpayer to,
7 or citizen of, the state of Iowa, or the attorney general or
8 county attorney, may seek judicial enforcement of the
9 requirements of this chapter. Suits to enforce this chapter
10 shall be brought in the district court for the county in which
11 the governmental body has its principal place of business.

12 Sec. 98. Section 22.7, subsection 15, Code Supplement
13 1995, is amended to read as follows:

14 15. Information concerning the procedures to be used to
15 control disturbances at adult correctional institutions. Such
16 information shall also be exempt from public inspection under
17 ~~section-17A-3~~ sections 17A.2101 and 17A.2102. As used in this
18 subsection disturbance means a riot or a condition that can
19 reasonably be expected to cause a riot.

20 Sec. 99. Section 22.8, subsection 4, paragraph f, Code
21 1995, is amended to read as follows:

22 f. The rights and remedies provided by this section are in
23 addition to any rights and remedies provided by ~~section-17A-19~~
24 chapter 17A, article 5.

25 Sec. 100. Section 22.9, unnumbered paragraph 2, Code 1995,
26 is amended to read as follows:

27 An agency within the meaning of ~~section 17A-27-subsection-1~~
28 17A.1102 shall adopt as a rule, in each situation where this
29 section is believed applicable, its determination identifying
30 those particular provisions of this chapter that must be
31 waived in the circumstances to prevent the denial of federal
32 funds, services, or information.

33 Sec. 101. Section 22.10, subsection 1, Code 1995, is
34 amended to read as follows:

35 1. The rights and remedies provided by this section are in

1 addition to any rights and remedies provided by ~~section-17A-19~~
2 chapter 17A, article 5. Any aggrieved person, any taxpayer to
3 or citizen of the state of Iowa, or the attorney general or
4 any county attorney, may seek judicial enforcement of the
5 requirements of this chapter in an action brought against the
6 lawful custodian and any other persons who would be
7 appropriate defendants under the circumstances. Suits to
8 enforce this chapter shall be brought in the district court
9 for the county in which the lawful custodian has its principal
10 place of business.

11 Sec. 102. Section 68B.2, subsection 13, paragraph b,
12 subparagraph (8), Code 1995, is amended to read as follows:

13 (8) Persons whose activities are limited to submitting
14 data, views, or arguments in writing, or requesting an
15 opportunity to make an oral presentation under section ~~17A-47~~
16 subsection-1 17A.3104.

17 Sec. 103. Section 68B.31, subsection 8, Code 1995, is
18 amended to read as follows:

19 8. If a hearing on the complaint is ordered the ethics
20 committee shall receive all admissible evidence, determine any
21 factual or legal issues presented during the hearing, and make
22 findings of fact based upon evidence received. Hearings shall
23 be conducted in the manner prescribed for adjudicative
24 proceedings in section-17A-12 chapter 17A, article 4. The
25 rules of evidence applicable under section ~~17A-14~~ 17A.4212
26 shall also apply in hearings before the ethics committee.
27 Clear and convincing evidence shall be required to support a
28 finding that the member of the general assembly or lobbyist
29 before the general assembly has committed a violation of this
30 chapter. parties to a complaint may, subject to the approval
31 of the ethics committee, negotiate for settlement of disputes
32 that are before the ethics committee. Terms of any negotiated
33 settlements shall be publicly recorded. If a complaint is
34 filed or initiated less than ninety days before the election
35 for a state office, for which the person named in the

1 complaint is the incumbent officeholder, the ethics committee
2 shall, if possible, set the hearing at the earliest available
3 date so as to allow the issue to be resolved before the
4 election. An extension of time for a hearing may be granted
5 when both parties mutually agree on an alternate date for the
6 hearing. The ethics committee shall make every effort to hear
7 all ethics complaints within three months of the date that the
8 complaints are filed. However, after three months from the
9 date of the filing of the complaint, extensions of time for
10 purposes of preparing for hearing may only be granted by the
11 ethics committee when the party charged in the complaint with
12 the ethics violation consents to an extension. If the party
13 charged does not consent to an extension, the ethics committee
14 shall not grant any extensions of time for preparation prior
15 to hearing. All complaints alleging a violation of this
16 chapter or the code of ethics shall be heard within nine
17 months of the filing of the complaint. Final dispositions of
18 violations, which the ethics committee has found to have been
19 established by clear and convincing evidence, shall be made
20 within thirty days of the conclusion of the hearing on the
21 complaint.

22 Sec. 104. Section 68B.34, Code 1995, is amended to read as
23 follows:

24 68B.34 INVESTIGATION BY INDEPENDENT SPECIAL COUNSEL --
25 PROBABLE CAUSE.

26 The purpose of an investigation by the independent special
27 counsel is to determine whether there is probable cause to
28 proceed with an adjudicatory hearing on the matter. In
29 conducting investigations and holding hearings, the
30 independent special counsel may require by subpoena the
31 attendance and testimony of witnesses and may subpoena books,
32 papers, records, and any other real evidence relating to the
33 matter before the independent special counsel. The
34 independent special counsel shall have the additional
35 authority provided in section ~~17A.4210~~ 17A.4210. If the

1 independent special counsel determines at any stage in the
2 proceedings that take place prior to hearing that the
3 complaint is without merit, the independent special counsel
4 shall report that determination to the appropriate ethics
5 committee and the complaint shall be dismissed and the
6 complainant and the party charged shall be notified. If,
7 after investigation, the independent special counsel
8 determines evidence exists which, if proven, would support a
9 finding of a violation of this chapter, a finding of probable
10 cause shall be made and reported to the ethics committee, and
11 a hearing shall be ordered by the ethics committee as provided
12 in section 68B.31. Independent special counsel investigations
13 are not meetings of a governmental body within the meaning of
14 chapter 21, and records and information obtained by
15 independent special counsel during investigations are
16 confidential until disclosed to a legislative ethics committee
17 under section 68B.31.

18 Sec. 105. Section 80A.17, subsection 1, unnumbered
19 paragraphs 2 and 3, Code 1995, are amended to read as follows:

20 Pursuant to section ~~17A.19, subsection 6~~ 17A.5115, the
21 department, upon an appeal by the licensee of the decision by
22 the department shall transmit the entire record of the
23 contested case to the reviewing court.

24 Notwithstanding section ~~17A.19, subsection 6~~ 17A.5115, if a
25 waiver of privilege has been involuntary and evidence has been
26 received at a disciplinary hearing, the court shall order
27 withheld the identity of the individual whose privilege was
28 waived.

29 Sec. 106. Section 86.17, subsection 1, Code 1995, is
30 amended to read as follows:

31 1. A deputy industrial commissioner may preside over any
32 ~~contested-case~~ adjudicative proceeding brought under this
33 chapter, or chapter 85 or 85A in the manner provided by
34 chapter 17A. The deputy commissioner or the commissioner may
35 make such inquiries and investigation in ~~contested-case~~

1 adjudicative proceedings as shall be deemed necessary,
2 consistent with the provisions of section ~~17A-17~~ 17A.4213.

3 Sec. 107. Section 86.19, subsection 2, Code 1995, is
4 amended to read as follows:

5 2. Notwithstanding the requirements of section ~~17A-12~~
6 17A.4211, subsection 7 4, a certified shorthand reporter,
7 appointed by the presiding officer in a ~~contested case~~ an
8 adjudicative proceeding or by the industrial commissioner in
9 an appeal proceeding, may maintain and thus have the
10 responsibility for the recording or stenographic notes for the
11 period required by section ~~17A-12~~ 17A.4211, subsection 7 4.

12 Sec. 108. Section 86.24, subsections 2 and 3, Code 1995,
13 are amended to read as follows:

14 2. In addition to the provisions of ~~section-17A-15~~
15 sections 17A.4215 and 17A.4216, the industrial commissioner
16 may affirm, modify, or reverse the decision of a deputy
17 commissioner or the commissioner may remand the decision to
18 the deputy commissioner for further proceedings.

19 3. In addition to the provisions of ~~section-17A-15~~
20 sections 17A.4215 and 17A.4216, the industrial commissioner,
21 on appeal, may limit the presentation of evidence as provided
22 by rule.

23 Sec. 109. Section 86.42, Code 1995, is amended to read as
24 follows:

25 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

26 Any party in interest may present a certified copy of an
27 order or decision of the commissioner, from which a timely
28 petition for judicial review has not been filed or if judicial
29 review has been filed, which has not had execution or
30 enforcement stayed as provided in section ~~17A-19~~-~~subsection-5~~
31 17A.5111, or an order or decision of a deputy commissioner
32 from which a timely appeal has not been taken within the
33 agency and which has become final by the passage of time as
34 provided by rule and section ~~17A-15~~ 17A.4220, or an agreement
35 for settlement approved by the commissioner, and all papers in

1 connection therewith, to the district court where judicial
2 review of the agency action may be commenced. The court shall
3 render a decree or judgment and cause the clerk to notify the
4 parties. The decree or judgment, in the absence of a petition
5 for judicial review or if judicial review has been commenced,
6 in the absence of a stay of execution or enforcement of the
7 decision or order of the industrial commissioner, or in the
8 absence of an act of any party which prevents a decision of a
9 deputy industrial commissioner from becoming final, has the
10 same effect and in all proceedings in relation thereto is the
11 same as though rendered in a suit duly heard and determined by
12 the court.

13 Sec. 110. Section 99A.6, unnumbered paragraph 2, Code
14 1995, is amended to read as follows:

15 Judicial review of actions of the issuing authorities may
16 be sought in accordance with the terms of the Iowa
17 administrative procedure Act. Municipalities acting as
18 issuing authorities shall be deemed state agencies solely for
19 the purposes of bringing their actions under this chapter
20 within the terms ~~of section 17A.19~~ for judicial review in
21 chapter 17A, article 5. If the licensee has not filed a
22 petition for judicial review in district court, revocation
23 shall date from the thirty-first day following the date of the
24 order of the issuing authority. If the licensee has filed a
25 petition for judicial review, revocation shall date from the
26 thirty-first day following entry of the order of the district
27 court, if action by the district court is adverse to the
28 licensee.

29 Sec. 111. Section 123.37, unnumbered paragraph 2, Code
30 1995, is amended to read as follows:

31 The administrator may compromise and settle doubtful and
32 disputed claims for taxes imposed under this chapter or for
33 taxes of doubtful collectibility, notwithstanding section
34 7D.9. The administrator may enter into informal settlements
35 as permitted pursuant to section ~~17A.10~~ 17A.1106, to

1 compromise and settle doubtful and disputed claims for taxes
2 imposed under this chapter. The administrator may make a
3 claim under a licensee's or permittee's penal bond for taxes
4 of doubtful collectibility. Whenever a compromise or
5 settlement is made, the administrator shall make a complete
6 record of the case showing the tax assessed, reports and
7 audits, if any, the licensee's or permittee's grounds for
8 dispute or contest, together with all evidence of the dispute
9 or contest, and the amounts, conditions, and settlement or
10 compromise of the dispute or contest.

11 Sec. 112. Section 135.70, Code 1995, is amended to read as
12 follows:

13 135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.

14 The council's decision on an application for certificate of
15 need, when announced pursuant to section 135.69, is a final
16 decision. Any dissatisfied party who is an affected person
17 with respect to the application, and who participated or
18 sought unsuccessfully to participate in the formal review
19 procedure prescribed by section 135.66, may request a
20 ~~rehearing~~ reconsideration in accordance with ~~chapter-17A~~
21 section 17A.4218 and rules of the department. If a ~~rehearing~~
22 reconsideration is not requested or an affected party remains
23 dissatisfied after the request for ~~rehearing~~ reconsideration,
24 an appeal may be taken in the manner provided by chapter 17A.
25 Notwithstanding the Iowa administrative procedure Act, chapter
26 17A, a request for ~~rehearing~~ reconsideration is not required,
27 prior to ~~appeal-under-section-17A-19~~ the filing of a petition
28 for judicial review as provided in chapter 17A, article 5.

29 Sec. 113. Section 135C.2, subsection 3, paragraph d, Code
30 Supplement 1995, is amended to read as follows:

31 d. Notwithstanding the limitations set out in this
32 subsection regarding rules for intermediate care facilities
33 for the mentally retarded, the department shall consider the
34 federal interpretive guidelines issued by the federal health
35 care financing administration when interpreting the

1 department's rules for intermediate care facilities for the
2 mentally retarded. This use of the guidelines is not subject
3 to the rulemaking provisions of sections ~~17A.4 and 17A.5~~
4 chapter 17A, article 3, but the guidelines shall be published
5 in the Iowa administrative bulletin and the Iowa
6 administrative code.

7 Sec. 114. Section 139C.2, subsection 3, Code 1995, is
8 amended to read as follows:

9 3. The department shall establish an expert review panel
10 to determine on a case-by-case basis under what circumstances,
11 if any, a health care provider determined to be infected with
12 HIV or HBV practicing outside the hospital setting or referred
13 to the panel by a hospital, may perform exposure-prone
14 procedures. If a health care provider determined to be
15 infected with HIV or HBV does not comply with the
16 determination of the expert review panel, the panel shall
17 report the noncompliance to the examining board with
18 jurisdiction over the health care provider. A determination
19 of an expert review panel pursuant to this section is a final
20 agency action ~~appealable~~ subject to judicial review pursuant
21 to ~~section 17A.19~~ chapter 17A, article 5.

22 Sec. 115. Section 147A.5, subsection 3, Code Supplement
23 1995, is amended to read as follows:

24 3. The department may deny an application for
25 authorization, or may place on probation, suspend, or revoke
26 existing authorization if the department finds reason to
27 believe the program has not been or will not be operated in
28 compliance with this subchapter and the rules adopted pursuant
29 to this subchapter, or that there is insufficient assurance of
30 adequate protection for the public. The denial or period of
31 probation, suspension, or revocation shall be effected and
32 judicial review may be appealed sought as provided by section
33 ~~17A.12~~ for adjudicative proceedings under chapter 17A, article
34 5.

35 Sec. 116. Section 147A.7, subsection 2, Code Supplement

1 1995, is amended to read as follows:

2 2. If clinical issues are involved, the matter shall be
3 referred to the board for completion of the investigation and
4 the conduct of any disciplinary proceeding pursuant to chapter
5 17A. The findings of the board shall be the final decision
6 for purposes of section ~~17A-15~~ 17A.4215 and shall be enforced
7 by the department.

8 Sec. 117. Section 148C.6A, Code 1995, is amended to read
9 as follows:

10 148C.6A APPEAL TO BOARD OF MEDICAL EXAMINERS IN CONTESTED
11 CASES INVOLVING DISCIPLINE.

12 Pursuant to section ~~17A-15~~ 17A.4219, a decision of the
13 board in ~~a-contested-case~~ an adjudicative proceeding involving
14 discipline of a person licensed as a physician assistant may
15 be appealed to the board of medical examiners.

16 Sec. 118. Section 161A.4, subsection 1, unnumbered
17 paragraph 1, Code 1995, is amended to read as follows:

18 The soil conservation division is established within the
19 department to perform the functions conferred upon it in
20 chapters 161A through 161C, 207, 208, 467B, and 467C. The
21 division shall be administered in accordance with the policies
22 of the state soil conservation committee, which shall advise
23 the division and which shall approve administrative rules
24 proposed by the division for the administration of chapters
25 161A through 161C, 161E, 161F, 207, and 208 before the rules
26 are adopted pursuant to section ~~17A-5~~ 17A.3115. If a
27 difference exists between the committee and secretary
28 regarding the content of a proposed rule, the secretary shall
29 notify the chairperson of the committee of the difference
30 within thirty days from the committee's action on the rule.
31 The secretary and the committee shall meet to resolve the
32 difference within thirty days after the secretary provides the
33 committee with notice of the difference.

34 Sec. 119. Section 163.30, subsection 3, unnumbered
35 paragraph 3, Code 1995, is amended to read as follows:

1 A permittee shall not represent more than one dealer.
2 Failure of a licensee or permittee to comply with this chapter
3 or a rule made pursuant to this chapter is cause for
4 revocation by the secretary of the permit or license after
5 notice to the alleged offender and the holding of a hearing by
6 the secretary. Rules shall be made in accordance with chapter
7 17A. A rule, the violation of which is made the basis for
8 revocation, except temporary emergency rules, shall first have
9 been approved after public hearing as provided in section
10 ~~17A-4~~ 17A.3104 after giving twenty days' notice of the hearing
11 as follows:

12 Sec. 120. Section 169.5, subsection 9, paragraph e, Code
13 1995, is amended to read as follows:

14 e. Hold hearings on all matters properly brought before
15 the board and administer oaths, receive evidence, make the
16 necessary determinations, and enter orders consistent with the
17 findings. The board may require by subpoena the attendance
18 and testimony of witnesses and the production of papers,
19 records, or other documentary evidence and commission
20 depositions. An administrative law judge may be appointed
21 pursuant to ~~section-17A-11, subsection-3~~ chapter 17A, article
22 4, to perform those functions which properly repose in an
23 administrative law judge.

24 Sec. 121. Section 169.5, subsection 9, paragraph i, Code
25 1995, is amended to read as follows:

26 i. Adopt, amend, or repeal rules relating to the standards
27 of conduct for, testing of, and revocation or suspension of
28 certificates issued to veterinary assistants. However, a
29 certificate shall not be suspended or revoked by less than a
30 two-thirds vote of the entire board in a proceeding conducted
31 in compliance with ~~section-17A-12~~ chapter 17A, article 4.

32 Sec. 122. Section 169.15, Code 1995, is amended to read as
33 follows:

34 169.15 APPEAL.

35 Any party aggrieved by a decision of the board may appeal

1 ~~the-matter-to-the-district-court~~ petition for judicial review
2 as provided in ~~section-17A-19~~ chapter 17A, article 5.

3 Sec. 123. Section 172D.1, subsection 14, Code Supplement
4 1995, is amended to read as follows:

5 14. "Rule of the department" means a rule as defined in
6 section ~~17A-2~~ 17A.1102 which materially affects the operation
7 of a feedlot and which has been adopted by the department. The
8 term includes a rule which was in effect prior to July 1,
9 1975. Except as specifically provided in section 172D.3,
10 subsection 2, paragraph "b", subparagraph (5) and paragraph
11 "c", subparagraph (5) nothing in this chapter shall be deemed
12 to empower the department to make any rule.

13 Sec. 124. Section 200.3, subsection 20, Code 1995, is
14 amended to read as follows:

15 20. "Rule" means a rule as defined in section ~~17A-2~~
16 17A.1102 which materially affects the operation of an
17 anhydrous ammonia plant. The term includes a rule which was
18 in effect prior to July 1, 1984.

19 Sec. 125. Section 203C.10, unnumbered paragraph 2, Code
20 1995, is amended to read as follows:

21 If upon the filing of the information or complaint the
22 department finds that the licensee has failed to meet the
23 warehouse operator's obligation or otherwise has violated or
24 failed to comply with the provisions of this chapter or any
25 rule ~~promulgated~~ adopted under this chapter, and if the
26 department finds that the public health, safety or welfare
27 imperatively requires emergency action, then the department
28 without hearing may order a summary suspension of the license
29 in the manner provided in section ~~17A-18~~ 17A.4105. When so
30 ordered, a copy of the order of suspension shall be served
31 upon the licensee at the time the information or complaint is
32 served as provided in this section.

33 Sec. 126. Section 207.14, subsection 2, unnumbered
34 paragraph 2, Code 1995, is amended to read as follows:

35 If upon expiration of the time as fixed the administrator

1 finds in writing that the violation has not been abated, the
2 administrator, notwithstanding ~~section-17A-18~~ sections
3 17A.4105 and 17A.4501, shall immediately order a cessation of
4 coal mining and reclamation operations relating to the
5 violation until the order is modified, vacated, or terminated
6 by the administrator pursuant to procedures outlined in this
7 section. In the order of cessation issued by the
8 administrator under this subsection, the administrator shall
9 include the steps necessary to abate the violation in the most
10 expeditious manner possible.

11 Sec. 127. Section 207.15, subsection 5, unnumbered
12 paragraph 2, Code 1995, is amended to read as follows:

13 Notwithstanding section ~~17A-20~~ 17A.5118, an appeal bond
14 shall be required for an appeal of a judgment assessing a
15 civil penalty.

16 Sec. 128. Section 216.15, subsection 3, paragraph b, Code
17 Supplement 1995, is amended to read as follows:

18 b. For purposes of this chapter, an administrative law
19 judge issuing a determination of probable cause or no probable
20 cause under this section is exempt from ~~section-17A-17~~
21 sections 17A.4213 and 17A.4214.

22 Sec. 129. Section 216.17, subsection 1, unnumbered
23 paragraphs 2 and 3, Code 1995, are amended to read as follows:

24 For purposes of the time limit for filing a petition for
25 judicial review under the Iowa administrative procedure Act,
26 specified by section ~~17A-19~~ 17A.5108, the issuance of a final
27 decision of the commission under this chapter occurs on the
28 date notice of the decision is mailed by certified mail, to
29 the parties.

30 Notwithstanding the time limit provided in section ~~17A-19~~
31 ~~subsection-3~~ 17A.5108, a petition for judicial review of no-
32 probable-cause decisions and other final agency actions which
33 are not of general applicability must be filed within thirty
34 days of the issuance of the final agency action.

35 Sec. 130. Section 216.17, subsection 6, Code 1995, is

1 amended to read as follows:

2 6. In the enforcement proceeding the court shall determine
3 its order on the same basis as it would in a proceeding
4 reviewing commission action under section ~~17A.197~~-subsection-8
5 17A.5117.

6 Sec. 131. Section 217.30, subsection 8, Code 1995, is
7 amended to read as follows:

8 8. The provisions of this section shall take precedence
9 over section ~~17A.12~~ 17A.4211, subsection 7 4.

10 Sec. 132. Section 225C.29, Code 1995, is amended to read
11 as follows:

12 225C.29 COMPLIANCE.

13 Except for a violation of section 225C.28B, subsection 2,
14 the sole remedy for violation of a rule adopted by the
15 commission to implement sections 225C.25 through 225C.28B
16 shall be by a proceeding for compliance initiated by request
17 to the division pursuant to chapter 17A. Any decision of the
18 division shall be in accordance with due process of law and is
19 subject to ~~appeal to the Iowa district court~~ judicial review
20 ~~pursuant to sections 17A.19 and 17A.20~~ chapter 17A, article 5,
21 and appeal pursuant to section 17A.5118 by any aggrieved
22 party. Either the division or a party in interest may apply
23 to the Iowa district court for an order to enforce the
24 decision of the division. Any rules adopted by the commission
25 to implement sections 225C.25 through 225C.28B do not create
26 any right, entitlement, property or liberty right or interest,
27 or private cause of action for damages against the state or a
28 political subdivision of the state or for which the state or a
29 political subdivision of the state would be responsible. Any
30 violation of section 225C.28B, subsection 2, shall solely be
31 subject to the enforcement by the commissioner of insurance
32 and penalties granted by chapter 507B for a violation of
33 section 507B.4, subsection 7.

34 Sec. 133. Section 229.23, subsection 3, Code 1995, is
35 amended to read as follows:

1 3. In addition to protection of the person's
2 constitutional rights, enjoyment of other legal, medical,
3 religious, social, political, personal and working rights and
4 privileges which the person would enjoy if the person were not
5 so hospitalized or detained, so far as is possible consistent
6 with effective treatment of that person and of the other
7 patients of the hospital. If the patient's rights are
8 restricted, the physician's direction to that effect shall be
9 noted on the patient's record. The department of human
10 services shall, in accordance with chapter 17A establish rules
11 setting forth the specific rights and privileges to which
12 persons so hospitalized or detained are entitled under this
13 section, ~~and the exceptions provided by section 17A.27~~
14 ~~subsection 107, paragraphs "a" and "k", shall not be applicable~~
15 ~~to the rules so established.~~ The patient or the patient's
16 next of kin or friend shall be advised of these rules and be
17 provided a written copy upon the patient's admission to or
18 arrival at the hospital.

19 Sec. 134. Section 249A.3, subsection 11, paragraph b, Code
20 Supplement 1995, is amended to read as follows:

21 b. The department shall exercise the option provided in 42
22 U.S.C. § 1396p(c) to provide a period of ineligibility for
23 medical assistance due to a transfer of assets by a
24 noninstitutionalized individual or the spouse of a
25 noninstitutionalized individual. For noninstitutionalized
26 individuals, the number of months of ineligibility shall be
27 equal to the total, cumulative uncompensated value of all
28 assets transferred by the individual or the individual's
29 spouse on or after the look-back date specified in 42 U.S.C. §
30 1396p(c)(1)(B)(i), divided by the average monthly cost to a
31 private patient for nursing facility services in Iowa at the
32 time of application. The services for which
33 noninstitutionalized individuals shall be made ineligible
34 shall include any long-term care services for which medical
35 assistance is otherwise available. Notwithstanding section

1 ~~17A-4~~ sections 17A.3103 through 17A.3107, the department may
 2 adopt rules providing a period of ineligibility for medical
 3 assistance due to a transfer of assets by a
 4 noninstitutionalized individual or the spouse of a
 5 noninstitutionalized individual without notice of opportunity
 6 for public comment, to be effective immediately upon filing
 7 under section ~~17A-5~~ 17A.3115, subsection 2, paragraph "b",
 8 subparagraph (1).

9 Sec. 135. Section 252.27, unnumbered paragraph 2, Code
 10 1995, is amended to read as follows:

11 The board shall record its proceedings relating to the
 12 provision of assistance to specific persons under this
 13 chapter. A person who is aggrieved by a decision of the board
 14 may ~~appeal~~ seek judicial review of the decision as if it were
 15 ~~a-contested-case~~ an adjudicative proceeding before an agency
 16 and as if the person had exhausted administrative remedies in
 17 accordance with the procedures and standards ~~in-section~~
 18 ~~17A-19--subsections-2-to-8-except-paragraphs-"b"-and-"e"-of~~
 19 ~~subsection-87-and-section-17A-20~~ for judicial review in
 20 chapter 17A, article 5, except for section 17A.5116,
 21 subsection 3, paragraphs "b" and "g", and for appeal in
 22 section 17A.5118.

23 Sec. 136. Section 252J.8, subsection 4, paragraph d, Code
 24 Supplement 1995, is amended to read as follows:

25 d. If the licensing authority's rules and procedures
 26 conflict with the additional requirements of this section, the
 27 requirements of this section shall apply. Notwithstanding
 28 section ~~17A-18~~ 17A.4105, the obligor does not have a right to
 29 a hearing before the licensing authority to contest the
 30 authority's actions under this chapter but may request a court
 31 hearing pursuant to section 252J.9 within thirty days of the
 32 provision of notice under this section.

33 Sec. 137. Section 256B.6, unnumbered paragraph 3, Code
 34 1995, is amended to read as follows:

35 Notwithstanding ~~section-17A-11~~ chapter 17A, article 4, the

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

5 Sec. 138. Section 261B.3, unnumbered paragraph 2, Code
6 1995, is amended to read as follows:

7 The secretary may request additional information as
8 necessary to enable the secretary to determine the accuracy
9 and completeness of the information contained in the
10 registration application. If the secretary believes that
11 false, misleading, or incomplete information has been
12 submitted in connection with an application for registration,
13 the secretary may deny registration. The secretary shall
14 conduct a hearing on the denial if a hearing is requested by a
15 school. The secretary may withhold a certificate of
16 registration pending the outcome of the hearing. Upon a
17 finding after the hearing that information contained in the
18 registration application is false, misleading, or incomplete,
19 the secretary shall deny a certificate of registration to the
20 school. The decision of the secretary is subject to judicial
21 review in accordance with ~~section 17A-19~~ chapter 17A, article
22 5.

23 Sec. 139. Section 262.69, unnumbered paragraph 3, Code
24 1995, is amended to read as follows:

25 Notwithstanding the provisions of chapter 17A, a proceeding
26 conducted by the state board of regents or an institution
27 governed by the state board of regents to determine the
28 validity of an assessment of a violation of traffic control
29 and parking rules is not ~~a contested case~~ an adjudicative
30 proceeding as defined in section ~~17A-27-subsection-5~~ 17A.1102.

31 Sec. 140. Section 267.6, Code 1995, is amended to read as
32 follows:

33 267.6 IOWA ADMINISTRATIVE PROCEDURE ACT.

34 The provisions of chapter 17A shall not apply to the
35 council or any actions taken by it, except that any

1 recommendations adopted by the council pursuant to section
2 267.5, subsection 3, and any rules adopted by the council
3 shall be adopted, amended, or repealed only after compliance
4 with the provisions of ~~sections 17A.47, 17A.57, and 17A.6~~
5 chapter 17A, article 3.

6 Sec. 141. Section 272C.6, subsection 4, unnumbered
7 paragraphs 2 and 3, Code 1995, are amended to read as follows:

8 Pursuant to the provisions of section ~~17A.197, subsection 6~~
9 17A.5115, a licensing board upon ~~an appeal~~ seeking of judicial
10 review by the licensee of the decision by the licensing board,
11 shall transmit the entire record of the ~~contested case~~
12 adjudicative proceeding to the reviewing court.

13 Notwithstanding the provisions of section ~~17A.197~~
14 ~~subsection 6~~ 17A.5115, if a waiver of privilege has been
15 involuntary and evidence has been received at a disciplinary
16 hearing, the court shall order withheld the identity of the
17 individual whose privilege was waived.

18 Sec. 142. Section 316.9, subsection 4, Code 1995, is
19 amended to read as follows:

20 4. A person aggrieved by a determination as to eligibility
21 for assistance or a payment authorized by this chapter, or the
22 amount of a payment, upon application may have the matter
23 reviewed. Rules governing reviews shall provide for a prompt
24 one-step uncomplicated fact-finding process. Such a review is
25 an appeal of an agency action as defined in section ~~17A.27~~
26 ~~subsection 2~~ 17A.1102, and is not ~~a contested case~~ an
27 adjudicative proceeding. The decision rendered shall be the
28 displacing agency's final agency action.

29 Sec. 143. Section 321.52, subsection 3, unnumbered
30 paragraph 2, Code Supplement 1995, is amended to read as
31 follows:

32 However, upon application the department upon a showing of
33 good cause may issue a certificate of title after the
34 fourteen-day period for a junked vehicle for which a junking
35 certificate has been issued. For purposes of this subsection,

S.F. _____ H.F. _____

1 "good cause" means that the junking certificate was obtained
2 by mistake or inadvertence. If a person's application to the
3 department is denied, the person may make application for a
4 certificate of title under the bonding procedure as provided
5 in section 321.24, if the vehicle qualifies as an antique
6 vehicle under section 321.115, subsection 1, or the person may
7 seek judicial review as provided under ~~sections 17A.19 and~~
8 ~~17A.20~~ chapter 17A, article 5, and appellate review under
9 section 17A.5118.

10 Sec. 144. Section 321.253A, subsection 1, Code 1995, is
11 amended to read as follows:

12 1. The department shall place and maintain directional
13 signs upon primary highways which provide information about
14 historic sites which are located on land owned or managed by
15 an agency as defined in section ~~17A.2~~ 17A.1102. The signs
16 shall conform to the manual of uniform traffic devices.
17 However, the directional signs are not subject to requirements
18 applicable to tourist-oriented directional signs.

19 Sec. 145. Section 321.556, subsections 1 and 2, Code
20 Supplement 1995, are amended to read as follows:

21 1. If, upon review of the record of convictions of any
22 person, the department determines that the person appears to
23 be a habitual offender, the department shall immediately
24 notify the person in writing and afford the licensee an
25 opportunity for a hearing. The notice shall direct the person
26 named in the notice to appear for hearing and show cause why
27 the person should not be barred from operating a motor vehicle
28 on the highways of this state. The notice shall meet the
29 requirements of section ~~17A.12~~ 17A.4206 and shall be served in
30 the manner provided in that section. Service of notice on any
31 nonresident of this state may be made in the same manner as
32 provided in sections 321.498 through 321.506. A peace officer
33 stopping a person for whom a notice to appear for hearing has
34 been issued under the provisions of this section may
35 personally serve the notice upon forms approved by the

1 department to satisfy the notice requirements of this section.
2 A peace officer may confiscate the motor vehicle license of a
3 person if the license has been revoked or has been suspended
4 subsequent to a hearing and the person has not forwarded the
5 motor vehicle license to the department as required.

6 2. The hearing shall be conducted as provided ~~in section~~
7 ~~17A-12~~ for an adjudicative proceeding in chapter 17A, article
8 4, before the department in the county where the alleged
9 events occurred, unless the director and the person agree that
10 the hearing may be held in some other county, or the hearing
11 may be held by telephone conference at the discretion of the
12 agency conducting the hearing. The hearing shall be recorded
13 and its scope shall be limited to the issue of whether the
14 person notified is a habitual offender.

15 Sec. 146. Section 321.560, Code Supplement 1995, is
16 amended to read as follows:

17 321.560 PERIOD OF REVOCATION.

18 A license to operate a motor vehicle in this state shall
19 not be issued to any person declared to be a habitual offender
20 under section 321.555, subsection 1, for a period of not less
21 than two years nor more than six years from the date of the
22 final decision of the department under section ~~17A-19~~ 17A.4215
23 or the date on which the district court upholds the final
24 decision of the department, whichever occurs later. However,
25 a temporary restricted license may be issued to a person
26 declared to be a habitual offender under section 321.555,
27 subsection 1, paragraph "c", pursuant to section 321.215,
28 subsection 2. A license to operate a motor vehicle in this
29 state shall not be issued to any person declared to be a
30 habitual offender under section 321.555, subsection 2, for a
31 period of one year from the date of the final decision of the
32 department under section ~~17A-19~~ 17A.4215 or the date on which
33 the district court upholds the final decision of the
34 department, whichever occurs later. The department shall
35 adopt rules under chapter 17A which establish a point system

1 which shall be used to determine the period for which a person
2 who is declared to be a habitual offender under section
3 321.555, subsection 1, shall not be issued a license.

4 Sec. 147. Section 368.22, unnumbered paragraph 4, and
5 subsections 1, 2, and 3, Code 1995, are amended to read as
6 follows:

7 The judicial review provisions of this section and chapter
8 17A, article 5, shall be the exclusive means by which a person
9 or party who is aggrieved or adversely affected by agency
10 action may seek judicial review of that agency action. The
11 court's review on appeal of a decision is limited to questions
12 relating to jurisdiction, regularity of proceedings, and
13 whether the decision appealed from is arbitrary, unreasonable,
14 or without substantial supporting evidence. The court may
15 reverse and remand a decision of the board or a committee,
16 with appropriate directions. The following ~~portions of~~
17 ~~section 17A:19~~ provisions of chapter 17A are not applicable to
18 this chapter:

19 ~~1. The part of subsection 2 which relates to where~~
20 ~~proceedings for judicial review shall be instituted:~~ Section
21 17A.5104, subsection 2.

22 ~~2. Subsection 5:~~ Section 17A.5111.

23 ~~3. Subsection 8:~~ Section 17A.5116.

24 ~~4. Section 17A.5117.~~

25 Sec. 148. Section 421.17, subsection 20, unnumbered
26 paragraph 2, Code Supplement 1995, is amended to read as
27 follows:

28 The provisions of ~~sections 17A:10 to 17A:18~~ chapter 17A,
29 article 4, relating to ~~contested cases~~ adjudicative
30 proceedings shall not apply to any matters involving the
31 equalization of valuations of classes of property as
32 authorized by this chapter and chapter 441. This exemption
33 shall not apply to a hearing before the state board of tax
34 review.

35 Sec. 149. Section 422.21, unnumbered paragraph 5, Code

1 1995, is amended to read as follows:

2 The director shall determine for the 1989 and each
3 subsequent calendar year the annual and cumulative inflation
4 factors for each calendar year to be applied to tax years
5 beginning on or after January 1 of that calendar year. The
6 director shall compute the new dollar amounts as specified to
7 be adjusted in section 422.5 by the latest cumulative
8 inflation factor and round off the result to the nearest one
9 dollar. The annual and cumulative inflation factors
10 determined by the director are not rules as defined in section
11 ~~17A-27-subsection-10~~ 17A.1102. The director shall determine
12 for the 1990 calendar year and each subsequent calendar year
13 the annual and cumulative standard deduction factors to be
14 applied to tax years beginning on or after January 1 of that
15 calendar year. The director shall compute the new dollar
16 amounts of the standard deductions specified in section 422.9,
17 subsection 1, by the latest cumulative standard deduction
18 factor and round off the result to the nearest ten dollars.
19 The annual and cumulative standard deduction factors
20 determined by the director are not rules as defined in section
21 ~~17A-27-subsection-10~~ 17A.1102.

22 Sec. 150. Section 422.53, subsection 5, Code Supplement
23 1995, is amended to read as follows:

24 5. If the holder of a permit fails to comply with any of
25 the provisions of this division or any order or rule of the
26 department adopted under this division or is substantially
27 delinquent in the payment of a tax administered by the
28 department or the interest or penalty on the tax, or if the
29 person is a corporation and if any officer having a
30 substantial legal or equitable interest in the ownership of
31 the corporation owes any delinquent tax of the permit-holding
32 corporation, or interest or penalty on the tax, administered
33 by the department, the director may revoke the permit. The
34 director shall send notice by mail to a permit holder
35 informing that person of the director's intent to revoke the

1 permit and of the permit holder's right to a hearing on the
2 matter. If the permit holder petitions the director for a
3 hearing on the proposed revocation, after giving ten days'
4 notice of the time and place of the hearing in accordance with
5 section ~~17A:187-subsection-3~~ 17A.4105, the matter may be heard
6 and a decision rendered. The director may restore permits
7 after revocation. The director shall adopt rules setting
8 forth the period of time a retailer must wait before a permit
9 may be restored or a new permit may be issued. The waiting
10 period shall not exceed ninety days from the date of the
11 revocation of the permit.

12 Sec. 151. Section 424.5, subsection 6, Code 1995, is
13 amended to read as follows:

14 6. To revoke a permit the director shall serve notice as
15 required by section ~~17A:18~~ 17A.4105 to the permit holder
16 informing that person of the director's intent to revoke the
17 permit and of the permit holder's right to a hearing on the
18 matter. If the permit holder petitions the director for a
19 hearing on the proposed revocation, after giving ten days'
20 notice of the time and place of the hearing in accordance with
21 section ~~17A:187-subsection-3~~ 17A.4105, the matter may be heard
22 and a decision rendered. The director may restore permits
23 after revocation. The director shall adopt rules setting
24 forth the period of time a depositor must wait before a permit
25 may be restored or a new permit may be issued. The waiting
26 period shall not exceed ninety days from the date of the
27 revocation of the permit.

28 Sec. 152. Section 441.21, subsection 11, Code Supplement
29 1995, is amended to read as follows:

30 11. The percentage of actual value computed by the
31 director for agricultural property, residential property,
32 commercial property, industrial property and property valued
33 by the department of revenue and finance pursuant to chapters
34 428, 433, 434, 436, 437, and 438 and used to determine
35 assessed values of those classes of property does not

1 constitute a rule as defined in section ~~17A:27-subsection-10~~
2 17A.1102.

3 Sec. 153. Section 441.49, unnumbered paragraph 7, Code
4 1995, is amended to read as follows:

5 Tentative and final equalization orders issued by the
6 director of revenue and finance are not rules as defined in
7 section ~~17A:27-subsection-7~~ 17A.1102.

8 Sec. 154. Section 455B.105, subsection 9, Code 1995, is
9 amended to read as follows:

10 9. Upon request of at least four members of the commission
11 before adopting or modifying a rule, the director shall
12 prepare and publish with the notice required under section
13 ~~17A:4~~ 17A.3103, subsection 1, ~~paragraph-"a"~~, a comprehensive
14 estimate of the economic impact of the proposed rule or
15 modification.

16 Sec. 155. Section 455B.446, subsection 4, Code 1995, is
17 amended to read as follows:

18 4. Notice of the hearing in the form provided in section
19 ~~17A:127-subsection-2~~, 17A.4206 shall be published in a
20 newspaper of general circulation in each city and county in
21 which the proposed site is located once a week for two
22 consecutive weeks with the second publication being at least
23 twenty days prior to the date of the hearing.

24 Sec. 156. Section 455G.4, subsection 3, paragraph b, Code
25 1995, is amended by striking the paragraph.

26 Sec. 157. Section 476.6, subsection 19, paragraph a, Code
27 1995, is amended to read as follows:

28 a. The board shall conduct ~~contested-case~~ adjudicative
29 proceedings for review of energy efficiency plans and budgets
30 filed by rate-regulated gas or electric utilities. The board
31 may approve, reject, or modify the plans and budgets.

32 Notwithstanding the provisions of section ~~17A:197-subsection-5~~
33 17A.5111, in an application for judicial review of the board's
34 decision concerning a utility's energy efficiency plan or
35 budget, the reviewing court shall not order a stay. Whenever

1 a request to modify an approved plan or budget is filed
2 subsequently by the office of consumer advocate or a rate-
3 regulated gas or electric public utility, the board shall
4 promptly initiate a formal proceeding if the board determines
5 that any reasonable ground exists for investigating the
6 request. The formal proceeding may be initiated at any time
7 by the board on its own motion. Implementation of board
8 approved plans or budgets shall be considered continuous in
9 nature and shall be subject to investigation at any time by
10 the board or the office of the consumer advocate.

11 Sec. 158. Section 476A.1, subsection 1, Code 1995, is
12 amended to read as follows:

13 1. "Agency" means an agency as defined in section ~~17A.27~~
14 ~~subsection-1~~ 17A.1102.

15 Sec. 159. Section 476A.4, subsection 3, Code 1995, is
16 amended to read as follows:

17 3. Notice of the proceeding in the form provided in
18 section ~~17A.127-subsection-27~~ 17A.4206 shall be published in a
19 newspaper of general circulation in each county in which the
20 proposed site is located once a week for two consecutive weeks
21 with the second publication being at least twenty days prior
22 to the date of the hearing. The board shall be responsible for
23 publication and delivery of notices required by this section.

24 Sec. 160. Section 479.29, subsection 1, Code Supplement
25 1995, is amended to read as follows:

26 1. The board shall, pursuant to chapter 17A, adopt rules
27 establishing standards for the protection of underground
28 improvements during the construction of pipelines, to protect
29 soil conservation and drainage structures from being
30 permanently damaged by pipeline construction and for the
31 restoration of agricultural lands after pipeline construction.
32 To ensure that all interested persons are informed of this
33 rulemaking procedure and are afforded a right to participate,
34 the board shall schedule an opportunity for oral presentations
35 on the proposed rulemaking, and, in addition to the

1 requirements of ~~section-17A-4~~ sections 17A.3103 and 17A.3104,
2 shall distribute copies of the notice of intended action and
3 opportunity for oral presentations to each county board of
4 supervisors. Any county board of supervisors may, under the
5 provisions of chapter 17A, and subsequent to the rulemaking
6 proceedings, petition under those provisions for additional
7 rulemaking to establish standards to protect soil conservation
8 practices, structures and drainage structures within that
9 county. Upon the request of the petitioning county the board
10 shall schedule a hearing to consider the merits of the
11 petition. Rules adopted under this section shall not apply
12 within the boundaries of a city, unless the land is used for
13 agricultural purposes.

14 Sec. 161. Section 479A.14, subsection 1, Code Supplement
15 1995, is amended to read as follows:

16 1. The board shall adopt rules establishing standards to
17 protect underground improvements during the construction of
18 pipelines, to protect soil conservation and drainage
19 structures from being permanently damaged by pipeline
20 construction, and for the restoration of agricultural lands
21 after pipeline construction. To ensure that all interested
22 persons are informed of this rulemaking procedure and are
23 afforded a right to participate, the board shall schedule an
24 opportunity for oral presentations on the proposed rulemaking
25 and, in addition to the requirements of ~~section-17A-4~~ sections
26 17A.3103 and 17A.3104, shall distribute copies of the notice
27 of intended action and opportunity for oral presentations to
28 each county board of supervisors. A county board of
29 supervisors may, under chapter 17A and subsequent to the
30 rulemaking proceedings, petition for additional rulemaking to
31 establish standards to protect soil conservation practices,
32 structures, and drainage structures within that county. Upon
33 the request of the petitioning county, the board shall
34 schedule a hearing to consider the merits of the petition.
35 Rules adopted under this section do not apply within the

1 boundaries of a city, unless the land is used for agricultural
2 purposes.

3 Sec. 162. Section 479B.20, subsection 1, Code Supplement
4 1995, is amended to read as follows:

5 1. The board, pursuant to chapter 17A, shall adopt rules
6 establishing standards for the protection of underground
7 improvements during the construction of pipelines or
8 underground storage facilities, to protect soil conservation
9 and drainage structures from being permanently damaged by
10 construction of the pipeline or underground storage facility,
11 and for the restoration of agricultural lands after pipeline
12 or underground storage facility construction. To ensure that
13 all interested persons are informed of this rulemaking
14 procedure and are afforded a right to participate, the board
15 shall schedule an opportunity for oral presentations on the
16 proposed rulemaking, and, in addition to the requirements of
17 ~~section 17A.4~~ sections 17A.3103 and 17A.3104, shall distribute
18 copies of the notice of intended action and opportunity for
19 oral presentations to each county board of supervisors. Any
20 county board of supervisors may, under the provisions of
21 chapter 17A, and subsequent to the rulemaking proceedings,
22 petition under those provisions for additional rulemaking to
23 establish standards to protect soil conservation practices,
24 structures, and drainage structures within that county. Upon
25 the request of the petitioning county, the board shall
26 schedule a hearing to consider the merits of the petition.
27 Rules adopted under this section shall not apply within the
28 boundaries of a city unless the land is used for agricultural
29 purposes.

30 Sec. 163. Section 514B.4A, subsection 2, Code 1995, is
31 amended to read as follows:

32 2. Rules proposed by the commissioner for adoption for the
33 direct provision of health care services by a health
34 maintenance organization, shall be forwarded by the
35 commissioner to the director of public health for review,

1 comment, and recommendation, prior to submission to the
2 administrative rules coordinator pursuant to section ~~17A-4~~
3 17A.3103.

4 Sec. 164. Section 519A.4, subsection 1, Code 1995, is
5 amended to read as follows:

6 1. The association shall submit a plan of operation to the
7 commissioner, together with any amendments necessary or
8 suitable to assure the fair, reasonable, and equitable
9 administration of the association consistent with sections
10 519A.2 to 519A.13. The plan of operation and any amendments
11 thereto shall become effective only after ~~promulgation~~
12 adoption of the plan or amendment by the commissioner as a
13 rule pursuant to ~~section-17A-4~~ chapter 17A, article 3:
14 Provided that the initial plan may in the discretion of the
15 commissioner become effective immediately upon filing with the
16 secretary of state pursuant to section ~~17A-5~~ 17A.3115,
17 subsection 2, paragraph "b", subparagraph (1).

18 Sec. 165. Section 524.228, subsection 4, Code 1995, is
19 amended to read as follows:

20 4. A hearing provided for in this section shall be
21 presided over by an administrative law judge appointed in
22 accordance with ~~section-17A-11~~ chapter 17A, article 4. The
23 hearing shall be private, unless the superintendent determines
24 after full consideration of the views of the party afforded
25 the hearing, that a public hearing is necessary to protect the
26 public interest. After the hearing, and within thirty days
27 after the case has been submitted for decision, the
28 superintendent shall review the proposed order of the
29 administrative law judge and render a final decision,
30 including findings of fact upon which the decision is
31 predicated, and issue and serve upon each party to the
32 proceeding an order consistent with this section.

33 Sec. 166. Section 533.6A, subsection 4, Code 1995, is
34 amended to read as follows:

35 4. A hearing provided for in this section shall be

1 presided over by an administrative law judge appointed in
2 accordance with ~~section-17A-11~~ chapter 17A, article 4. The
3 hearing shall be private, unless the superintendent determines
4 after full consideration of the views of the party afforded
5 the hearing, that a public hearing is necessary to protect the
6 public interest. After the hearing, and within thirty days
7 after the case has been submitted for decision, the
8 superintendent shall review the proposed order of the
9 administrative law judge and render a final decision,
10 including findings of fact upon which the decision is
11 predicated, and issue and serve upon each party to the
12 proceeding an order consistent with this section.

13 Sec. 167. Section 534.405, unnumbered paragraph 7, Code
14 1995, is amended to read as follows:

15 Actions taken by the superintendent under this section are
16 not subject to ~~section 17A-18,--subsection-3~~ 17A.4105.

17 Sec. 168. Section 535B.7, subsection 2, unnumbered
18 paragraph 1, Code 1995, is amended to read as follows:

19 The administrator may order an emergency suspension of a
20 licensee's license pursuant to ~~section 17A-18,--subsection-3~~
21 17A.4501. A written order containing the facts or conduct
22 which warrants the emergency action shall be timely sent to
23 the licensee by restricted certified mail. Upon issuance of
24 the suspension order, the licensee must also be notified of
25 the right to an evidentiary hearing. A suspension proceeding
26 shall be promptly instituted and determined.

27 Sec. 169. Section 904.602, subsection 9, unnumbered
28 paragraph 2, Code 1995, is amended to read as follows:

29 These records are exempt from the public inspection
30 requirements in ~~section-17A-3~~ sections 17A.2101, 17A.2102, and
31 section 22.2.

32 Sec. 170. Section 906.3, Code 1995, is amended to read as
33 follows:

34 906.3 DUTIES OF PAROLE BOARD.

35 The board of parole shall adopt rules regarding a system of

1 paroles from correctional institutions, and shall direct,
2 control, and supervise the administration of the system of
3 paroles. The board of parole shall consult with the director
4 of the department of corrections on rules regarding a system
5 of work release and shall assist in the direction, control,
6 and supervision of the work release system. The board shall
7 determine which of those persons who have been committed to
8 the custody of the director of the Iowa department of
9 corrections, by reason of their conviction of a public
10 offense, shall be released on parole or work release. The
11 grant or denial of parole or work release is not a-contested
12 case an adjudicative proceeding as defined in section ~~17A.2~~
13 17A.1102.

14 Sec. 171. REPEAL.

15 1. Sections 17A.1 through 17A.5, 17A.7, and 17A.9 through
16 17A.33, Code 1995, are repealed.

17 2. Sections 17A.6 and 17A.8, Code Supplement 1995, are
18 repealed.

19 EXPLANATION

20 This bill repeals the current Iowa Administrative Procedure
21 Act under chapter 17A and replaces it with a new Iowa
22 Administrative Procedure Act. The new Act is based in part on
23 the 1981 Model State Administrative Procedures Act of the
24 national conference of commissioners on uniform state laws.
25 Like the current chapter 17A, the proposed new Act applies to
26 all state agencies and covers four main subjects: 1) public
27 access to agency law and policy; 2) agency rulemaking
28 procedure and the review of agency rules; 3) agency
29 adjudication; and 4) the judicial review of agency action.

30 The bill makes several changes from current law.

31 First, the bill imposes several new or additional
32 requirements concerning public access to agency law. New
33 section 17A.2101 requires each agency to compile, index, and
34 make available to the public, with some minor exceptions, all
35 agency policies of general applicability that are not required

1 to be published.

2 The bill also makes several changes concerning the adoption
3 and effectiveness of rules. The bill requires all agencies,
4 as soon as feasible and to the extent practicable, to make
5 their law through rules adopted after public rulemaking
6 proceedings in which all interested persons may participate
7 and which are subject to legislative and gubernatorial review.
8 The bill also requires each agency to maintain an up-to-date
9 public rulemaking docket containing all rules proposed by that
10 agency and in process and all rules currently under active
11 consideration within that agency for future proposal. New
12 section 17A.3105 requires an agency to prepare, in specified
13 circumstances, a detailed, structured, regulatory (cost-
14 benefit) analysis for a proposed rule that is available to the
15 general public. New section 17A.3107 specifies when a
16 variance between the text of a proposed rule and the text of
17 the adopted rule based on that proposed rule is sufficiently
18 substantial so that the agency must hold additional public
19 proceedings before it can adopt the rule. New section
20 17A.3109 authorizes agencies to omit usual rulemaking
21 procedures for wholly interpretive rules only if the rules
22 issued in reliance on that exemption are subject to de novo
23 judicial review for their correctness. Section 17A.3110
24 requires an explanatory statement for each adopted rule and
25 makes the reasons contained in that statement the sole basis
26 on which the agency may defend the legality of that rule.
27 Section 17A.3111 specifies the required contents, style, and
28 form for all adopted rules. Section 17A.3112 requires the
29 creation of a detailed public agency rulemaking record for
30 each adopted rule. Section 17A.3117 requires agencies, after
31 a petition therefor, to adopt, as soon as feasible and to the
32 extent practicable, a rule subject to public rulemaking
33 procedures superseding specified principles of law or policy
34 lawfully declared in individual cases.

35 Section 17A.3201 requires each agency to engage in a

1 formal, systematic, and periodic review of its rules to
2 facilitate the elimination or amendment of its unnecessary
3 rules. Sections 17A.3202 through 17A.3204 provide for the
4 powers of the governor and the administrative rules review
5 committee of the general assembly in reviewing agency rules.

6 Section 17A.4106 requires the waiver in individual cases of
7 a particular rule that is overbroad because its application in
8 those cases would not in actual practice serve any of the
9 purposes of the rule and authorizes the waiver of a particular
10 rule in individual cases where its application would cause
11 undue hardship, its waiver is consistent with the public
12 interest, and would not prejudice the rights of any other
13 person.

14 The bill also provides for the adjudicative process to be
15 applied in various situations. The bill replaces the current
16 reference to contested case proceedings with adjudicative
17 proceedings. The bill provides that the product of agency
18 adjudication (an "order") that is subject to the provisions of
19 the Act includes all agency action of particular applicability
20 defining the legal rights, duties, or privileges, of specified
21 persons. The bill requires agencies, with only few
22 exceptions, to conduct adjudicatory proceedings before issuing
23 an "order" and that agencies shall conduct a "formal
24 adjudicative hearing" as the process for issuing an order,
25 unless another statutory provision or a rule authorized by
26 this Act provides otherwise, and specifies all of the elements
27 of such a proceeding. Sections 17A.4204 and 17A.4205 provide
28 for and regulate prehearing conferences in formal adjudicative
29 hearings. Sections 17A.4206 through 17A.4208 provide for the
30 specificity of the notice, pleadings, and default requirements
31 applicable to formal adjudicative hearings. Section 17A.4209
32 provides for and regulates intervention in formal adjudicative
33 hearings. Section 17A.4210 requires notice to persons who are
34 the subject of an agency investigation of any subpoenas
35 related to that investigation that are directed at third

1 persons. Section 17A.4213 also imposes ex parte
2 communications prohibitions in formal adjudicative hearings
3 and additional remedies for their violation. Section 17A.4214
4 provides for separation of functions requirements and remedies
5 for their violation in formal adjudicative hearings, including
6 entirely new prohibitions on the combination of investigative
7 and subsequent decision-making functions and probable cause
8 finding and subsequent decision-making functions. Section
9 17A.4215 provides for the required contents of agency orders
10 and the burden of proof in formal adjudicative hearings.
11 Section 17A.4220 establishes an effective date for
12 adjudicatory orders in formal adjudicative hearings.
13 Section 17A.4301 establishes a wholly separate and
14 independent office of administrative hearings to house and
15 provide rules governing administrative law judges (ALJ)
16 including rules imposing on all persons who act as presiding
17 officers a code of administrative judicial conduct that is
18 similar to the Iowa code of judicial conduct; that section
19 also requires all newly hired ALJs who preside over formal
20 adjudicative hearings to be admitted to the bar of this state.
21 Sections 17A.4401 to 17A.4403 create and regulate a
22 conference adjudicative hearing of less formality, complexity,
23 and cost, than a formal adjudicative hearing, and establish
24 guidelines prescribing the precise and limited circumstances
25 in which agencies may use a conference adjudicative hearing.
26 The bill also creates and regulates very informal, summary,
27 low-cost adjudicative proceedings, called emergency and
28 summary adjudicative proceedings, and prescribes the limited
29 circumstances in which agencies may use those proceedings.
30 The bill also makes provision for the judicial review of
31 agency action. Section 17A.5102 statutorily defines the
32 distinction between "final" and "nonfinal" agency actions
33 which are subject to different requirements for judicial
34 review. Section 17A.5103 increases the grounds upon which
35 nonfinal agency action is reviewable. Section 17A.5106

1 confers standing to seek judicial review on specified classes
2 of persons and also lists three elements that must be
3 satisfied to qualify for standing under the "aggrieved and
4 adversely affected" standard. Section 17A.5107 increases the
5 grounds justifying a failure to exhaust administrative
6 remedies prior to filing a suit for judicial review of agency
7 action. Section 17A.5108 specifies in detail the time
8 requirements for review of various types of agency action.
9 Section 17A.5111 specifies a standard for the issuance by the
10 reviewing court of a stay of agency action pending judicial
11 review and clarifies the right of an agency to grant a stay
12 after a judicial review proceeding has commenced. Section
13 17A.5112 indicates the circumstances in which judicial review
14 may be obtained of issues that were not previously raised
15 before the agency. Section 17A.5114 specifies the
16 circumstances in which new evidence may be taken by the court
17 reviewing the agency action and in which that court may remand
18 the matter to the agency for the taking of additional
19 evidence. Section 17A.5116 greatly elaborates and increases
20 the specificity of the standards for judicial review,
21 expressly indicates when a reviewing court may and when it may
22 not substitute its judgment de novo for that of the agency,
23 and expressly prescribes the burden of persuasion with respect
24 to those standards. Section 17A.5117 provides for the various
25 types of relief available in proceedings for judicial review.
26 Section 17A.5118 codifies the appropriate standard for Iowa
27 supreme court review of a district court decision reviewing
28 agency action.

29 Additional conforming amendments to the Code may be
30 necessary to fully implement this bill.

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