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Place On Calendar

HOUSE FILE 667
BY COMMITTEE ON JUDICIARY
2/25/98 Do Pass

(SUCCESSOR TO HSB 230)

Passed House, ^(P.569) Date 3/10/98

Passed Senate, ^(P.1117) Date 4/7/98

Vote: Ayes 89 Nays 0

Vote: Ayes 49 Nays 0

Approved May 19, 1998

Passed 4-14-98
vote 48-0 (P.1252)

A BILL FOR

1 An Act relating to the Iowa administrative procedure Act and
2 providing an effective and applicability date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 667

1 Section 1. Section 10A.101, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. "Administrator" means the ~~chief-administrative-law~~
4 ~~judge~~, chief inspector, chief investigator, chief auditor, or
5 the person administering a division of the department.

6 Sec. 2. Section 10A.104, subsection 2, Code 1997, is
7 amended to read as follows:

8 2. Appoint the administrators of the divisions within the
9 department and all other personnel deemed necessary for the
10 administration of this chapter, except the state public
11 defender, assistant state public defenders, administrator of
12 the racing and gaming commission, members of the employment
13 appeal board, the chief administrative law judge,
14 administrative law judges, and administrator of the state
15 citizen foster care review board. All persons appointed and
16 employed in the department are covered by the provisions of
17 chapter 19A, but persons not appointed by the director are
18 exempt from the merit system provisions of chapter 19A, except
19 as provided in section 10A.801.

20 Sec. 3. Section 10A.104, subsection 5, Code 1997, is
21 amended to read as follows:

22 5. Adopt rules deemed necessary for the implementation and
23 administration of this chapter in accordance with chapter 17A,
24 ~~including-rules-governing-hearing-and-appeal-proceedings.~~

25 Sec. 4. Section 10A.106, Code 1997, is amended to read as
26 follows:

27 10A.106 DIVISIONS OF THE DEPARTMENT.

28 The department is comprised of the following divisions:

29 ~~1. Appeals and fair hearings division.~~

30 2. 1. Audits division.

31 3. 2. Investigations division.

32 4. 3. Inspections division.

33 The allocation of departmental duties to the divisions of
34 the department in sections ~~10A.202~~, 10A.302, 10A.402, and
35 10A.502 does not prohibit the director from reallocating

1 departmental duties within the department. The director shall
2 not reallocate any of the duties of the office of
3 administrative hearings, created by section 10A.801, to any
4 other unit of the department.

5 Sec. 5. NEW SECTION. 10A.801 OFFICE OF ADMINISTRATIVE
6 HEARINGS -- CREATION, POWERS, DUTIES.

7 1. An independent office of administrative hearings within
8 the department is created to be headed and administered by a
9 chief administrative law judge appointed by the governor for a
10 term of six years subject to confirmation by the senate. The
11 chief administrative law judge may be removed by the governor
12 at any time for good cause.

13 2. a. The chief administrative law judge shall employ a
14 sufficient number of administrative law judges to conduct
15 proceedings for which agencies are required, by section 17A.11
16 or any other provision of law, to use an administrative law
17 judge employed by the office. An administrative law judge
18 employed by the office shall not perform duties inconsistent
19 with the judge's duties and responsibilities as an
20 administrative law judge and shall be located in an office
21 that is entirely separated from the offices of the agencies
22 for which that person acts as a presiding officer.

23 Administrative law judges shall be covered by the merit system
24 provisions of chapter 19A.

25 b. Subject to the approval of the department of personnel,
26 the office shall, insofar as practicable, provide for
27 different classes of administrative law judges with different
28 salary scales. The office shall also facilitate, insofar as
29 practicable, specialization by its administrative law judges
30 so that particular judges may become expert in presiding over
31 cases in particular agencies. An agency may, by rule,
32 identify particular classes of its contested cases for which
33 the administrative law judge who acts as presiding officer
34 shall have specified technical expertness. After the adoption
35 of such a rule, the office may assign administrative law

1 judges to preside over those identified particular classes of
2 contested cases only if the agency responsible for those cases
3 has certified, either at the time of the initial hiring of the
4 administrative law judge by the office or at a subsequent
5 time, that the agency was satisfied that the particular
6 administrative law judge designated to preside possessed the
7 necessary technical expertness.

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

16 4. The office may furnish administrative law judges on a
17 contract basis to any governmental entity to conduct any
18 proceeding.

19 5. After the effective date of this Act, a person shall
20 not be newly employed by the office as an administrative law
21 judge to preside over contested case proceedings unless that
22 person has a license to practice law in this state.

23 6. The office shall adopt rules pursuant to this chapter
24 and chapter 17A to do all of the following:

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

32 b. To establish procedures for agencies to request and for
33 the chief administrative law judge to assign administrative
34 law judges employed by the office.

35 c. To establish procedures and adopt forms, consistent

1 with chapter 17A and other provisions of law, to govern
2 administrative law judges employed by the office, but any
3 rules adopted under this paragraph shall be applicable to a
4 particular contested case proceeding only to the extent that
5 they are not inconsistent with the rules of the agency under
6 whose authority that proceeding is conducted. Nothing in this
7 paragraph precludes an agency from establishing procedural
8 requirements otherwise within its authority to govern its
9 contested case proceedings, including requirements with
10 respect to the timeliness of decisions rendered for it by
11 administrative law judges.

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. Those
15 procedures shall include provisions for each agency for whom a
16 particular administrative law judge presides to submit to the
17 office on a periodic basis the agency's views with respect to
18 the performance of that administrative law judge or the need
19 for specified additional training for that administrative law
20 judge. However, the evaluation, training, promotion, and
21 discipline of all administrative law judges employed by the
22 office shall remain solely within the authority of the office.

23 e. To establish, consistent with the provisions of this
24 section and chapter 17A, a code of administrative judicial
25 conduct that is similar in function and substantially
26 equivalent to the Iowa code of judicial conduct, to govern the
27 conduct, in relation to their quasi-judicial functions in
28 contested cases, of all persons who act as presiding officers
29 under the authority of section 17A.11, subsection 1. The code
30 of administrative judicial conduct shall separately specify
31 which provisions are applicable to agency heads or members of
32 multimembered agency heads when they act as presiding
33 officers, taking into account the objectives of the code and
34 the fact that agency heads, unlike administrative law judges,
35 have other duties imposed upon them by law. The code of

1 administrative judicial conduct may also contain separate
2 provisions, that are appropriate and consistent with the
3 objectives of such a code, to govern the conduct of agency
4 heads or the members of multimember agency heads when they act
5 as presiding officers. However, a provision of the code of
6 administrative judicial conduct shall not be made applicable
7 to agency heads or members of multimember agency heads unless
8 the application of that provision to agency heads and members
9 of multimember agency heads has previously been approved by
10 the administrative rules coordinator.

11 f. To facilitate the performance of the responsibilities
12 conferred upon the office by this section, chapter 17A, and
13 any other provision of law.

14 7. The office may do all of the following:

15 a. Provide administrative law judges, upon request, to any
16 agency that is required to or wishes to utilize the services
17 of an administrative law judge employed by the office.

18 b. Maintain a staff of reporters and other personnel.

19 c. Administer the provisions of this section and rules
20 adopted under its authority.

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

24 9. Except to the extent specified otherwise by statute,
25 decisions of administrative law judges employed by the office
26 are subject to review by the agencies for which they act as
27 presiding officers as provided by section 17A.15 or any other
28 provision of law.

29 Sec. 6. Section 17A.2, Code 1997, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 9A. "Provision of law" means the whole or
32 part of the Constitution of the United States of America or
33 the Constitution of the State of Iowa, or of any federal or
34 state statute, court rule, executive order of the governor, or
35 agency rule.

1 Sec. 7. Section 17A.2, subsection 10, unnumbered paragraph
2 1, Code 1997, is amended to read as follows:

3 "Rule" means each agency statement of general applicability
4 that implements, interprets, or prescribes law or policy, or
5 that describes the organization, procedure, or practice
6 requirements of any agency. Notwithstanding any other
7 ~~provision-of-law~~ statute, the term includes an executive order
8 or directive of the governor which creates an agency or
9 establishes a program or which transfers a program between
10 agencies established by statute or rule. The term includes
11 the amendment or repeal of an existing rule, but does not
12 include:

13 Sec. 8. Section 17A.2, subsection 10, paragraph b, Code
14 1997, is amended to read as follows:

15 b. A declaratory ~~ruling~~ order issued pursuant to section
16 17A.9, or an interpretation issued by an agency with respect
17 to a specific set of facts and intended to apply only to that
18 specific set of facts.

19 Sec. 9. Section 17A.3, subsection 1, Code 1997, is amended
20 by adding the following new paragraph after paragraph b and
21 relettering the subsequent paragraphs:

22 NEW PARAGRAPH. c. As soon as feasible and to the extent
23 practicable, adopt rules, in addition to those otherwise
24 required by this chapter, embodying appropriate standards,
25 principles, and procedural safeguards that the agency will
26 apply to the law it administers.

27 Sec. 10. Section 17A.4, subsection 1, paragraph b, Code
28 1997, is amended to read as follows:

29 b. Afford all interested persons not less than twenty days
30 to submit data, views, or arguments in writing. If timely
31 requested in writing by twenty-five interested persons, by a
32 governmental subdivision, by the administrative rules review
33 committee, by an agency, or by an association having not less
34 than twenty-five members, the agency must give interested
35 persons an opportunity to make oral presentation. The

1 opportunity for oral presentation must be held at least twenty
2 days after publication of the notice of its time and place in
3 the Iowa administrative bulletin. The agency shall consider
4 fully all written and oral submissions respecting the proposed
5 rule. Within one hundred eighty days following either the
6 notice published according to the provisions of paragraph "a"
7 or within one hundred eighty days after the last date of the
8 oral presentations on the proposed rule, whichever is later,
9 the agency shall adopt a rule pursuant to the rulemaking
10 proceeding or shall terminate the proceeding by publishing
11 notice of termination in the Iowa administrative bulletin. ~~if~~

12 An agency shall include in a preamble to each rule it
13 adopts a brief explanation of the principal reasons for its
14 action and, if applicable, a brief explanation of the
15 principal reasons for its failure to provide in that rule for
16 the waiver of the rule in specified situations if no such
17 waiver provision is included in the rule. This explanatory
18 requirement does not apply when the agency adopts a rule that
19 only defines the meaning of a provision of law if the agency
20 does not possess delegated authority to bind the courts to any
21 extent with its definition. In addition, if requested to do
22 so by an interested person, either prior to adoption or within
23 thirty days thereafter, the agency shall issue a concise
24 statement of the principal reasons for and against the rule it
25 adopted, incorporating therein the reasons for overruling
26 considerations urged against the rule. This concise statement
27 shall be issued either at the time of the adoption of the rule
28 or within thirty-five days after the agency receives the
29 request.

30 Sec. 11. Section 17A.4, subsection 1, paragraph c, Code
31 1997, is amended by striking the paragraph.

32 Sec. 12. NEW SECTION. 17A.4A REGULATORY ANALYSIS.

33 1. An agency shall issue a regulatory analysis of a
34 proposed rule that complies with subsection 2, paragraph "a",
35 if, within thirty-two days after the published notice of

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

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

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

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

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

1 (4) A comparison of the probable costs and benefits of the
2 proposed rule to the probable costs and benefits of inaction.

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

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

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

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

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

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

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

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

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

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

34 4. Upon receipt by an agency of a timely request for a
35 regulatory analysis, the agency shall extend the period

1 specified in this chapter for each of the following until at
2 least twenty days after publication in the administrative
3 bulletin of a concise summary of the regulatory analysis:

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

6 b. The end of the period during which an oral proceeding
7 may be requested.

8 c. The date of any required oral proceeding on the
9 proposed rule.

10 In the case of a rule adopted without prior notice and an
11 opportunity for public participation in reliance upon section
12 17A.4, subsection 2, the summary must be published within
13 seventy days of the request.

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

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

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

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

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

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

1 in its field of operation" means an entity which is at least
2 twenty percent owned by an entity dominant in its field of
3 operation, or by partners, officers, directors, majority
4 stockholders, or their equivalent, of an entity dominant in
5 that field of operation.

6 Sec. 13. Section 17A.7, Code 1997, is amended to read as
7 follows:

8 17A.7 PETITION FOR ADOPTION OF RULES AND REQUEST FOR
9 REVIEW OF RULES.

10 1. An interested person may petition an agency requesting
11 the ~~promulgation~~ adoption, amendment, or repeal of a rule.
12 Each agency shall prescribe by rule the form for petitions and
13 the procedure for their submission, consideration, and
14 disposition. Within sixty days after submission of a
15 petition, the agency either shall deny the petition in writing
16 on the merits, stating its reasons for the denial, or initiate
17 rulemaking proceedings in accordance with section 17A.4, or
18 issue a rule if it is not required to be issued according to
19 the procedures of section 17A.4, subsection 1.

20 2. The administrative rules review committee, the
21 administrative rules coordinator, a political subdivision, an
22 agency, twenty-five persons signing one request, or an
23 association having not less than twenty-five members, may
24 request an agency to conduct a formal review of a specified
25 rule of that agency to determine whether the rule should be
26 repealed or amended or a new rule adopted instead.

27 If the agency has not conducted such a review of the
28 specified rule within a period of five years prior to the
29 filing with the agency of that written request, the agency
30 shall prepare within a reasonable time a written report with
31 respect to the rule summarizing the agency's findings, its
32 supporting reasons, and any proposed course of action. The
33 report must include, for the specified rule, a concise
34 statement of all of the following:

35 a. The rule's effectiveness in achieving its objectives,

1 including a summary of any available data supporting the
2 conclusions reached.

3 b. Written criticisms of the rule received during the
4 previous five years, including a summary of any petitions for
5 waiver of the rule tendered to the agency or granted by the
6 agency.

7 c. Alternative solutions regarding the subject matter of
8 the criticisms and the reasons they were rejected or the
9 changes made in the rule in response to those criticisms and
10 the reasons for the changes.

11 A copy of the report shall be sent to the administrative
12 rules review committee and the administrative rules
13 coordinator and shall be made available for public inspection.

14 Sec. 14. Section 17A.9, Code 1997, is amended by striking
15 the section and inserting in lieu thereof the following:

16 17A.9 DECLARATORY ORDERS.

17 1. Any person may petition an agency for a declaratory
18 order as to the applicability to specified circumstances of a
19 statute, rule, or order within the primary jurisdiction of the
20 agency. An agency shall issue a declaratory order in response
21 to a petition for that order unless the agency determines that
22 issuance of the order under the circumstances would be
23 contrary to a rule adopted in accordance with subsection 2.

24 However, an agency shall not issue a declaratory order that
25 would substantially prejudice the rights of a person who would
26 be a necessary party and who does not consent in writing to
27 the determination of the matter by a declaratory order
28 proceeding.

29 2. Each agency shall adopt rules that provide for the
30 form, contents, and filing of petitions for declaratory
31 orders, the procedural rights of persons in relation to the
32 petitions, and the disposition of the petitions. The rules
33 must describe the classes of circumstances in which the agency
34 will not issue a declaratory order and must be consistent with
35 the public interest and with the general policy of this

1 chapter to facilitate and encourage agency issuance of
2 reliable advice.

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

7 4. Persons who qualify under any applicable provision of
8 law as an intervenor and who file timely petitions for
9 intervention according to agency rules may intervene in
10 proceedings for declaratory orders. The provisions of
11 sections 17A.10 through 17A.18 apply to agency proceedings for
12 declaratory orders only to the extent an agency so provides by
13 rule or order.

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

17 a. Issue an order declaring the applicability of the
18 statute, rule, or order in question to the specified
19 circumstances.

20 b. Set the matter for specified proceedings.

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

22 d. Decline to issue a declaratory order, stating the
23 reasons for its action.

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

27 7. A declaratory order has the same status and binding
28 effect as any final order issued in a contested case
29 proceeding. A declaratory order must contain the names of all
30 parties to the proceeding on which it is based, the particular
31 facts on which it is based, and the reasons for its
32 conclusion.

33 8. If an agency has not issued a declaratory order within
34 sixty days after receipt of a petition therefor, or such later
35 time as agreed by the parties, the petition is deemed to have

1 been denied. Once a petition for a declaratory order is
2 deemed denied or if the agency declines to issue a declaratory
3 order pursuant to subsection 5, paragraph "d", a party to that
4 proceeding may either seek judicial review or await further
5 agency action with respect to its petition for a declaratory
6 order.

7 Sec. 15. NEW SECTION. 17A.10A CONTESTED CASES -- NO
8 FACTUAL DISPUTE.

9 Upon petition by a party in a matter that would be a
10 contested case if there was a dispute over the existence of
11 material facts, all of the provisions of this chapter
12 applicable to contested cases, except those relating to
13 presentation of evidence, shall be applicable even though
14 there is no factual dispute in the particular case.

15 Sec. 16. Section 17A.11, Code 1997, is amended by striking
16 the section and inserting in lieu thereof the following:

17 17A.11 PRESIDING OFFICER, DISQUALIFICATION, SUBSTITUTION.

18 1. a. If the agency or an officer of the agency under
19 whose authority the contested case is to take place is a named
20 party to that proceeding or a real party in interest to that
21 proceeding the presiding officer may be, in the discretion of
22 the agency head, either the agency head, one or more members
23 of the agency head, or one or more administrative law judges
24 assigned by the office of administrative hearings in
25 accordance with the provisions of section 10A.801.

26 b. If the agency or an officer of the agency under whose
27 authority the contested case is to take place is not a named
28 party to that proceeding or a real party in interest to that
29 proceeding the presiding officer may be, in the discretion of
30 the agency head, either the agency head, one or more members
31 of the agency head, an administrative law judge assigned by
32 the office of administrative hearings in accordance with the
33 provisions of section 10A.801, or any other qualified person
34 designated as a presiding officer by the agency head. Any
35 other person designated as a presiding officer by the agency

1 head may be employed by and officed in the agency for which
2 that person acts as a presiding officer, but such a person
3 shall not perform duties inconsistent with that person's
4 duties and responsibilities as a presiding officer.

5 c. For purposes of paragraph "a", the office of
6 administrative hearings established in section 10A.801 shall
7 be treated as a wholly separate agency from the department of
8 inspections and appeals.

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

13 3. Any party may timely request the disqualification of a
14 person as a presiding officer by filing a motion supported by
15 an affidavit asserting an appropriate ground for
16 disqualification, after receipt of notice indicating that the
17 person will preside or upon discovering facts establishing
18 grounds for disqualification, whichever is later.

19 4. A person whose disqualification is requested shall
20 determine whether to grant the request, stating facts and
21 reasons for the determination.

22 5. If a substitute is required for a person who is
23 disqualified or becomes unavailable for any other reason, the
24 substitute shall be appointed by either of the following:

25 a. The governor, if the disqualified or unavailable person
26 is an elected official.

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

29 6. Any action taken by a duly-appointed substitute for a
30 disqualified or unavailable person is as effective as if taken
31 by the latter.

32 Sec. 17. Section 17A.12, subsection 3, Code 1997, is
33 amended by striking the subsection and inserting in lieu
34 thereof the following:

35 3. a. If a party fails to appear or participate in a

1 contested case proceeding, the presiding officer shall serve
2 all parties by certified mail written notice of a proposed
3 default order, including a statement of the grounds.

4 b. Within fifteen days or such longer period specified by
5 agency rule after the mailing by certified mail of a proposed
6 default order, the party against whom it was issued may file a
7 written motion requesting that the proposed default order be
8 vacated and stating the grounds relied upon. A proposed
9 default order may be vacated for any reason specified in the
10 rules of civil procedure or for any other reason specified by
11 agency rule. At the time a party fails to appear or
12 participate in a contested case proceeding, or during the time
13 within which a party may file a written motion under this
14 subsection, the presiding officer may adjourn the proceedings
15 or conduct them without the participation of the party against
16 whom a proposed default order was issued, having due regard
17 for the interests of justice and the orderly and prompt
18 conduct of the proceedings.

19 c. The presiding officer shall either issue or vacate the
20 default order promptly after expiration of the time within
21 which the party may file a written motion under paragraph "b".

22 d. After issuing a default order, the presiding officer
23 shall conduct any further proceedings necessary to complete
24 the contested case proceeding without the participation of the
25 party in default and shall determine all issues in the
26 contested case including those affecting the defaulting party.

27 e. If the presiding officer conducts further proceedings
28 after the issuance of a proposed default order, the time
29 period for seeking judicial review of a decision in that
30 contested case proceeding shall begin to run from the date of
31 the issuance of the final decision in that case, if any, or
32 the date of the issuance of a default order, whichever is
33 later.

34 Sec. 18. Section 17A.16, subsection 1, Code 1997, is
35 amended to read as follows:

1 1. A proposed or final decision or order in a contested
2 case shall be in writing or stated in the record. A proposed
3 or final decision shall include findings of fact and
4 conclusions of law, separately stated. Findings of fact, if
5 set forth in statutory language, shall be accompanied by a
6 concise and explicit statement of underlying facts supporting
7 the findings. The decision shall include an explanation of
8 why the evidence in the record supports each finding of fact
9 and why the evidence in the record that is contrary to a
10 finding does not preclude it. If, in accordance with agency
11 rules, a party submitted proposed findings of fact, the
12 decision shall include a ruling upon each proposed finding.
13 Each conclusion of law shall be supported by cited authority
14 or by a reasoned opinion. Parties shall be promptly notified
15 of each proposed or final decision or order by the delivery to
16 them of a copy of such decision or order in the manner
17 provided by section 17A.12, subsection 1.

18 Sec. 19. Section 17A.17, Code 1997, is amended to read as
19 follows:

20 17A.17 EX PARTE COMMUNICATIONS AND SEPARATION OF
21 FUNCTIONS.

22 1. Unless required for the disposition of ex parte matters
23 specifically authorized by statute, ~~individuals assigned to~~
24 ~~render a proposed or final decision or to make findings of~~
25 ~~fact and conclusions of law~~ a presiding officer in a contested
26 case, shall not communicate, directly or indirectly, in
27 connection with any issue of fact or law in that contested
28 case, with any person or party, except upon notice and
29 opportunity for all parties to participate as shall be
30 provided for by agency rules.

31 However, without such notice and opportunity for all
32 parties to participate, ~~individuals assigned to render a~~
33 ~~proposed or final decision or to make findings of fact and~~
34 ~~conclusions of law~~ a presiding officer in a contested case may
35 communicate with members of the agency, and may have the aid

1 and advice of persons other than those with a personal
2 interest in, or those engaged in personally investigating,
3 prosecuting or advocating in, either the case under
4 consideration or a pending factually related case involving
5 the same parties so long as those persons do not directly or
6 indirectly communicate to the presiding officer any ex parte
7 communications they have received of a type that the presiding
8 officer would be prohibited from receiving or that furnish,
9 augment, diminish, or modify the evidence in the record.

10 2. Unless required for the disposition of ex parte matters
11 specifically authorized by statute, parties or their
12 representatives in a contested case and persons with a direct
13 or indirect interest in such a case shall not communicate,
14 directly or indirectly, in connection with any issue of fact
15 or law in that contested case, with individuals assigned to
16 render a proposed or final decision or to make findings of
17 fact and conclusions of law a presiding officer in that
18 contested case, except upon notice and opportunity for all
19 parties to participate as shall be provided for by agency
20 rules. The agency's rules may require the recipient of a
21 prohibited communication to submit the communication if
22 written or a summary of the communication if oral for
23 inclusion in the record of the proceeding. As sanctions for
24 violations, the rules may provide for a decision against a
25 party who violates the rules, for censuring, suspending or
26 revoking a privilege to practice before the agency, and for
27 censuring, suspending or dismissing agency personnel.

28 3. If, before serving as the presiding officer in a
29 contested case, a person receives an ex parte communication
30 relating directly to the merits of the proceeding over which
31 that person subsequently presides, the person, promptly after
32 starting to serve, shall disclose to all parties any material
33 factual information so received and not otherwise disclosed to
34 those parties pursuant to section 17A.13, subsection 2, or
35 through discovery.

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

14 5. If the effect of an ex parte communication received in
15 violation of this section is so prejudicial that it cannot be
16 cured by the procedure in subsection 4, a presiding officer
17 who receives the communication shall be disqualified and the
18 portions of the record pertaining to the communication shall
19 be sealed by protective order.

20 6. The agency and any party may report any violation of
21 this section to appropriate authorities for any disciplinary
22 proceedings provided by law. In addition, each agency by rule
23 shall provide for appropriate sanctions, including default,
24 suspending or revoking a privilege to practice before the
25 agency, and censuring, suspending, or dismissing agency
26 personnel, for any violations of this section.

27 7. A party to a contested case proceeding may file a
28 timely and sufficient affidavit alleging a violation of any
29 provision of this section. The agency shall determine the
30 matter as part of the record in the case. When an agency in
31 these circumstances makes such a determination with respect to
32 an agency member, that determination shall be subject to de
33 novo judicial review in any subsequent review proceeding of
34 the case.

35 3- 8. No An individual who participates in the making of

1 any proposed or final decision in a contested case shall not
 2 have personally investigated, prosecuted, or advocated in
 3 connection with that case, the specific controversy underlying
 4 that case, or another pending factually related contested
 5 case, or pending factually related controversy that may
 6 culminate in a contested case, involving the same parties.
 7 ~~Nor shall any~~ In addition, such an individual shall not be
 8 subject to the authority, direction, or discretion of any
 9 person who has personally investigated, prosecuted, or
 10 advocated in connection with that contested case, the specific
 11 controversy underlying that contested case, or a pending
 12 factually related contested case or controversy, involving the
 13 same parties. However, this section shall not be construed to
 14 preclude a person from serving as a presiding officer solely
 15 because that person determined there was probable cause to
 16 initiate the proceeding.

17 ~~4.--A party to a contested case proceeding may file a~~
 18 ~~timely and sufficient affidavit asserting disqualification~~
 19 ~~according to the provisions of subsection 3, or asserting~~
 20 ~~personal bias of an individual participating in the making of~~
 21 ~~any proposed or final decision in that case.--The agency shall~~
 22 ~~determine the matter as part of the record in the case.--When~~
 23 ~~an agency in these circumstances makes such a determination~~
 24 ~~with respect to an agency member, that determination shall be~~
 25 ~~subject to de novo judicial review in any subsequent review~~
 26 ~~proceeding of the case.~~

27 Sec. 20. Section 17A.18, subsection 3, Code 1997, is
 28 amended to read as follows:

29 3. No revocation, suspension, annulment or withdrawal, in
 30 whole or in part, of any license is lawful unless, prior to
 31 the institution of agency proceedings, the agency gave
 32 written, timely notice by personal service as in civil actions
 33 or by restricted certified mail to the licensee of facts or
 34 conduct and the provisions provision of law which warrant
 35 warrants the intended action, and the licensee was given an

1 opportunity to show, in an evidentiary hearing conducted
2 according to the provisions of this chapter for contested
3 cases, compliance with all lawful requirements for the
4 retention of the license. ~~If the agency finds that public~~
5 ~~health, safety or welfare imperatively requires emergency~~
6 ~~action, and incorporates a finding to that effect in its~~
7 ~~order, summary suspension of a license may be ordered pending~~
8 ~~proceedings for revocation or other action. These proceedings~~
9 ~~shall be promptly instituted and determined.~~

10 Sec. 21. NEW SECTION. 17A.18A EMERGENCY ADJUDICATIVE
11 PROCEEDINGS.

12 1. Notwithstanding any other provision of this chapter and
13 to the extent consistent with the Constitution, an agency may
14 use emergency adjudicative proceedings in a situation
15 involving an immediate danger to the public health, safety, or
16 welfare requiring immediate agency action.

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

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

26 4. The agency shall give such notice as is practicable to
27 persons who are required to comply with the order. The order
28 is effective when issued.

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

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

1 record.

2 7. Unless otherwise required by a provision of law, the
3 agency record need not constitute the exclusive basis for
4 agency action in emergency adjudicative proceedings or for
5 judicial review thereof.

6 Sec. 22. Section 17A.19, subsection 1, Code 1997, is
7 amended to read as follows:

8 1. A person or party who has exhausted all adequate
9 administrative remedies and who is aggrieved or adversely
10 affected by any final agency action is entitled to judicial
11 review thereof under this chapter. When agency action is
12 pursuant to rate regulatory powers over public utilities or
13 common carriers and the aggrievement or adverse effect is to
14 the rates or charges of a public utility or common carrier,
15 the agency action shall not be final until all agency remedies
16 have been exhausted and a decision prescribing rates which
17 satisfy the requirements of those provisions of the Code has
18 been rendered. A preliminary, procedural or intermediate
19 agency action is immediately reviewable if all adequate
20 administrative remedies have been exhausted and review of the
21 final agency action would not provide an adequate remedy. If
22 a declaratory ruling order has not been rendered within thirty
23 sixty days after the filing of a petition therefor under
24 section 17A.9, or by such later time as agreed by the parties,
25 or if the agency declines to issue such a declaratory ruling
26 order after receipt of a petition therefor, any administrative
27 remedy available under section 17A.9 shall be deemed
28 inadequate or exhausted.

29 Sec. 23. Section 17A.19, subsection 5, Code 1997, is
30 amended to read as follows:

31 5. a. The filing of the petition for review does not
32 itself stay execution or enforcement of any agency action.
33 ~~Upon application the agency or the reviewing court may, in~~
34 ~~appropriate cases, order such a stay pending the outcome of~~
35 ~~the judicial review proceedings~~ Unless precluded by law, the

1 agency may grant a stay on appropriate terms or other
2 temporary remedies during the pendency of judicial review.

3 b. A party may file an interlocutory motion in the
4 reviewing court, during the pendency of judicial review,
5 seeking review of the agency's action on an application for
6 stay or other temporary remedies.

7 c. If the agency refuses to grant an application for stay
8 or other temporary remedies, or application to the agency for
9 a stay or other temporary remedies is an inadequate remedy,
10 the court may grant relief but only after a consideration and
11 balancing of all of the following factors:

12 (1) The extent to which the applicant is likely to prevail
13 when the court finally disposes of the matter.

14 (2) The extent to which the applicant will suffer
15 irreparable injury if relief if not granted.

16 (3) The extent to which the grant of relief to the
17 applicant will substantially harm other parties to the
18 proceedings.

19 (4) The extent to which the public interest relied on by
20 the agency is sufficient to justify the agency's action in the
21 circumstances.

22 d. If the court determines that relief should be granted
23 from the agency's action on an application for stay or other
24 temporary remedies, the court may remand the matter to the
25 agency with directions to deny a stay, to grant a stay on
26 appropriate terms, or to grant other temporary remedies, or
27 the court may issue an order denying a stay, granting a stay
28 on appropriate terms, or granting other temporary remedies.

29 Sec. 24. Section 17A.19, subsection 8, Code 1997, is
30 amended by striking the subsection and inserting in lieu
31 thereof the following:

32 8. Except to the extent that this chapter provides
33 otherwise, in suits for judicial review of agency action all
34 of the following apply:

35 a. The burden of demonstrating the required prejudice and

1 the invalidity of agency action is on the party asserting
2 invalidity.

3 b. The validity of agency action must be determined in
4 accordance with the standards of review provided in this
5 section, as applied to the agency action at the time that
6 action was taken.

7 9. The court shall make a separate and distinct ruling on
8 each material issue on which the court's decision is based.

9 10. The court may affirm the agency action or remand to
10 the agency for further proceedings. The court shall reverse,
11 modify, or grant other appropriate relief from agency action,
12 equitable or legal and including declaratory relief, if it
13 determines that substantial rights of the person seeking
14 judicial relief have been prejudiced because the agency action
15 is any of the following:

16 a. Unconstitutional on its face or as applied or is based
17 upon a provision of law that is unconstitutional on its face
18 or as applied.

19 b. Beyond the authority delegated to the agency by any
20 provision of law or in violation of any provision of law.

21 c. Based upon an erroneous interpretation of a provision
22 of law whose interpretation has not clearly been vested by a
23 provision of law in the discretion of the agency.

24 d. Based upon a procedure or decision-making process
25 prohibited by law or was taken without following the
26 prescribed procedure or decision-making process.

27 e. The product of decision making undertaken by persons
28 who were improperly constituted as a decision-making body,
29 were motivated by an improper purpose, or were subject to
30 disqualification.

31 f. Based upon a determination of fact clearly vested by a
32 provision of law in the discretion of the agency that is not
33 supported by substantial evidence in the record before the
34 court when that record is viewed as a whole. For purposes of
35 this paragraph, the following terms have the following

1 meanings:

2 (1) "Substantial evidence" means the quantity and quality
3 of evidence that would be deemed sufficient by a neutral,
4 detached, and reasonable person, to establish the fact at
5 issue when the consequences resulting from the establishment
6 of that fact are understood to be serious and of great
7 importance.

8 (2) "Record before the court" means the agency record for
9 judicial review, as defined by this chapter, supplemented by
10 any additional evidence received by the court under the
11 provisions of this chapter.

12 (3) "When that record is viewed as a whole" means that the
13 adequacy of the evidence in the record before the court to
14 support a particular finding of fact must be judged in light
15 of all the relevant evidence in the record cited by any party
16 that detracts from that finding as well as all of the relevant
17 evidence in the record cited by any party that supports it,
18 including any determinations of veracity by the presiding
19 officer who personally observed the demeanor of the witnesses
20 and the agency's explanation of why the evidence in the record
21 supports its finding of fact and why the evidence in the
22 record that is contrary to its finding does not preclude that
23 finding.

24 g. Action other than a rule that is inconsistent with a
25 rule of the agency.

26 h. Action other than a rule that is inconsistent with the
27 agency's prior practice or precedents, unless the agency has
28 justified that inconsistency by stating credible reasons
29 sufficient to indicate a fair and rational basis for the
30 inconsistency.

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

33 j. The product of a decision-making process in which the
34 agency did not consider a relevant and important matter
35 relating to the propriety or desirability of the action in

1 question that a rational decision maker in similar
2 circumstances would have considered prior to taking that
3 action.

4 k. Not required by law and its negative impact on the
5 private rights affected is so grossly disproportionate to the
6 benefits accruing to the public interest from that action that
7 it must necessarily be deemed to lack any foundation in
8 rational agency policy.

9 l. Based upon an irrational, illogical, or wholly
10 unjustifiable interpretation of a provision of law whose
11 interpretation has clearly been vested by a provision of law
12 in the discretion of the agency.

13 m. Based upon an irrational, illogical, or wholly
14 unjustifiable application of law to fact that has clearly been
15 vested by a provision of law in the discretion of the agency.

16 n. Otherwise unreasonable, arbitrary, capricious, or an
17 abuse of discretion.

18 11. In making the determinations required by subsection
19 10, paragraphs "a" through "n", the court shall do all of the
20 following:

21 a. Shall not give any deference to the view of the agency
22 with respect to whether particular matters have been vested by
23 a provision of law in the discretion of the agency.

24 b. Should not give any deference to the view of the agency
25 with respect to particular matters that have not been vested
26 by a provision of law in the discretion of the agency.

27 c. Shall give appropriate deference to the view of the
28 agency with respect to particular matters that have been
29 vested by a provision of law in the discretion of the agency.

30 12. A defendant in a suit for civil enforcement of agency
31 action may defend on any of the grounds specified in
32 subsection 10, paragraphs "a" through "n", if that defendant,
33 at the time the enforcement suit was filed, would have been
34 entitled to rely upon any of those grounds as a basis for
35 invalidating the agency action in a suit for judicial review

1 of that action brought at the time the enforcement suit was
2 filed. If a suit for civil enforcement of agency action in a
3 contested case is filed within the time period in which the
4 defendant could have filed a petition for judicial review of
5 that agency action, and the agency subsequently dismisses its
6 suit for civil enforcement of that agency action against the
7 defendant, the defendant may, within thirty days of that
8 dismissal, file a petition for judicial review of the original
9 agency action at issue if the defendant relied upon any of the
10 grounds for judicial review in subsection 10, paragraphs "a"
11 through "n", in a responsive pleading to the enforcement
12 action, or if the time to file a responsive pleading had not
13 yet expired at the time the enforcement action was dismissed.

14 Sec. 25. Section 17A.33, Code 1997, is amended to read as
15 follows:

16 17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW COMMITTEE.

17 The administrative rules review committee shall review
18 existing rules, as time permits, to determine if there are
19 adverse or beneficial effects from these rules. The committee
20 shall give a high priority to rules that are referred to it by
21 small business as defined in section ~~17A.31~~ 17A.4A. The
22 review of these rules shall be forwarded to the appropriate
23 standing committees of the house and senate.

24 Sec. 26. Section 19A.1A, Code 1997, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 4. Reduction in force appeals shall be
27 subject to review by the director.

28 Sec. 27. Section 20.6, subsection 4, Code 1997, is amended
29 to read as follows:

30 4. Hold hearings and administer oaths, examine witnesses
31 and documents, take testimony and receive evidence, issue
32 subpoenas to compel the attendance of witnesses and the
33 production of records, and delegate such power to a member of
34 the board, or persons appointed or employed by the board,
35 including administrative law judges, or administrative law

1 judges employed by the office of administrative hearings
2 created by section 10A.801, for the performance of its
3 functions. The board may petition the district court at the
4 seat of government or of the county where a hearing is held to
5 enforce a board order compelling the attendance of witnesses
6 and production of records.

7 Sec. 28. Section 86.17, subsection 1, Code 1997, is
8 amended to read as follows:

9 1. A Notwithstanding the provisions of section 17A.11, the
10 industrial commissioner or a deputy industrial commissioner
11 may shall preside over any contested case proceeding brought
12 under this chapter, chapter 85, or 85A, or 85B in the manner
13 provided by chapter 17A. The deputy commissioner or the
14 commissioner may make such inquiries ~~and-investigation~~ in
15 contested case proceedings as shall be deemed necessary,
16 consistent-with so long as such inquiries do not violate any
17 of the provisions of section 17A.17.

18 Sec. 29. Section 137E.12, Code 1997, is amended to read as
19 follows:

20 137E.12 REVOCATION OR ORDER FOR DISCONTINUANCE.

21 A license issued under this chapter may be revoked by the
22 regulatory authority for violation by the licensee of a
23 provision of this chapter or an applicable rule of the
24 department. In lieu of license revocation, the regulatory
25 authority may require the immediate discontinuance of
26 operation of a vending machine or commissary if it finds
27 unsanitary conditions or other conditions which constitute a
28 substantial hazard to the public health. The order shall
29 apply only to the vending machines, commissary, or product
30 involved. A person whose license is revoked, or who is
31 ordered to discontinue the operation of a vending machine or
32 commissary, may appeal that decision to the director. The
33 director or ~~the-chief~~ an administrative law judge of-the
34 department appointed according to the requirements of section
35 17A.11, subsection 1, shall schedule and hold a hearing upon

1 the appeal not later than thirty days from the time of
2 revocation or the order of discontinuance. The director or
3 the chief administrative law judge shall issue a decision
4 immediately following the hearing. Judicial review may be
5 sought in accordance with ~~the Iowa administrative procedure~~
6 Act chapter 17A.

7 Sec. 30. Section 148.7, subsection 3, Code 1997, is
8 amended to read as follows:

9 3. The hearing shall be before a member or members
10 designated by the board or before an administrative law judge
11 appointed by the board according to the requirements of
12 section 17A.11, subsection 1. The presiding board member or
13 administrative law judge may issue subpoenas, administer
14 oaths, and take or cause depositions to be taken in connection
15 with the hearing. The presiding board member or
16 administrative law judge shall issue subpoenas at the request
17 and on behalf of the licensee. The hearing shall be open to
18 the public.

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

29 Sec. 31. Section 169.5, subsection 9, paragraph e, Code
30 1997, is amended to read as follows:

31 e. Hold hearings on all matters properly brought before
32 the board and administer oaths, receive evidence, make the
33 necessary determinations, and enter orders consistent with the
34 findings. The board may require by subpoena the attendance
35 and testimony of witnesses and the production of papers,

1 records, or other documentary evidence and commission
2 depositions. An administrative law judge may be appointed
3 pursuant to section 17A.11~~7-subsection-3~~ to perform those
4 functions which properly repose in an administrative law
5 judge.

6 Sec. 32. Section 169.14, subsection 3, Code 1997, is
7 amended to read as follows:

8 3. The hearing shall be before a member or members
9 designated by the board or before an administrative law judge
10 appointed by the board according to the requirements of
11 section 17A.11, subsection 1. The presiding board member or
12 administrative law judge may issue subpoenas, administer
13 oaths, and take or cause depositions to be taken in connection
14 with the hearing. The member or officer shall issue subpoenas
15 at the request and on behalf of the licensee.

16 Sec. 33. Section 203C.10, unnumbered paragraph 2, Code
17 1997, is amended to read as follows:

18 If upon the filing of the information or complaint the
19 department finds that the licensee has failed to meet the
20 warehouse operator's obligation or otherwise has violated or
21 failed to comply with the provisions of this chapter or any
22 rule promulgated under this chapter, and if the department
23 finds that the public health, safety or welfare imperatively
24 requires emergency action, then the department without hearing
25 may order a summary suspension of the license in the manner
26 provided in section ~~17A.18~~ 17A.18A. When so ordered, a copy
27 of the order of suspension shall be served upon the licensee
28 at the time the information or complaint is served as provided
29 in this section.

30 Sec. 34. Section 207.14, subsection 2, unnumbered
31 paragraph 2, Code 1997, is amended to read as follows:

32 If upon expiration of the time as fixed the administrator
33 finds in writing that the violation has not been abated, the
34 administrator, notwithstanding ~~section~~ sections 17A.18 and
35 17A.18A, shall immediately order a cessation of coal mining

1 and reclamation operations relating to the violation until the
2 order is modified, vacated, or terminated by the administrator
3 pursuant to procedures outlined in this section. In the order
4 of cessation issued by the administrator under this
5 subsection, the administrator shall include the steps
6 necessary to abate the violation in the most expeditious
7 manner possible.

8 Sec. 35. Section 216.15, subsection 3, paragraph a, Code
9 1997, is amended to read as follows:

10 a. After the filing of a verified complaint, a true copy
11 shall be served within twenty days by certified mail on the
12 person against whom the complaint is filed. An authorized
13 member of the commission staff shall make a prompt
14 investigation and shall issue a recommendation to an
15 administrative law judge ~~under the jurisdiction of~~ employed
16 either by the commission or by the office of administrative
17 hearings created by section 10A.801, who shall then issue a
18 determination of probable cause or no probable cause.

19 Sec. 36. Section 216.17, subsection 6, Code 1997, is
20 amended to read as follows:

21 6. In the enforcement proceeding the court shall determine
22 its order on the same basis as it would in a proceeding
23 reviewing commission action under section 17A.19~~7~~-subsection
24 8.

25 Sec. 37. Section 252.27, unnumbered paragraph 2, Code
26 1997, is amended to read as follows:

27 The board shall record its proceedings relating to the
28 provision of assistance to specific persons under this
29 chapter. A person who is aggrieved by a decision of the board
30 may appeal the decision as if it were a contested case before
31 an agency and as if the person had exhausted administrative
32 remedies in accordance with the procedures and standards in
33 section 17A.19, subsections 2 to 8 12 except subsection 10,
34 paragraphs "b" and "~~e~~" ~~of subsection 8~~ "g", and section
35 17A.20.

1 Sec. 38. Section 256.7, subsection 6, Code 1997, is
2 amended to read as follows:

3 6. Hear appeals of persons aggrieved by decisions of
4 boards of directors of school corporations under chapter 290
5 and other appeals prescribed by law. The state board may
6 review the record and shall review the decision of the
7 director of the department of education or the administrative
8 law judge designated ~~by the director in~~ for any appeals heard
9 and decided by the director under chapter 290, and may affirm,
10 modify, or vacate the decision, or may direct a rehearing
11 before the director.

12 Sec. 39. Section 368.22, Code 1997, is amended by adding
13 the following new subsections:

14 NEW SUBSECTION. 4. Subsection 9.

15 NEW SUBSECTION. 5. Subsection 10.

16 NEW SUBSECTION. 6. Subsection 11.

17 Sec. 40. Section 421.17, subsection 20, unnumbered
18 paragraph 2, Code 1997, is amended to read as follows:

19 The provisions of sections 17A.10 to ~~17A.18~~ 17A.18A
20 relating to contested cases shall not apply to any matters
21 involving the equalization of valuations of classes of
22 property as authorized by this chapter and chapter 441. This
23 exemption shall not apply to a hearing before the state board
24 of tax review.

25 Sec. 41. Section 535B.7, subsection 2, unnumbered
26 paragraph 1, Code 1997, is amended to read as follows:

27 The administrator may order an emergency suspension of a
28 licensee's license pursuant to section ~~17A.18, subsection 3~~
29 17A.18A. A written order containing the facts or conduct
30 which warrants the emergency action shall be timely sent to
31 the licensee by restricted certified mail. Upon issuance of
32 the suspension order, the licensee must also be notified of
33 the right to an evidentiary hearing. A suspension proceeding
34 shall be promptly instituted and determined.

35 Sec. 42. Section 602.9206, unnumbered paragraph 2, Code

1 1997, is amended to read as follows:

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

11 Sec. 43. Section 903A.1, Code 1997, is amended to read as
12 follows:

13 903A.1 CONDUCT REVIEW.

14 The director of the Iowa department of corrections shall
15 appoint independent administrative law judges whose duties
16 shall include but are not limited to review, as provided in
17 section 903A.3, of the conduct of inmates in institutions
18 under the department. Sections 10A.801 and 17A.11 do not
19 apply to administrative law judges appointed pursuant to this
20 section.

21 Sec. 44. Sections 10A.201, 10A.202, 17A.31, and 17A.32,
22 Code 1997, are repealed.

23 Sec. 45. EFFECTIVE DATE. This Act takes effect July 1,
24 1998, and applies to agency proceedings commenced on or after
25 that date, except that this Act shall apply to any agency
26 proceedings conducted on a remand from a court or another
27 agency on or after that date.

28 EXPLANATION

29 This bill makes changes to the Iowa administrative
30 procedures Act and establishes an independent office of
31 administrative hearings within the department of inspections
32 and appeals to provide administrative law judges for the
33 conduct of administrative hearings. The bill takes effect
34 July 1, 1998, and applies to initial or remanded proceedings
35 commenced on or after that date.

1 The bill establishes an independent office of
2 administrative hearings within the department of inspections
3 and appeals headed by a chief administrative law judge subject
4 to appointment by the governor and confirmation by the senate.
5 The new office, through the chief administrative law judge,
6 would have the authority to employ and assign most
7 administrative law judges (ALJs) that would preside over
8 hearings held by state agencies in which the agency head did
9 not preside. New Code section 10A.801 requires the office to
10 establish rules governing ALJs, including rules imposing on
11 all persons who act as presiding officers a code of
12 administrative judicial conduct that is similar to the Iowa
13 code of judicial conduct. The new section also makes
14 provisions for the specialization of ALJs and the ability of
15 agencies to require a certain level of expertness in ALJs used
16 by that agency. The new section also requires all newly hired
17 ALJs to be admitted to the bar of this state.

18 Code section 17A.3 is amended to provide that agencies
19 shall, to the extent practicable, adopt rules that embody the
20 standards, principles, and procedural safeguards that the
21 agency will apply to the law it administers.

22 Code section 17A.4 is amended to provide that when agencies
23 adopt most rules, the agency shall include in a preamble to
24 the rule a brief explanation of the principal reasons for its
25 adoption, and, if applicable, any reasons for not including a
26 provision providing for the waiver of that rule.

27 The bill creates new Code section 17A.4A requiring agencies
28 to issue a regulatory analysis of proposed rules under certain
29 circumstances. The new Code section replaces current law
30 which provides for requests for an economic impact of a rule
31 (Code section 17A.4(1)(c)) and for a small business regulatory
32 analysis (Code section 17A.31) which are stricken.

33 Code section 17A.7 is amended to provide a mechanism for
34 requiring an agency to conduct a formal review of an adopted
35 rule of the agency. The amendment provides that the

1 administrative rules review committee, the administrative
2 rules coordinator, a political subdivision, an agency, or a
3 petition of 25 people or of an association with at least 25
4 members may request a review of a specified rule. The
5 amendment provides that the agency need only review a
6 particular rule once every five years.

7 Code section 17A.9 is rewritten by this bill. Current law
8 makes provision for agencies to establish rules governing the
9 disposition of requests for declaratory rulings as to the
10 applicability of any law of the agency. The new Code section
11 provides specific guidelines, including specific time
12 standards, concerning the disposition of a petition requesting
13 a declaratory order by an agency. A declaratory order is
14 defined similarly to the current declaratory ruling.

15 New Code section 17A.10A is created to provide that a party
16 can request a contested case proceeding even if the facts of
17 the particular case are not in dispute.

18 Code section 17A.11 governing presiding officers and
19 administrative law judges is rewritten. The new Code section
20 provides that if an ALJ is used, the ALJ must be from the
21 office of administrative hearings unless the agency or an
22 agency officer is not a party or the real party in interest in
23 the hearing. The new Code section also provides for the
24 disqualification and substitution of presiding officers.

25 Code section 17A.12, subsection 3, governing defaults in
26 contested case proceedings is rewritten, providing the
27 mechanism, including applicable time standards, governing the
28 imposition of a default order.

29 Code section 17A.16 is amended to require that a proposed
30 or final agency decision include reasons why evidence contrary
31 to the finding does not preclude that finding.

32 Code section 17A.17 governing ex parte communications and
33 separation of functions is amended by the bill. The bill bars
34 a person from both personally investigating a matter and then
35 serving as a presiding officer or assisting the presiding

1 officer when the matter is considered. The bill also provides
2 that if a presiding officer has received an ex parte
3 communication prior to the commencement of a contested case,
4 the officer must disclose any material factual information
5 received that has not already been provided through discovery.

6 New Code section 17A.18A governing emergency adjudicative
7 proceeding is created by the bill. Current law, reflected in
8 Code section 17A.18, subsection 3 and replaced by this new
9 Code section, makes provision only for emergency proceedings
10 concerning licenses.

11 Code section 17A.19 governing judicial review is amended to
12 provide specific guidelines concerning the granting of stays
13 and for the review of a grant or denial of a stay. The bill
14 also specifies, in greater detail than the current Code, the
15 standards to be applied by a court when it reviews agency
16 action. The bill also requires a court reviewing any agency
17 finding of fact to use the substantial evidence test and to
18 consider both the evidence that supports and the evidence that
19 detracts from the finding.

20 Code section 17A.19 is also amended to provide that a
21 defendant in a suit for civil enforcement of agency action may
22 defend on any of the grounds specified for judicial review of
23 agency action if that defendant could have relied on any of
24 those grounds in a suit for judicial review of that action
25 brought at the time the enforcement suit was filed.

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**HOUSE FILE 667
FISCAL NOTE**

A fiscal note for **House File 667** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 667 establishes an independent Office of Administrative Hearings in the Department of Inspections. The Office will be headed by an Administrative Law Judge subject to appointment by the Governor and confirmation by the Senate. The new Office, would have authority to employ and assign most Administrative Law Judges (ALJs) that would preside over hearings held by State agencies in which the agency head did not preside.

The Bill requires the Office to establish rules governing ALJs, including rules imposing on all persons who act as presiding officers, a code of administrative judicial conduct similar to the Iowa Code of Judicial Conduct. The Bill also makes provision for the specialization of ALJs and the ability of agencies to require a certain level of expertise in ALJs used by that agency. The Bill also requires all newly hired ALJs to be admitted to the Bar of this State.

Code of Iowa Section 17A.3 is amended to provide that agencies shall, to the extent practicable, adopt rules that embody the standards, principles, and procedural safeguards that the agency will apply to the law it administers.

Code of Iowa Section 17A.4 is amended to provide that when agencies adopt most rules, the agency shall include in a preamble to the rule, a brief explanation of the principal reasons for its adoption, and if applicable, any reasons for not including a provision providing for waiver of that rule.

The Bill requires agencies to issue a regulatory analysis of proposed rules under certain circumstances. This replaces current law which provides for requests for an economic impact of a rule and for a small business regulatory analysis.

Code of Iowa Section 17A.7 is amended to provide a mechanism for requiring an agency to conduct a formal review of an adopted rule of the agency. This provides that the Administrative Rules Committee, the Administrative Rules Coordinator, a political subdivision, an agency, or a petition of 25 people or of an association with at least 25 members may request a review of a specified rule. The amendment provides that the agency need only review a particular rule once every five years.

Code of Iowa Section 17A.9 is rewritten to provide specific guidelines, including specific time standards, concerning the disposition of a petition requesting a declaratory order by an agency. A declaratory order is defined similarly to current law.

The Bill provides that a party can request a contested case proceeding even if the facts of the particular case are not in dispute.

-2-

Code of Iowa Section 17A.11 is rewritten to provide that if an ALJ is used, the ALJ must be from the Office of Administrative Hearings unless the agency or an agency officer is not a party or the real party in interest in the hearing. It also provides for the disqualification and substitution of presiding officers.

Code of Iowa Section 17A.12(3) is rewritten to provide the mechanism, including applicable time standards, governing the imposition of a default order.

Code of Iowa Section 17A.16 is amended to require that a proposed or final agency decision include the reasons why evidence contrary to the finding does not preclude that finding.

Code of Iowa Section 17A.17 is amended to bar a person from both personally investigating a matter and then serving as a presiding officer or assisting the presiding officer when the matter is considered. It also provides that if a presiding officer has received an ex parte communication prior to the commencement of a contested case, the officer must disclose any material factual information.

The Bill makes provisions for emergency proceedings concerning licenses.

Code of Iowa Section 17A.19 is amended to provide specific guidelines concerning the granting of stays and for the review of a grant or denial of a stay. The Bill also specifies, in greater detail than current law, the standards to be applied by a court when it reviews agency action. The Bill also requires a court reviewing any agency finding of fact to use the substantial evidence test and to consider both the evidence that supports and the evidence that detracts from the finding. This Section is also amended to provide that a defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified for judicial review of agency action if that defendant could have relied on any of those grounds in a suit for judicial review of that action brought at the time the enforcement suit was filed.

The Bill makes various other conforming language changes to the changes specified above.

FISCAL EFFECT

The only specific costs identified by agencies was \$143,385 per year beginning in FY 1999 for the Department of Workforce Development.

The creation of the new Office of Administrative Hearings will be handled through the transfer of appropriate staff and related support costs from other departments and should result in no or minimal increased costs.

The Department of Workforce Development indicates an increase in costs of \$143,385 in FY 1999 due to the language on handling of default situations in contested case proceedings. This includes certified mailings, preparations of the mailings, and rescheduling and holding hearings including the costs of the ALJs.

The Judicial Branch indicates a potential for a significant amount of increased

-3-

Judicial review, but is unable to project the level of increase and therefore the level of increased costs cannot be specified.

Other departments indicated absorbing the cost of the certified letters and increased workload and the Department of Justice indicated costs may rise in future years but could provide no reliable estimate.

SOURCES

Judicial Department

Department of Workforce Development

Department of Human Services

Department of Inspections and Appeals

Department of Justice

Administrative Rules Review Committee

Governor's Administrative Rules Coordinator

(LSB 1598hv, DPW)

FILED APRIL 2, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 667
FISCAL NOTE**

REQ. BY SENATOR NEUHAUSER

A fiscal note for **Amendment S-5293** to **House File 667** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate Amendment S-5293 makes the following changes to HF 667.

1. Specifies that an Administrative Law Judge shall conduct all evidentiary hearings unless otherwise provided by law, or if both parties agree and an Administrative Law Judge is not available.
2. Specifies that agencies have only the authority conferred upon them by law and shall not expand or enlarge the authority or discretion of the agency.
3. Allows Administrative Law Judges to make a final judgement in a hearing if one of the parties does not appear at the hearing if no postponement was granted.
4. Allows a party to ask an Administrative Law Judge to vacate a decision within 15 days of the decision, if the party had failed to attend the hearing, but had good cause for not attending.

ASSUMPTIONS

1. Several departments indicated they were unable to estimate a cost at this time or the impact would be minimal.
 - A. Department of Agriculture and Land Stewardship
 - B. Civil Rights Commission
 - C. Department of Elder Affairs
 - D. Iowa Finance Authority
 - E. Department of Human Rights
 - F. College Student Aid Commission
 - G. Department of Transportation
 - H. Iowa Communications Network
 - I. Secretary of State
2. The hourly rates currently charged for Administrative Law Judges and support staff will not decrease.

FISCAL EFFECT

The minimum cost for S-5293, based on the departments and agencies that responded is \$2.2 million for FY 2000.

<u>Department</u>	<u>Minimum Costs</u>
Department of Commerce	
Credit Union Division	\$ 50,000
Banking Division	125,000

-2-

Insurance Division	220,000
Professional Lic. Div.	181,000
Utilities Division	\$ 674,000
Department of Rev. and Fin.	150,000
Board of Regents	
Iowa State University	57,000
Department of Justice	114,000
Dept. of Inspections/Appeals	22,000
Department of Work. Devel.	
Appeals Section	22,000
Department of Public Health and Licensing Boards	536,000
Department of Personnel	56,000
Blind Commission	6,000
Department of Public Safety	29,000
Total	<u>\$2,242,000</u>

SOURCES

All State agencies were asked to review this amendment and the agencies that responded are listed in either the Assumptions or the Fiscal Effect section.

(LSB 1598HV.3, DPW)

FILED APRIL 7, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 667
FISCAL NOTE**

REQ. BY SENATOR BORLAUG

A fiscal note for House File 667, as amended and passed by the House, is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Effective July 1, 1999, House File 667, as amended by the House, establishes an independent Office of Administrative Hearings in the Department of Inspections and Appeals. The Office will be headed by an Administrative Law Judge subject to appointment by the Governor and confirmation by the Senate. The new Office would have authority to employ and assign most Administrative Law Judges that would preside over hearings held by State agencies in which the agency head did not preside.

The Bill requires the Office to establish rules governing Administrative Law Judges, including rules imposing on all persons who act as presiding officers, and a code of administrative judicial conduct similar to the Iowa Code of Judicial Conduct. The Bill also makes provision for the specialization of Administrative Law Judges and the ability of agencies to require a certain level of expertise in Administrative Law Judges used by that agency. The Bill also requires all newly hired Administrative Law Judges admitted to the Bar of this State.

Code of Iowa Section 17A.3 is amended to provide that agencies shall, to the extent practicable, adopt rules that embody the standards, principles, and procedural safeguards that the agency will apply to the law it administers.

Code of Iowa Section 17A.4 is amended to provide that when agencies adopt most rules, the agency shall include in a preamble to the rule a brief explanation of the principal reasons for its adoption and, if applicable, any reasons for not including a provision providing for waiver of that rule.

The Bill requires agencies to issue a regulatory analysis of proposed rules under certain circumstances. This replaces current law which provides for requests for an economic impact of a rule and for a small business regulatory analysis.

Code of Iowa Section 17A.7 is amended to provide a mechanism for requiring an agency to conduct a formal review of an adopted rule of the agency. This provides that the Administrative Rules Committee, the Administrative Rules Coordinator, a political subdivision, an agency, or a petition of 25 people, or an association with at least 25 members may request a review of a specified rule. The amendment provides that the agency need only review a particular rule once every five years.

Code of Iowa Section 17A.9 is rewritten to provide specific guidelines, including specific time standards concerning the disposition of a petition requesting a declaratory order by an agency. A declaratory order is defined

-2-

similarly to current law.

The Bill provides that a party can request a contested case proceeding even if the facts of the particular case are not in dispute.

Code of Iowa Section 17A.11 is rewritten to provide that if an Administrative Law Judge is used, they must be from the Office of Administrative Hearings unless the agency or an agency officer is not a party or the real party in interest in the hearing. It also provides for the disqualification and substitution of presiding officers.

Code of Iowa Section 17A.12(3) is rewritten to provide the mechanism, including applicable time standards, governing the imposition of a default order.

Code of Iowa Section 17A.16 is amended to require that a proposed or final agency decision include the reasons why evidence contrary to the finding does not preclude that finding.

Code of Iowa Section 17A.17 is amended to bar a person from both personally investigating a matter and then serving as a presiding officer or assisting the presiding officer when the matter is considered. It also provides that if a presiding officer has received an ex parte communication prior to the commencement of a contested case, the officer must disclose any material factual information.

The Bill makes provisions for emergency proceedings concerning licenses.

Code of Iowa Section 17A.19 is amended to provide specific guidelines concerning the granting of stays and for the review of a grant or denial of a stay. The Bill also specifies the standards to be applied by a court when it reviews agency action. The Bill also requires a court reviewing any agency finding of fact to use the substantial evidence test and to consider both the evidence that supports and the evidence that detracts from the finding. This Section is also amended to provide that a defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified for judicial review of agency action if that defendant could have relied on any of those grounds in a suit for judicial review of that action brought at the time the enforcement suit was filed.

The Bill makes various other conforming language changes to the changes specified above.

FISCAL EFFECT

The minimum estimated General Fund cost of HF 667, as amended by the House, is \$548,000 in FY 2000 and \$528,000 in FY 2001.

1. The creation of the new Office of Administrative Hearings will be handled through the transfer of hearing officers and related funds for salaries and support from other departments, except that support costs for clerical staff working with the Administrative Law Judges will be an increase in General Fund expenses. This will result in a net increase in General Fund costs of \$67,000 in FY 2000 and \$51,000 in FY 2001.

-3-

- A. Four Administrative Law Judges and 2.68 FTE positions for clerical support would be transferred from the Department of Workforce Development. These positions would be paid for with federal funds at a cost of \$472,000.
 - B. One Administrative Law Judge would be transferred from the Insurance Division of the Department of Commerce and one from the Department of Revenue and Finance. The transferred Administrative Law Judges would require additional clerical support of 1.32 FTE positions. A General Fund appropriation of \$244,000 in FY 2000 and \$229,000 in FY 2001 would be required. Of this amount, \$179,000 is current funding that would be transferred from the two departments.
2. The Department of Human Services would require additional clerical support of \$30,000 in FY 2000 and \$26,000 in FY 2001.
 3. The Department of Workforce Development specifies that the additional staff time involved in the new default procedures, rule making, documenting prehearing communications, expanded reasoning required in decisions, and supplies will result in an increased cost of \$176,000. The Department does not specify the number of staff that would be added. The Department stated that federal funds could not be used for these costs and an increase in the General Fund appropriation would be needed.
 4. The Department of Revenue and Finance estimates additional costs of \$275,000 to \$300,000.
 - A. Increased costs of using Department of Inspections and Appeals staff and being billed at a significantly higher cost per hour for hearings than full-time staff currently cost (\$150,000 to \$175,000).
 - B. Rule changes related to concise statements and default orders will create a significant increase in paperwork (\$36,000).
 - C. Expanding the requirements for what is needed for inclusion in decisions (\$75,000).
 5. The Judicial Branch indicates a potential for a significant increase in Judicial review, but is unable to project the level of increase, and therefore, the increased costs cannot be determined.

The Department of Justice indicated costs may increase in future years but the cost cannot be determined. Other departments indicated they can absorb the cost of the certified letters and increased workload.

SOURCES

Judicial Department
Department of Workforce Development
Department of Human Services
Department of Inspections and Appeals
Department of Justice
Department of Revenue and Finance
Administrative Rules Review Committee

(LSB 1598HV.2, DPW)

FILED APRIL 2, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

H-1553

1 Amend the amendment, H-1452, to House File 667 as
2 follows:
3 1. Page 1, by inserting after line 8 the
4 following:
5 " ____ . Page 12, by inserting after line 13 the
6 following:
7 "Sec. ____ . Section 17A.8, subsection 9, Code 1997,
8 is amended to read as follows:
9 9. Upon a vote of two-thirds of its members, the
10 administrative rules review committee may delay the
11 effective date of a rule until the adjournment of the
12 next regular session of the general assembly. The
13 committee shall refer a rule whose effective date has
14 been delayed to the speaker of the house of
15 representatives and the president of the senate who
16 shall refer the rule to the appropriate standing
17 committees of the general assembly. A standing
18 committee shall review a rule within twenty-one days
19 after the rule is referred to the committee by the
20 speaker of the house of representatives or the
21 president of the senate and shall take formal
22 committee action by sponsoring a joint resolution to
23 disapprove the rule, by proposing legislation relating
24 to the rule, or by refusing to propose a joint
25 resolution or legislation concerning the rule. The
26 standing committee shall inform the administrative
27 rules review committee of the committee action taken
28 concerning the rule. If the general assembly has not
29 disapproved of the rule by a joint resolution, the
30 rule shall become effective. The speaker of the house
31 of representatives and the president of the senate
32 shall notify the administrative code editor of the
33 final disposition of each rule delayed pursuant to
34 this subsection. If a rule is disapproved, it shall
35 not become effective and the agency shall rescind the
36 rule. This section shall not apply to rules made
37 effective under section 17A.5, subsection 2, paragraph
38 "b"."

By RANTS of Woodbury

H-1553 FILED APRIL 3, 1997

*O/Order
3/10/98*

H-1452

1 Amend House File 667 as follows:

2 1. Page 6, by inserting after line 26 the
3 following:

4 "Sec. _____. Section 17A.3, Code 1997, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 3. A rule shall not expand or
7 enlarge the jurisdiction, authority, or discretion
8 conferred upon or delegated to an agency by statute."

9 2. By striking page 15, line 33, through page 16,
10 line 33, and inserting the following: "amended to
11 read as follows:

12 3. a. If a party fails to appear in a contested
13 case proceeding after proper service of notice, the
14 presiding officer may, if no adjournment is granted,
15 proceed with the hearing and make a decision in the
16 absence of the party.

17 b. A party may request the presiding officer or
18 the agency that a decision entered pursuant to
19 paragraph "a" be vacated for any reason specified by
20 agency rule. If the request is made to the agency,
21 and adequate reasons are provided showing good cause
22 for the failure to appear, the agency may remand the
23 matter back to the presiding officer for an
24 evidentiary hearing on the merits."

25 3. Page 28, by inserting after line 17 the
26 following:

27 "Sec. _____. Section 96.6, subsection 3, unnumbered
28 paragraph 2, Code 1997, is amended to read as follows:

29 Appeals Notwithstanding the provisions of section
30 17A.11, appeals from the initial determination shall
31 be heard by an administrative law judge employed by
32 the department. An administrative law judge's
33 decision may be appealed by any party to the
34 employment appeal board created in section 10A.601.
35 The decision of the appeal board is final agency
36 action and an appeal of the decision shall be made
37 directly to the district court.

38 Sec. _____. Section 96.7, subsection 4, unnumbered
39 paragraph 3, Code 1997, is amended to read as follows:

40 A Notwithstanding the provisions of section 17A.11,
41 a hearing on an appeal shall be conducted by an
42 administrative law judge employed by and officed in
43 the department according to rules adopted by the
44 department. A copy of the decision of the
45 administrative law judge shall be sent by regular mail
46 to the last address, according to the records of the
47 department, of each affected employing unit or
48 employer."

49 4. By renumbering as necessary.

By DINKLA of Guthrie

H-1452 FILED MARCH 27, 1997

WITHDRAWN

2/10/98

(P. 567)

H-1637

1 Amend House File 667 as follows:

2 1. Page 12, by inserting after line 13 the
3 following:

4 "Sec. ____ . Section 17A.8, subsection 9, Code 1997,
5 is amended to read as follows:

6 9. Upon a vote of two-thirds of its members, the
7 administrative rules review committee may delay the
8 effective date of a rule until the adjournment of the
9 next regular session of the general assembly. The
10 committee shall refer a rule whose effective date has
11 been delayed to the speaker of the house of
12 representatives and the president of the senate who
13 shall refer the rule to the appropriate standing
14 committees of the general assembly. A standing
15 committee shall review a rule within twenty-one days
16 after the rule is referred to the committee by the
17 speaker of the house of representatives or the
18 president of the senate and shall take formal
19 committee action by sponsoring a joint resolution to
20 disapprove the rule, by proposing legislation relating
21 to the rule, or by refusing to propose a joint
22 resolution or legislation concerning the rule. The
23 standing committee shall inform the administrative
24 rules review committee of the committee action taken
25 concerning the rule. If the general assembly has not
26 disapproved of the rule by a joint resolution, the
27 rule shall become effective. The speaker of the house
28 of representatives and the president of the senate
29 shall notify the administrative code editor of the
30 final disposition of each rule delayed pursuant to
31 this subsection. If a rule is disapproved, it shall
32 not become effective and the agency shall rescind the
33 rule. This section shall not apply to rules made
34 effective under section 17A.5, subsection 2, paragraph
35 "b"."

36 2. By renumbering as necessary.

By RANTS of Woodbury

H-1637 FILED APRIL 8, 1997

adapted
3/10/98
(p. 568)

HOUSE FILE 667

WITHDRAWN
3/10/98

H-1682

1 Amend House File 667 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "ARTICLE 1
5 GENERAL PROVISIONS

6 Section 1. NEW SECTION. 17A.1101 CITATION,
7 STATEMENT OF PURPOSE, AND CONSTRUCTION.

8 1. This chapter may be cited as the "Iowa
9 Administrative Procedure Act". Whenever the terms
10 "administrative procedure Act" or "chapter 17A" appear
11 in the Code, they mean this chapter and this Act.

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

13 a. To provide legislative and gubernatorial
14 oversight of powers and duties delegated to
15 administrative agencies.

16 b. To increase the public accountability of
17 administrative agencies.

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

21 d. To increase public access to information about
22 agency law and policy.

23 e. To increase public participation in the
24 formulation of administrative rules and the efficacy
25 and acceptability of those rules.

26 f. To increase the fairness and efficiency of
27 agencies in their conduct of adjudicative proceedings.

28 g. To simplify the process of judicial review of
29 agency action as well as to increase its availability
30 and effectiveness.

31 3. In accomplishing its objectives, the intention
32 of this chapter is to strike a fair balance between
33 the need for adequate protection of private rights and
34 political control of agency processes and the need for
35 efficient, economical, and effective government
36 administration.

37 4. The coverage and requirements of this chapter
38 shall be construed broadly to effectuate the purposes
39 of this chapter and any exemptions from its
40 requirements contained in this chapter or elsewhere
41 shall be narrowly construed.

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

43 As used in this chapter, unless the context
44 otherwise requires:

45 1. "Adjudicative proceeding" means the process for
46 formulating and issuing an order.

47 2. "Agency" means a board, commission, department,
48 officer, or other administrative unit of this state,
49 including the agency head, and one or more members of
50 the agency head or agency employees directly or

H-1682

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

18 Unless provided otherwise by statute, no less than
19 two-thirds of the members eligible to vote of a
20 multimember agency head constitute a quorum authorized
21 to act in the name of the 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
26 perform, any other duty, function, or activity,
27 discretionary or otherwise.

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

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

35 6. "Order" means an agency action of particular
36 applicability that determines the legal rights,
37 duties, privileges, immunities, or other legal
38 interests of one or more specific persons. The term
39 does not include an "executive order" issued by the
40 governor pursuant to section 17A.1104 or 17A.3202. A
41 "final order" means the whole or part of an agency
42 order other than a nonfinal order. A "nonfinal order"
43 includes an initial order and means the whole or part
44 of an agency order that the agency intends to be
45 preliminary, preparatory, procedural, or intermediate
46 with regard to subsequent agency action.

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

- 49 a. A person to whom the agency action is
50 specifically directed.

H-1682

Page 3

1 b. A person named as a party to an agency
2 proceeding or allowed to intervene or participate as a
3 party in the proceeding.

4 8. "Party to judicial review or civil enforcement
5 proceeding" or "party" in context so indicating, means
6 any of the following:

7 a. A person who files a petition for judicial
8 review or civil enforcement.

9 b. A person named as a party in a proceeding for
10 judicial review or civil enforcement or allowed to
11 participate as a party in the proceeding.

12 9. "Person" means an individual, partnership,
13 corporation, association, governmental subdivision or
14 unit thereof, or public or private organization or
15 entity of any character, and includes another agency.

16 10. "Presiding officer" means an individual who
17 presides at any stage in an adjudicative proceeding.

18 11. "Provision of law" means the whole or a part
19 of the federal or state constitution, or of any
20 federal or state statute, court rule, executive order,
21 or rule of an agency.

22 12. "Rule" means the whole or a part of an agency
23 statement of general applicability that implements,
24 interprets, or prescribes law or policy, or the
25 organization, procedures, or practice requirements of
26 an agency. The term includes the amendment, repeal,
27 or suspension of an existing rule. Notwithstanding
28 any other provision of law, "rule" includes an
29 executive order or directive of the governor which
30 creates an agency or establishes a program or which
31 transfers a program between agencies established by
32 statute or rule.

33 13. "Rulemaking" means the process for formulating
34 and adopting a rule.

35 Sec. 3. NEW SECTION. 17A.1103 APPLICABILITY AND
36 RELATION TO OTHER LAW.

37 1. This chapter applies to all agencies and all
38 proceedings not expressly exempted, mentioning this
39 chapter by name or number.

40 2. This chapter creates only procedural rights and
41 imposes only procedural duties. The procedural rights
42 and duties are in addition to those created and
43 imposed by other statutes. To the extent that any
44 other statute would diminish a right created or duty
45 imposed by this chapter, the other statute is
46 superseded by this chapter, unless the other statute
47 expressly provides otherwise, mentioning this chapter
48 by name or number. However, where this chapter
49 expressly refers to another statute and incorporates
50 its contents, that other statute controls whether or

H-1682

-3-

H-1682

Page 4

1 not it mentions this chapter by name or number.

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

6 4. An agency may exercise only that authority
7 delegated to it by some provision of law and not
8 otherwise prohibited by law.

9 Sec. 4. NEW SECTION. 17A.1104 SUSPENSION OF
10 CHAPTER'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF
11 FEDERAL FUNDS OR SERVICES.

12 1. To the extent necessary to avoid a denial of
13 funds or services from the United States which would
14 otherwise be available to the state, the governor by
15 executive order may suspend, in whole or in part, one
16 or more provisions of this chapter. The governor by
17 executive order shall declare the termination of a
18 suspension as soon as it is no longer necessary to
19 prevent the loss of funds or services from the United
20 States.

21 2. An executive order issued under subsection 1 is
22 subject to the requirements applicable to the adoption
23 and effectiveness of a rule.

24 3. If any provision of this chapter is suspended
25 pursuant to this section, the governor shall promptly
26 report the suspension to the general assembly. The
27 report must include recommendations concerning any
28 desirable legislation that may be necessary to conform
29 this chapter to federal law.

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

31 Except to the extent precluded by another provision
32 of law, a person may waive any right conferred upon
33 that person by this chapter.

34 Sec. 6. NEW SECTION. 17A.1106 INFORMAL
35 SETTLEMENTS.

36 Except to the extent precluded by another provision
37 of law, informal settlement of matters that may make
38 unnecessary more elaborate proceedings under this
39 chapter is encouraged. Agencies shall establish by
40 rule specific procedures to facilitate informal
41 settlement of matters. This section does not require
42 any party or other person to settle a matter pursuant
43 to informal procedures.

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

46 1. At any point in an agency proceeding the
47 presiding officer or other agency official responsible
48 for the proceeding may convert the proceeding to
49 another type of agency proceeding provided for by this
50 chapter if the conversion is appropriate under the

H-1682

-4-

H-1682

Page 5

1 particular circumstances, is in the public interest,
2 and does not prejudice the substantial rights of any
3 party. If required by any provision of law, the
4 presiding officer or other agency official responsible
5 for the proceeding shall convert the proceeding to
6 another type of agency proceeding provided by this
7 chapter.

8 2. A conversion of a proceeding of one type to a
9 proceeding of another type may be effected only upon
10 notice to all parties to the original proceeding and
11 an opportunity to present argument on that issue. An
12 order converting one type of proceeding to another
13 type of proceeding is a final order.

14 3. If the presiding officer or other agency
15 official responsible for the original proceeding would
16 not have authority over the new proceeding to which it
17 is to be converted, that officer or official, in
18 accordance with agency rules, shall secure the
19 appointment of a successor to preside over or be
20 responsible for the new proceeding.

21 4. To the extent feasible and consistent with the
22 rights of parties and the requirements of this chapter
23 pertaining to the new proceeding, the record of the
24 original agency proceeding must be used in the new
25 agency proceeding.

26 5. After a proceeding is converted from one type
27 to another, the presiding officer or other agency
28 official responsible for the new proceeding shall do
29 all of the following:

30 a. Give such additional notice to parties or other
31 persons as is necessary to satisfy the requirements of
32 this chapter pertaining to the new proceeding.

33 b. Dispose of the matters involved without further
34 proceedings if sufficient proceedings have already
35 been held to satisfy the requirements of this chapter
36 pertaining to the new proceeding.

37 c. Conduct or cause to be conducted any additional
38 proceedings necessary to satisfy the requirements of
39 this chapter pertaining to the new proceeding.

40 6. Each agency shall adopt rules to govern the
41 conversion of one type of proceeding to another. The
42 rules must include an enumeration of the factors to be
43 considered in determining whether and under what
44 circumstances one type of proceeding will be converted
45 to another.

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

47 This chapter takes effect on July 1, 1998, and does
48 not govern proceedings pending on that date. However,
49 section 17A.3103, subsection 3, takes effect on July
50 1, 1997. This chapter governs all agency proceedings,

H-1682

1 and all proceedings for judicial review or civil
2 enforcement of agency action, commenced after that
3 date. This chapter also governs agency proceedings
4 conducted on a remand from a court or another agency
5 after the effective date of this chapter.

6 ARTICLE 2

7 PUBLIC ACCESS TO AGENCY LAW AND POLICY

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

10 1. The administrative rules editor shall cause the
11 "Iowa Administrative Bulletin" to be published in
12 pamphlet or electronic form at least every other week
13 containing all of the following:

14 a. Notices of proposed rule adoption prepared in
15 such a manner so that the text of a proposed rule
16 shows the text of any existing rule being changed and
17 the change being made.

18 b. Newly filed adopted rules prepared so that the
19 text of the newly filed adopted rule shows the text of
20 any existing rule being changed and the change being
21 made.

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

24 d. Resolutions nullifying administrative rules
25 passed by the general assembly pursuant to article
26 III, section 40 of the Constitution of the State of
27 Iowa.

28 e. Other materials deemed appropriate for such
29 publication by the administrative rules review
30 committee or the administrative rules coordinator.

31 2. Subject to the direction of the administrative
32 rules coordinator, the administrative rules editor
33 shall cause the "Iowa Administrative Code" to be
34 compiled, indexed, and published in loose-leaf or
35 electronic form containing all effective rules of each
36 agency. The administrative rules editor shall also
37 cause loose-leaf or electronic supplements to the Iowa
38 administrative code to be published on a schedule
39 determined by the administrative rules coordinator and
40 the administrative rules review committee. Any such
41 loose-leaf supplements shall be in a form suitable for
42 insertion in the appropriate places in the permanent
43 compilation, and any such electronic supplements shall
44 be wholly integrated into the text of the permanent
45 compilation. The administrative rules coordinator
46 shall devise a uniform numbering system for rules and
47 may renumber rules before publication to conform with
48 the system.

49 3. a. The administrative rules editor may omit
50 from the Iowa administrative bulletin or code any

H-1682

Page 7

1 proposed or filed adopted rule the publication of
2 which would be unduly cumbersome, expensive, or
3 otherwise inexpedient, if all of the following apply:

4 (1) The administrative rules editor and the
5 administrative rules coordinator determine that
6 knowledge of the rule is likely to be important to
7 only a small class of persons.

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

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

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

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

30 Each agency shall also make available for public
31 inspection and copying in its principal office those
32 portions of the Iowa administrative bulletin and code
33 containing all rules adopted or used by the agency in
34 the discharge of its functions, and the index to those
35 rules. An agency may satisfy the requirements of this
36 paragraph by making available for public inspection
37 and copying in its principal office a complete and up-
38 to-date set of the administrative bulletin and code.

39 5. All expenses incurred by the administrative
40 rules editor under this section shall be defrayed
41 under section 2B.22.

42 6. a. The Iowa administrative code shall be cited
43 as (agency identification number) IAC, (chapter, rule,
44 subrule, lettered paragraph, or numbered
45 subparagraph).

46 b. The Iowa administrative bulletin shall be cited
47 as IAB (volume), (number), (publication date), (page
48 number), (ARC number). "ARC number" means the
49 identification number assigned by the administrative
50 rules coordinator to each rulemaking document.

H-1682

-7-

H-1682

Page 8

1 7. Except as otherwise required by law,
2 subsections 1 and 2 do not apply to rules governed by
3 section 17A.3116, and the following provisions apply
4 instead:
5 a. Each agency shall index by subject all of its
6 written rules within the scope of section 17A.3116.
7 All of those rules must also be made available for
8 public inspection and copying at no more than the cost
9 of reproduction; however, an agency need not make
10 available for public inspection and copying those
11 portions containing rules governed by section
12 17A.3116, subsection 2, except to the extent that such
13 inspection and copying is required by constitution or
14 statute or in discovery under the Iowa rules of civil
15 or criminal procedure.

16 b. A rule subject to the requirements of this
17 subsection shall not be relied on by an agency to the
18 detriment of any person who does not have actual,
19 timely knowledge of the contents of the rule until the
20 requirements of paragraph "a" are satisfied. The
21 burden of proving that knowledge is on the agency.

22 Sec. 10. NEW SECTION. 17A.2102 PUBLIC INSPECTION
23 AND INDEXING OF AGENCY ORDERS.

24 1. In addition to other requirements imposed by
25 any provision of law, each agency shall make all
26 written final orders, including settlement orders,
27 available for public inspection and copying at no more
28 than the cost of reproduction and index them by name
29 and subject. When the agency makes them available for
30 public inspection and copying, the agency shall delete
31 from those orders identifying details to the extent
32 required by any provision of law or necessary to
33 prevent a clearly unwarranted invasion of privacy or
34 release of trade secrets. In each case the
35 justification for the deletion must be explained in
36 writing and attached to the order.

37 2. A written final order shall not be relied on as
38 precedent by an agency and shall not be invoked by an
39 agency for any purpose, to the detriment of any
40 person, until it has been made available for public
41 inspection and indexed in the manner described in
42 subsection 1. This provision is inapplicable to any
43 person who has actual timely knowledge of the order.
44 The burden of proving that knowledge is on the agency.

45 Sec. 11. NEW SECTION. 17A.2103 DECLARATORY
46 ORDERS.

47 1. Any person may petition an agency for a
48 declaratory order as to the applicability to specified
49 circumstances of a statute, rule, or order within the
50 primary jurisdiction of the agency. An agency shall

H-1682

-8-

H-1682

Page 9

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

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

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

26 4. Persons who qualify under section 17A.4209,
27 subsection 1, paragraphs "b" and "c" as an intervenor
28 and who file timely petitions for intervention
29 according to agency rules may intervene in proceedings
30 for declaratory orders. Other provisions of article 4
31 of this chapter apply to agency proceedings for
32 declaratory orders only to the extent an agency so
33 provides by rule or order.

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

37 a. Issue an order declaring the applicability of
38 the statute, rule, or order in question to the
39 specified circumstances.

40 b. Set the matter for specified proceedings.

41 c. Agree to issue a declaratory order by a
42 specified time.

43 d. Decline to issue a declaratory order, stating
44 the reasons for its action.

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

48 7. A declaratory order has the same status and
49 binding effect as any other order issued in an agency
50 adjudicative proceeding. A declaratory order must

H-1682

-9-

H-1682

Page 10

1 contain the names of all parties to the proceeding on
2 which it is based, the particular facts on which it is
3 based, and the reasons for its conclusion.

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

7 Sec. 12. NEW SECTION. 17A.2104 REQUIRED
8 RULEMAKING.

9 In addition to other rulemaking requirements
10 imposed by law, each agency shall do all of the
11 following:

12 1. Adopt as a rule a description of the
13 organization of the agency which states the course and
14 method of its operations, the administrative
15 subdivisions of the agency and the programs
16 implemented by each of them, a statement of the
17 mission of the agency and the methods by which and
18 location where the public may obtain information or
19 make submissions or requests.

20 2. Adopt rules of practice setting forth the
21 nature and requirements of all formal and informal
22 procedures available to the public, including a
23 description of all forms and instructions that are to
24 be used by the public in dealing with the agency.

25 3. As soon as feasible and to the extent
26 practicable, adopt rules, in addition to those
27 otherwise required by this chapter, embodying
28 appropriate standards, principles, and procedural
29 safeguards that the agency will apply to the law it
30 administers.

31 ARTICLE 3
32 RULEMAKING
33 PART 1

34 ADOPTION AND EFFECTIVENESS OF RULES

35 Sec. 13. NEW SECTION. 17A.3101 ADVICE ON
36 POSSIBLE RULES BEFORE NOTICE OF PROPOSED RULE
37 ADOPTION.

38 1. In addition to seeking information by other
39 methods, an agency, before publication of a notice of
40 proposed rule adoption under section 17A.3103, may
41 solicit comments from the public on a subject matter
42 of possible rulemaking under active consideration
43 within the agency by causing notice to be published in
44 the administrative bulletin of the subject matter and
45 indicating where, when, and how persons may comment.

46 2. Each agency head may also appoint formal
47 committees, as determined by the agency head, to
48 comment, before publication of a notice of proposed
49 rule adoption under section 17A.3103, on the subject
50 matter of a possible rulemaking under active

H-1682

H-1682

Page 11

1 consideration within the agency. The membership of
2 those committees must be published at least annually
3 in the administrative bulletin.

4 Sec. 14. NEW SECTION. 17A.3102 PUBLIC RULEMAKING
5 DOCKET.

6 1. Each agency shall maintain a current, public
7 rulemaking docket.

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

16 a. The subject matter of the proposed rule.

17 b. A citation to all published notices relating to
18 the proceeding.

19 c. Where written submissions on the proposed rule
20 may be inspected.

21 d. The time during which written submissions may
22 be made.

23 e. The names of persons who have made written
24 requests for an opportunity to make oral presentations
25 on the proposed rule, where those requests may be
26 inspected, and where and when oral presentations may
27 be made.

28 f. Whether a written request for the issuance of a
29 regulatory analysis of the proposed rule has been
30 filed, whether that analysis has been issued, and
31 where the written request and analysis may be
32 inspected.

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

35 h. Any known timetable for agency decisions or
36 other action in the proceeding.

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

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

42 k. The date of the rule's filing, indexing, and
43 publication.

44 1. When the rule will become effective.

45 Sec. 15. NEW SECTION. 17A.3103 NOTICE OF
46 PROPOSED RULE ADOPTION.

47 1. At least thirty-five days before the adoption
48 of a rule, an agency shall cause notice of its
49 contemplated action to be published in the
50 administrative bulletin by submitting five copies of

H-1682

-11-

H-1682

Page 12

1 the proposed rule to the administrative rules
2 coordinator, who shall assign an ARC number to each
3 rulemaking document and forward three copies to the
4 administrative rules editor for publication in the
5 administrative bulletin. The notice of proposed rule
6 adoption must include all of the following:

7 a. A short explanation of the purpose of the
8 proposed rule.

9 b. The specific legal authority authorizing the
10 proposed rule.

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

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

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

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

29 3. An agency may publish a notice of proposed rule
30 adoption and hold a rulemaking proceeding on the
31 notice after the enactment and before the effective
32 date of a statute authorizing it to adopt the proposed
33 rule as long as any rule adopted on the basis of that
34 proceeding states that it will not become effective
35 until a specified date on or after the effective date
36 of the authorizing statute.

37 Sec. 16. NEW SECTION. 17A.3104 PUBLIC
38 PARTICIPATION.

39 1. For at least twenty days after publication of
40 the notice of proposed rule adoption, an agency shall
41 afford persons the opportunity to submit in writing,
42 argument, data, and views on the proposed rule.

43 2. a. An agency shall schedule an oral proceeding
44 on a proposed rule if, within twenty days after the
45 published notice of proposed rule adoption, a written
46 request for an oral proceeding is submitted by the
47 administrative rules review committee, the
48 administrative rules coordinator, a political
49 subdivision, an agency, twenty-five persons, or by an
50 association having not less than twenty-five members.

H-1682

-12-

H-1682

Page 13

1 At that proceeding, persons may present oral argument,
2 data, and views on the proposed rule.

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

7 c. The agency head, a member of the agency head,
8 or another person designated by the agency, shall
9 preside at a required oral proceeding on a proposed
10 rule. The person presiding must have knowledge of the
11 purpose and subject matter of the proposed rule. If
12 the agency does not preside, the presiding officer
13 shall prepare a memorandum for consideration by the
14 agency summarizing the contents of the presentations
15 made at the oral proceeding. Oral proceedings must be
16 open to the public and be recorded by stenographic or
17 other means.

18 d. Each agency shall adopt rules for the conduct
19 of oral rulemaking proceedings. Those rules may
20 include provisions calculated to prevent undue
21 repetition in the oral proceedings.

22 Sec. 17. NEW SECTION. 17A.3105 REGULATORY
23 ANALYSIS.

24 1. An agency shall issue a regulatory analysis of
25 a proposed rule that complies with requirements of
26 subsection 2, paragraph "a", if, within thirty-five
27 days after the published notice of proposed rule
28 adoption, a written request for the analysis is
29 submitted to the agency by the administrative rules
30 review committee or the administrative rules
31 coordinator. An agency shall issue a regulatory
32 analysis of a proposed rule that complies with
33 subsection 2, paragraph "b", if that rule would have a
34 substantial impact on small business and if such a
35 request is submitted to the agency within the
36 specified time period by the administrative rules
37 review committee, the administrative rules
38 coordinator, at least twenty-five persons signing that
39 request who each qualify as a small business, or by an
40 organization representing at least twenty-five such
41 persons. If a rule has been adopted without prior
42 notice and an opportunity for public participation in
43 reliance upon section 17A.3108, the written request
44 for the analysis may be made within seventy days of
45 publication of that rule.

46 2. a. Except to the extent that the written
47 request expressly waives one or more of the following,
48 the regulatory analysis must contain all of the
49 following:

50 (1) A description of the classes of persons who

H-1682

-13-

1 probably will be affected by the proposed rule,
2 including classes that will bear the costs of the
3 proposed rule and classes that will benefit from the
4 proposed rule.

5 (2) A description of the probable quantitative and
6 qualitative impact of the proposed rule, economic or
7 otherwise, upon affected classes of persons, including
8 a description of the nature and amount of all of the
9 different kinds of costs that would be incurred in
10 complying with the proposed rule.

11 (3) The probable costs to the agency and to any
12 other agency of the implementation and enforcement of
13 the proposed rule and any anticipated effect on state
14 revenues.

15 (4) A comparison of the probable costs and
16 benefits of the proposed rule to the probable costs
17 and benefits of inaction.

18 (5) A determination of whether there are less
19 costly methods or less intrusive methods for achieving
20 the purpose of the proposed rule.

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

25 b. In the case of a rule that would have a
26 substantial impact on small business, the regulatory
27 analysis must contain a discussion of whether it would
28 be feasible and practicable to do any of the following
29 to reduce the impact of the rule on small business:

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

32 (2) Establish less stringent schedules or
33 deadlines in the rule for compliance or reporting
34 requirements for small business.

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

37 (4) Establish performance standards to replace
38 design or operational standards in the rule for small
39 business.

40 (5) Exempt small business from any or all
41 requirements of the rule.

42 c. The agency shall reduce the impact of the
43 proposed rule on small business by using a method
44 discussed in paragraph "b" if it finds that the method
45 is legal and feasible in meeting the statutory
46 objectives which are the basis of the proposed rule.

47 3. Each regulatory analysis must include
48 quantifications of the data to the extent practicable
49 and must take account of both short-term and long-term
50 consequences.

H-1682

Page 15

1 4. Notwithstanding any other time period specified
2 in this chapter, a concise summary of the regulatory
3 analysis must be published in the administrative
4 bulletin at least ten days before the earliest of the
5 following:

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

8 b. The end of the period during which an oral
9 proceeding may be requested.

10 c. The date of any required oral proceeding on the
11 proposed rule.

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

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

22 6. If the agency has made a good faith effort to
23 comply with the requirements of subsections 1 through
24 3, the rule may not be invalidated on the ground that
25 the contents of the regulatory analysis are
26 insufficient or inaccurate.

27 7. For the purpose of this section, "small
28 business" means any entity including but not limited
29 to an individual, partnership, corporation, joint
30 venture, association, or cooperative, to which all of
31 the following apply:

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

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

37 For purposes of this definition, "dominant in its
38 field of operation" means having more than twenty
39 full-time equivalent positions and more than one
40 million dollars in annual gross revenues, and
41 "affiliate or subsidiary of an entity dominant in its
42 field of operation" means an entity which is at least
43 twenty percent owned by an entity dominant in its
44 field of operation, or by partners, officers,
45 directors, majority stockholders, or their equivalent,
46 of an entity dominant in that field of operation.

47 Sec. 18. NEW SECTION. 17A.3106 TIME AND MANNER
48 OF RULE ADOPTION.

49 1. An agency shall not adopt a rule until the
50 period for making written submissions and oral

H-1682

-15-

H-1682

Page 16

1 presentations has expired and the period for
2 requesting a regulatory analysis has expired.
3 2. Within one hundred eighty days after the later
4 of the publication of the notice of proposed rule
5 adoption, or the end of oral proceedings thereon, an
6 agency shall adopt a rule pursuant to the rulemaking
7 proceeding or terminate the proceeding by publication
8 of a notice to that effect in the administrative
9 bulletin.

10 3. Before the adoption of a rule, an agency shall
11 consider the written submissions, oral submissions or
12 any memorandum summarizing oral submissions, and any
13 regulatory analysis, provided for by this part.

14 4. Within the scope of its delegated authority, an
15 agency may use its own experience, technical
16 competence, specialized knowledge, and judgment, in
17 the adoption of a rule.

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

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

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

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

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

34 2. In determining whether the notice of proposed
35 rule adoption provided fair warning that the outcome
36 of that rulemaking proceeding could be the rule in
37 question the agency shall consider all of the
38 following factors:

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

43 b. The extent to which the subject matter of the
44 rule or issues determined by the rule are different
45 from the subject matter or issues contained in the
46 notice of proposed rule adoption.

47 c. The extent to which the effects of the rule
48 differ from the effects of the proposed rule contained
49 in the notice of proposed rule adoption.

50 Sec. 20. NEW SECTION. 17A.3108 GENERAL EXEMPTION

H-1682

-16-

H-1682

Page 17

1 FROM PUBLIC RULEMAKING PROCEDURES.

2 1. To the extent an agency for good cause finds
3 that any requirements of sections 17A.3103 through
4 17A.3107 are unnecessary, impracticable, or contrary
5 to the public interest in the process of adopting a
6 particular rule, those requirements do not apply. The
7 agency shall incorporate the required finding and a
8 brief statement of its supporting reasons in each rule
9 adopted in reliance upon this subsection. An agency
10 shall not rely upon this subsection on the ground that
11 it has insufficient time to follow usual procedures to
12 adopt a rule, because adoption of the rule is required
13 by a statute that became effective only very recently,
14 unless that statute also requires the agency to adopt
15 the rule by a specified date and it would be
16 impracticable to follow usual procedures for adoption
17 of the rule during the period between the date of the
18 enactment of the statute and the specified date by
19 which the agency must adopt the rule.

20 2. In an action contesting a rule adopted under
21 subsection 1, the burden is upon the agency to
22 demonstrate that any omitted requirements of sections
23 17A.3103 through 17A.3107 were impracticable,
24 unnecessary, or contrary to the public interest in the
25 particular circumstances involved.

26 3. Within two years after the effective date of a
27 rule adopted under subsection 1, the administrative
28 rules review committee, the governor, or the attorney
29 general may request the agency to hold a rulemaking
30 proceeding thereon according to the requirements of
31 sections 17A.3103 through 17A.3107. The request must
32 be in writing, filed in the office of the
33 administrative rules coordinator, and sent to the
34 agency. The administrative rules coordinator shall
35 immediately forward to the administrative rules editor
36 a certified copy of the request. Notice of the filing
37 of the request must be published in the next issue of
38 the administrative bulletin. The rule in question
39 ceases to be effective one hundred eighty days after
40 the request is filed. However, an agency, after the
41 filing of the request, may subsequently adopt an
42 identical rule in a rulemaking proceeding conducted
43 pursuant to the requirements of sections 17A.3103
44 through 17A.3107.

45 Sec. 21. NEW SECTION. 17A.3109 EXEMPTION FOR
46 CERTAIN RULES.

47 1. An agency need not follow the provisions of
48 sections 17A.3103 through 17A.3108 in the adoption of
49 a rule that only defines the meaning of a statute or
50 other provision of law or precedent if the agency does

H-1682

-17-

H-1682

Page 18

1 not possess delegated authority to bind the courts to
2 any extent with its definition. A rule adopted under
3 this subsection must include a statement that it was
4 adopted under this subsection when it is published in
5 the administrative bulletin, and there must be an
6 indication to that effect in a footnote to the rule
7 when it is published in the administrative code.

8 2. A reviewing court shall determine wholly de
9 novo the validity of a rule within the scope of
10 subsection 1 that is adopted without complying with
11 the provisions of sections 17A.3103 through 17A.3108.

12 Sec. 22. NEW SECTION. 17A.3110 CONCISE

13 EXPLANATORY STATEMENT.

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

17 a. A summary of the principal reasons urged for
18 and against the rule.

19 b. The agency's reasons for adopting the rule,
20 including the agency's reasons for overruling the
21 considerations urged against its adoption.

22 c. An indication of any change between the text of
23 the proposed rule contained in the published notice of
24 proposed rule adoption and the text of the rule as
25 finally adopted, with the reasons for any change.

26 However, an agency may, without any additional
27 rulemaking proceedings, amend a concise explanatory
28 statement subsequent to its issuance in order to add,
29 based on later developments, new reasons for adopting
30 the rule or for overruling considerations urged
31 against adoption of the rule; but any such amendment
32 is effective only prospectively from the latter of the
33 date when the amendment is filed with the rule and its
34 original explanatory statement in the office of the
35 administrative rules coordinator as required by
36 section 17A.3114, subsection 1, and notice of the
37 amendment and a brief summary of its contents is
38 published in the administrative bulletin.

39 2. Only the reasons contained in the concise
40 explanatory statement may be used by any party as
41 justifications for the adoption of the rule in any
42 proceeding in which its validity is at issue.

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

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

47 a. The date the agency adopted the rule.

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

49 c. A reference to all rules repealed, amended, or
50 suspended by the rule.

H-1682

-18-

H-1682

Page 19

1 d. A reference to the specific statutory or other
2 authority authorizing adoption of the rule.

3 e. Any findings required by any provisions of law
4 as a prerequisite to adoption or effectiveness of the
5 rule.

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

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

11 3. An agency may incorporate, by reference in its
12 rules and without publishing the incorporated matter
13 in full, all or any part of a code, standard, rule, or
14 regulation that has been adopted by an agency of the
15 United States or of this state, another state, or by a
16 nationally or internationally recognized organization
17 or association, if incorporation of its text in agency
18 rules would be unduly cumbersome, expensive, or
19 otherwise inexpedient. The reference in the agency
20 rules must fully identify the incorporated matter by
21 location, date, and otherwise, and must state that the
22 rule does not include any later amendments or editions
23 of the incorporated matter. An agency may incorporate
24 by reference such matter in its rules only if the
25 agency, organization, or association originally
26 issuing that matter makes copies of it readily
27 available to the public. The rules must state where
28 copies of the incorporated matter may be inspected,
29 and copied or purchased at cost, at the agency issuing
30 the rule, and where copies are available from the
31 entity originally issuing that matter. An agency
32 which adopts standards by reference to another
33 publication shall purchase and provide a copy of the
34 publication containing the standards to the
35 administrative rules coordinator who shall deposit the
36 copy in the state law library where it shall be made
37 available for inspection and reference. In those
38 cases where the purchase of an additional copy would
39 be an unreasonable expense, the administrative rules
40 coordinator may waive this requirement if the
41 publication can be temporarily and promptly obtained
42 for review by the state law library upon request.

43 Sec. 24. NEW SECTION. 17A.3112 AGENCY RULEMAKING
44 RECORD.

45 1. An agency shall maintain for a period of at
46 least five years an official rulemaking record for
47 each rule it adopts. The record and materials
48 incorporated by reference must be available for public
49 inspection.

50 2. The agency rulemaking record must contain all

H-1682

-19-

H-1682

Page 20

1 of the following:

- 2 a. Copies of all publications in the
- 3 administrative bulletin with respect to the rule or
- 4 the proceeding upon which the rule is based.
- 5 b. Copies of any portions of the agency's public
- 6 rulemaking docket containing entries relating to the
- 7 rule or the proceeding upon which the rule is based.
- 8 c. All written petitions, requests, submissions,
- 9 and comments received by the agency and all other
- 10 written materials that are unprivileged and that are
- 11 not required by statute to be kept confidential that
- 12 were considered by the agency in connection with the
- 13 formulation, proposal, or adoption of the rule or the
- 14 proceeding upon which the rule is based.
- 15 d. Any official transcript of oral presentations
- 16 made in the proceeding upon which the rule is based
- 17 or, if not transcribed, any tape recording or
- 18 stenographic record of those presentations, and any
- 19 memorandum prepared by a presiding officer summarizing
- 20 the contents of those presentations.
- 21 e. A copy of any regulatory analysis prepared for
- 22 the proceeding upon which the rule is based.
- 23 f. A copy of the rule and explanatory statement
- 24 filed in the office of the administrative rules
- 25 coordinator.
- 26 g. All petitions for exceptions to, amendments of,
- 27 or repeal or suspension of, the rule.
- 28 h. A copy of any request filed pursuant to section
- 29 17A.3108, subsection 3.
- 30 i. A copy of any objection to the rule filed by
- 31 the administrative rules review committee pursuant to
- 32 section 17A.3204, subsection 4, and the agency's
- 33 response.
- 34 j. A copy of any filed executive order with
- 35 respect to the rule.

36 3. Upon judicial review, the record required by
37 this section constitutes the official agency
38 rulemaking record with respect to a rule. Except as
39 provided in section 17A.3110, subsection 2, or
40 otherwise required by a provision of law, the agency
41 rulemaking record need not constitute the exclusive
42 basis for agency action on that rule or for judicial
43 review thereof.

44 Sec. 25. NEW SECTION. 17A.3113 INVALIDITY OF
45 RULES NOT ADOPTED ACCORDING TO CHAPTER -- TIME
46 LIMITATIONS.

47 1. A rule adopted after the effective date of this
48 Act is invalid unless adopted in substantial
49 compliance with the provisions of sections 17A.3102
50 through 17A.3108 and sections 17A.3110 through

H-1682

-20-

H-1682

Page 21

1 17A.3112.

2 2. An action to contest the validity of a rule on
3 the grounds of its noncompliance with any provision of
4 sections 17A.3102 through 17A.3108 or sections
5 17A.3110 through 17A.3112 must be commenced within two
6 years after the effective date of the rule.

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

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

23 2. The administrative rules coordinator shall
24 transmit to the administrative rules editor, two
25 certified copies of each filed rule as soon after its
26 filing as is practicable.

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

29 1. Except to the extent subsection 2 provides
30 otherwise, each adopted rule becomes effective thirty-
31 five days after the later of its filing in the office
32 of the administrative rules coordinator or its
33 publication and indexing in the administrative
34 bulletin.

35 2. a. A rule becomes effective on a date later
36 than that established by subsection 1 if a later date
37 is required by another statute or specified in the
38 rule.

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

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

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

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

50 (4) The earlier effective date is necessary to

H-1682

-21-

H-1682

Page 22

1 avoid immediate danger to the public health, safety,
2 or welfare.

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

5 c. The finding and a brief statement of the
6 reasons therefor required by paragraph "b" must be
7 made a part of the rule. In any action contesting the
8 effective date of a rule made effective under
9 paragraph "b", the burden is on the agency to justify
10 its finding.

11 d. Each agency shall make a reasonable effort to
12 make known to persons who may be affected by it a rule
13 made effective before publication and indexing under
14 this subsection.

15 3. This section does not relieve an agency from
16 compliance with any provision of law requiring that
17 some or all of its rules be approved by other
18 designated officials or bodies before they become
19 effective.

20 Sec. 28. NEW SECTION. 17A.3116 SPECIAL PROVISION
21 FOR CERTAIN CLASSES OF RULES.

22 Except to the extent otherwise provided by any
23 provision of law, sections 17A.3102 through 17A.3115
24 are inapplicable to all of the following:

25 1. A rule concerning only the internal management
26 of an agency which does not directly and substantially
27 affect the procedural or substantive rights or duties
28 of any segment of the public.

29 2. A rule that establishes criteria or guidelines
30 to be used by the staff of an agency in performing
31 audits, investigations, or inspections, settling
32 commercial disputes, negotiating commercial
33 arrangements, or in the defense, prosecution, or
34 settlement of cases, if disclosure of the criteria or
35 guidelines would do any of the following:

36 a. Enable law violators to avoid detection.

37 b. Facilitate disregard of requirements imposed by
38 law.

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

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

44 4. A rule concerning only the physical servicing,
45 maintenance, or care of agency owned or operated
46 facilities or property.

47 5. A rule relating only to the use of a particular
48 facility or property owned, operated, or maintained by
49 the state or any of its political subdivisions, if the
50 substance of the rule is adequately indicated by means

H-1682

-22-

H-1682

Page 23

1 of signs or signals to persons who use the facility or
2 property.

3 6. A rule concerning only inmates of a
4 correctional or detention facility, students enrolled
5 in an educational institution, or patients admitted to
6 a hospital, if adopted by that facility, institution,
7 or hospital.

8 7. A form whose contents or substantive
9 requirements are prescribed by rule or statute, and
10 instructions for the execution or use of the form.

11 8. An agency budget.

12 9. An opinion of the attorney general.

13 10. The terms of a collective bargaining
14 agreement.

15 Sec. 29. NEW SECTION. 17A.3117 PETITION FOR
16 ADOPTION OF RULE.

17 1. Any person may petition an agency requesting
18 the adoption of a rule. Each agency shall prescribe
19 by rule the form of the petition and the procedure for
20 its submission, consideration, and disposition.
21 Within sixty days after submission of a petition, the
22 agency shall either deny the petition in writing,
23 stating its reasons therefor, initiate rulemaking
24 proceedings in accordance with this chapter or if
25 otherwise lawful, adopt a rule.

26 2. If a person petitions an agency requesting the
27 adoption of a rule superseding specified principles of
28 law or policy lawfully declared by the agency as the
29 basis for its decisions in particular cases, the
30 agency shall initiate rulemaking proceedings in
31 accordance with this chapter and adopt such a rule
32 unless the agency finds, and incorporates in that
33 finding the reasons therefor, that the adoption of
34 such a rule at this time is infeasible or that such a
35 rule is impracticable, and provides a copy of that
36 finding to the petitioner.

37

PART 2

38

REVIEW OF AGENCY RULES

39

Sec. 30. NEW SECTION. 17A.3201 REVIEW BY AGENCY.

40

The administrative rules review committee, the
41 administrative rules coordinator, a political
42 subdivision, an agency, twenty-five persons signing
43 one request, or an association having not less than
44 twenty-five members, may request an agency to conduct
45 a formal review of a specified rule of that agency to
46 determine whether the rule should be repealed or
47 amended or a new rule adopted instead. If the agency
48 has not conducted such a review of the specified rule
49 within a period of five years prior to the filing with
50 the agency of that written request, the agency shall

H-1682

H-1682

Page 24

1 prepare within a reasonable time a written report with
2 respect to the rule summarizing its findings, its
3 supporting reasons, and any proposed course of action.
4 The report must include, for the specified rule, a
5 concise statement of all of the following:

6 1. The rule's effectiveness in achieving its
7 objectives, including a summary of any available data
8 supporting the conclusions reached.

9 2. Criticisms of the rule received during the
10 previous five years, including a summary of any
11 petitions for waiver of the rule tendered to the
12 agency or granted by the agency.

13 3. Alternative solutions to the criticisms and the
14 reasons they were rejected or the changes made in the
15 rule in response to those criticisms and the reasons
16 for the changes.

17 A copy of the report must be sent to the
18 administrative rules review committee and the
19 administrative rules coordinator and be available for
20 public inspection.

21 Sec. 31. NEW SECTION. 17A.3202 REVIEW BY
22 GOVERNOR -- ADMINISTRATIVE RULES COORDINATOR.

23 1. To the extent the agency itself would have such
24 authority, the governor may rescind or suspend all or
25 a severable portion of a rule of an agency. In
26 exercising this authority, the governor shall act by
27 an executive order. If the rule in question has been
28 effective for more than one hundred eighty days, that
29 executive order shall be subject to the provisions of
30 sections 17A.3103, 17A.3104, and 17A.3106 through
31 17A.3116 applicable to the adoption and effectiveness
32 of a rule.

33 2. The governor may summarily terminate any
34 pending rulemaking proceeding by an executive order to
35 that effect, stating in the order the reasons for the
36 action. The executive order must be filed in the
37 office of the administrative rules coordinator, which
38 shall promptly forward a certified copy to the agency
39 and the administrative rules editor. An executive
40 order terminating a rulemaking proceeding becomes
41 effective on the date it is filed and must be
42 published in the next issue of the administrative
43 bulletin.

44 3. There is created, within the office of the
45 governor, an administrative rules coordinator to
46 advise the governor in the execution of the authority
47 vested under this article. The governor shall appoint
48 the administrative rules coordinator who shall serve
49 at the pleasure of the governor.

50 Sec. 32. NEW SECTION. 17A.3203 ADMINISTRATIVE

H-1682

-24-

H-1682

Page 25

1 RULES REVIEW COMMITTEE.

2 1. There is created an administrative rules review
3 committee. The committee shall be bipartisan and
4 shall be composed of the following members:

5 a. Five senators appointed by the majority leader
6 of the senate.

7 b. Five representatives appointed by the speaker
8 of the house.

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

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

26 4. The committee shall choose a chairperson from
27 its membership and prescribe its rules of procedure.
28 The committee may employ a secretary or may appoint
29 the administrative rules editor or a designee to act
30 as secretary.

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

42 6. Notwithstanding section 13.7, the committee may
43 employ necessary legal and technical staff.

44 Sec. 33. NEW SECTION. 17A.3204 REVIEW BY
45 ADMINISTRATIVE RULES REVIEW COMMITTEE.

46 1. The administrative rules review committee shall
47 selectively review possible, proposed, or adopted
48 rules and prescribe appropriate committee procedures
49 for that purpose. The committee may receive and
50 investigate complaints from members of the public with

H-1682

-25-

H-1682

Page 26

1 respect to possible, proposed, or adopted rules and
2 hold public proceedings on those complaints.

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

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

27 4. a. If the committee objects to all or some
28 portion of a rule because the committee considers it
29 to be beyond the procedural or substantive authority
30 delegated to the adopting agency, or prohibited by
31 law, the committee may file that objection in the
32 office of the administrative rules coordinator. The
33 filed objection must contain a concise statement of
34 the committee's reasons for its action.

35 b. The administrative rules coordinator shall
36 affix to each objection a certification of the date
37 and time of its filing and as soon thereafter as
38 practicable shall transmit a certified copy thereof to
39 the agency issuing the rule in question and the
40 administrative rules editor. The administrative rules
41 coordinator shall also maintain a permanent register
42 open to public inspection of all objections by the
43 committee.

44 c. The administrative rules editor shall publish
45 and index an objection filed pursuant to this
46 subsection in the next issue of the administrative
47 bulletin and indicate its existence in a footnote to
48 the rule in question when that rule is published in
49 the administrative code. In case of a filed objection
50 by the committee to a rule that is subject to the

H-1682

-26-

H-1682

Page 27

1 requirements of section 17A.2101, subsection 7, the
2 agency shall indicate the existence of that objection
3 adjacent to the rule in the official compilation
4 referred to in that subsection.

5 d. Within thirty days after the filing of an
6 objection by the committee to a rule, the adopting
7 agency shall respond in writing to the committee.
8 After receipt of the response, the committee may
9 withdraw or modify its objection.

10 e. After the filing of an objection by the
11 committee that is not subsequently withdrawn, the
12 burden is upon the agency in any proceeding for
13 judicial review or for enforcement of the rule to
14 establish that the whole or portion of the rule
15 objected to is within the procedural and substantive
16 authority delegated to the agency and not prohibited
17 by law. A court holding a rule in such a proceeding
18 to be invalid because it is outside the authority
19 delegated to the agency or prohibited by law shall
20 render judgment against the agency for court costs.
21 Court costs include a reasonable attorney's fee and
22 are payable by the treasurer of state from the support
23 appropriations of the agency that adopted the rule.

24 f. The failure of the administrative rules review
25 committee to object to a rule is not an implied
26 legislative authorization of its procedural or
27 substantive validity.

28 5. The committee may recommend to an agency that
29 it adopt a rule. The committee may also require an
30 agency to publish notice of the committee's
31 recommendation as a proposed rule of the agency and to
32 allow public participation thereon, according to the
33 provisions of sections 17A.3103 and 17A.3104. An
34 agency is not required to adopt the proposed rule.

35 6. The committee may, by a two-thirds vote of the
36 committee members, delay the effective date of an
37 adopted rule that is not yet effective for any period
38 designated by the committee that would end no later
39 than the next adjournment of a regular session of the
40 general assembly. When the committee takes such
41 action the committee shall state the reasons therefor.
42 If the general assembly has not disapproved the rule
43 by a joint resolution prior to the end of the period
44 during which its effectiveness has been delayed by the
45 action of the committee, the rule shall become
46 effective. If the rule is disapproved by the general
47 assembly during that period, the rule shall not become
48 effective and the agency shall summarily withdraw the
49 rule.

50 7. The committee shall file an annual report with

H-1682

-27-

H-1682

Page 28

1 the presiding officer of each house and the governor.

2 ARTICLE 4

3 ADJUDICATIVE PROCEEDINGS

4 PART 1

5 AVAILABILITY OF ADJUDICATIVE PROCEEDINGS --

6 APPLICATIONS -- LICENSES -- WAIVER OF RULE

7 Sec. 34. NEW SECTION. 17A.4101 ADJUDICATIVE

8 PROCEEDINGS -- WHEN REQUIRED -- EXCEPTIONS.

9 1. An agency shall conduct an adjudicative
10 proceeding as the process for formulating and issuing
11 an order. However, an agency need not conduct an
12 adjudicative proceeding if the order is a decision to
13 do any of the following:

14 a. To issue or not to issue, or to authorize or
15 not to authorize the issuance of, a complaint,
16 summons, or similar accusation.

17 b. To initiate or not to initiate, or to authorize
18 or not to authorize the initiation of, an
19 investigation, prosecution, or other proceeding before
20 the agency, another agency, or a court.

21 c. Under section 17A.4103, not to conduct an
22 adjudicative proceeding.

23 This subsection does not preclude an agency from
24 establishing, subject to sections 17A.5107 and
25 17A.5112, procedures that must be followed prior to
26 the commencement of an adjudicative proceeding, or
27 from issuing an order prior to conducting an
28 adjudicative proceeding if any of the following apply:

29 (1) The person subject to that order may, within a
30 time period specified by rule or in the order, file an
31 application for an adjudicative proceeding, that
32 application will automatically dissolve the order from
33 the time of its issuance, and the substantial rights
34 of the person subject to that order are not prejudiced
35 by the order in the interim period prior to its
36 automatic dissolution resulting from the filing of an
37 application for an adjudicative proceeding.

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

40 (3) The agency was expressly authorized by statute
41 to issue that order prior to conducting an
42 adjudicative proceeding, in which case, the agency
43 must proceed as quickly as feasible after its issuance
44 to complete any proceeding that would be required if
45 the statute had not authorized such action in advance
46 of any adjudicative proceeding.

47 2. This article applies to rulemaking proceedings
48 only to the extent that another statute expressly so
49 requires.

50 Sec. 35. NEW SECTION. 17A.4102 ADJUDICATIVE

H-1682

-28-

H-1682

Page 29

1 PROCEEDINGS -- COMMENCEMENT.

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

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

9 a. The agency lacks jurisdiction of the subject
10 matter.

11 b. Resolution of the matter requires the agency to
12 exercise discretion within the scope of section
13 17A.4101, subsection 1.

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

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

23 e. The matter was not timely submitted to the
24 agency according to any applicable provision of law
25 and there is no dispute of fact as to the time of its
26 submission.

27 f. The matter was not submitted in a form
28 substantially complying with any applicable provision
29 of law.

30 3. Subject to other provisions of law, each agency
31 may, by rule, establish specified time limits for
32 commencing various classes of adjudicative proceedings
33 that are within the agency's jurisdiction.

34 4. An application for an agency to issue an order
35 includes an application for the agency to conduct
36 appropriate adjudicative proceedings, whether or not
37 the applicant expressly requests those proceedings.

38 5. An adjudicative proceeding commences when the
39 agency or a presiding officer does any of the
40 following:

41 a. Notifies a party that a prehearing conference,
42 hearing, or other stage of an adjudicative proceeding
43 will be conducted.

44 b. Begins to take action on a matter that
45 appropriately may be determined by an adjudicative
46 proceeding, unless this action is one of the
47 following:

48 (1) An investigation for the purpose of
49 determining whether an adjudicative proceeding should
50 be conducted.

H-1682

-29-

H-1682

Page 30

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

4 Sec. 36. NEW SECTION. 17A.4103 DECISION NOT TO
5 CONDUCT ADJUDICATIVE PROCEEDING.

6 An agency that decides, pursuant to section
7 17A.4102, subsection 2, not to conduct an adjudicative
8 proceeding in response to an application, shall
9 furnish the applicant a copy of its decision in
10 writing, with a brief statement of the agency's
11 reasons and of any administrative review available to
12 the applicant.

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

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

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

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

35 (1) Approve or deny the application, in whole or
36 in part, on the basis of emergency or summary
37 adjudicative proceedings, if those proceedings are
38 available under this chapter for disposition of the
39 matter.

40 (2) Commence a formal adjudicative hearing or a
41 conference adjudicative hearing in accordance with
42 this chapter.

43 (3) Dispose of the application in accordance with
44 section 17A.4103.

45 c. If the application pertains to subject matter
46 that is not available when the application is filed
47 but may be available in the future, including an
48 application for housing or employment at a time no
49 vacancy exists, the agency may proceed to make a
50 determination of eligibility within the time provided

H-1682

-30-

H-1682

Page 31

1 in paragraph "b". If the agency determines that the
2 applicant is eligible, the agency shall maintain the
3 application on the agency's list of eligible
4 applicants as provided by law and, upon request, shall
5 notify the applicant of the status of the application.

6 2. If a timely application has been made for
7 renewal of a license with reference to any activity of
8 a continuing nature, the existing license does not
9 expire until the agency has taken final action upon
10 the application for renewal or, if the agency's action
11 is unfavorable, until the last day for seeking
12 judicial review of the agency's action or a later date
13 fixed by the reviewing court or agency.

14 Sec. 38. NEW SECTION. 17A.4105 AGENCY ACTION
15 AGAINST LICENSEES.

16 An agency shall not revoke, suspend, modify, annul,
17 withdraw, or amend a license unless the agency first
18 gives notice and an opportunity for an appropriate
19 adjudicative proceeding in accordance with this
20 chapter or other statute. This section does not
21 preclude an agency from taking immediate action to
22 protect the public interest in accordance with section
23 17A.4501 or adopting rules, otherwise within the scope
24 of its authority, pertaining to a class of licensees,
25 including rules affecting the existing licenses of a
26 class of licensees.

27 Sec. 39. NEW SECTION. 17A.4106 PETITION FOR
28 WAIVER OF RULE.

29 1. A person may file a petition with an agency
30 requesting a waiver, in whole or in part, of a rule of
31 that agency on the ground that the application of the
32 rule to the particular circumstances of that person
33 would qualify for a waiver under subsection 5. A
34 petition filed under this provision must specify the
35 rule in question, the precise scope of the waiver
36 requested, the specific facts that would justify a
37 waiver for petitioner, and the reasons why the
38 particular application of the rule to petitioner for
39 which the waiver is requested would qualify for a
40 waiver under subsection 5.

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

43 a. Governing the form, contents, and filing of
44 petitions for the waivers of rules.

45 b. Specifying the procedural rights of persons in
46 relation to such petitions.

47 c. Providing for the disposition of those
48 petitions.

49 3. Within fifteen days after receipt of a petition
50 for waiver of a rule, the agency shall cause to be

H-1682

-31-

H-1682

Page 32

1 published in the administrative bulletin, notice of
2 the pendency of the petition, including a concise
3 summary of its contents, and shall give notice of the
4 petition to all persons to whom notice is required by
5 any provision of law. In addition, the agency may
6 give notice to any other persons. Persons who qualify
7 under section 17A.4209, subsection 1, paragraphs "b"
8 and "c", as an intervenor and file timely petitions
9 for intervention according to agency rules may
10 intervene in proceedings for waivers of a rule. Other
11 provisions of this article apply to agency proceedings
12 for waivers of a rule only to the extent an agency so
13 provides by rule or order.

14 4. An order granting or denying such a petition
15 shall be in writing and shall contain a statement of
16 the relevant facts and reasons supporting that action.
17 An agency shall grant or deny such a petition within
18 ninety days of its receipt. Failure of an agency to
19 grant or deny such a petition within ninety days of
20 its receipt shall be deemed a denial of that petition
21 by the agency.

22 5. Unless otherwise prohibited by statute, an
23 agency shall issue an order granting a petition for a
24 waiver of a rule, in whole or in part, if application
25 of the rule to the petitioner on the basis of the
26 particular facts specified in the petition would not
27 serve any of the purposes of the rule. Unless
28 otherwise prohibited by statute, an agency may issue
29 an order granting a petition for waiver of a rule, in
30 whole or in part, if application of the rule to the
31 petitioner would result in undue hardship, waiver of
32 the rule on the basis of the facts specified in the
33 petition would be consistent with the public interest,
34 and waiver of the rule as to petitioner would not
35 prejudice the substantial rights of any other person.
36 An order granting such a petition shall constitute a
37 defense in any subsequent proceeding where the
38 applicability of that rule to petitioner is at issue
39 if petitioner proves in that subsequent proceeding all
40 of the relevant facts pertaining to petitioner upon
41 which that waiver order was based and that the
42 particular application of the rule at issue was within
43 the scope of the waiver order in question.

44 6. In an agency proceeding to enforce a rule of
45 that agency, a person resisting the enforcement of the
46 rule may defend successfully upon a demonstration that
47 application of the rule to the person would not serve
48 any of the purposes of the rule.

49 7. An agency may, on its own motion, waive the
50 application of one or more of its rules, in whole or

H-1682

-32-

H-1682

Page 33

1 in part, to a specified person on the ground that the
2 relevant facts pertaining to that person would qualify
3 that person for a waiver under the provisions of
4 subsection 5, by issuing an order containing the facts
5 and reasons justifying that waiver. An order granting
6 such a waiver on an agency's own motion shall
7 constitute a defense in any subsequent proceeding
8 where the applicability of that rule is at issue if
9 the petitioner proves in that subsequent proceeding
10 all of the relevant facts pertaining to the petitioner
11 upon which that waiver order was based and that the
12 particular application of the rule at issue was within
13 the scope of the waiver order in question.

14 8. Any order issued under this section shall be
15 transmitted to petitioner or to the person as to whom
16 the waiver order pertains, to the administrative rules
17 review committee, and to the administrative rules
18 coordinator, within seven days of its issuance.

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

23 10. This section does not apply to a rule that
24 only defines the meaning of a statute or other
25 provision of law or precedent if the agency does not
26 possess delegated authority to bind the courts to any
27 extent with its definition and does not authorize an
28 agency to waive any requirement created or duty
29 imposed by statute.

30 PART 2

31 FORMAL ADJUDICATIVE HEARING

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

33 An adjudicative proceeding is governed by this part
34 when, prior to the issuance of an order, constitution
35 or statute requires an opportunity for an evidentiary
36 hearing that must be determined on the record of that
37 proceeding, except as otherwise provided by any of the
38 following:

39 1. A statute other than this chapter.

40 2. A rule that adopts the procedures for the
41 conference adjudicative hearing or summary
42 adjudicative proceeding in accordance with the
43 standards provided in this chapter for those
44 proceedings.

45 3. Section 17A.4501 pertaining to emergency
46 adjudicative proceedings.

47 4. Section 17A.2103 pertaining to declaratory
48 proceedings.

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

H-1682

-33-

1 Sec. 41. NEW SECTION. 17A.4202 PRESIDING
2 OFFICER, DISQUALIFICATION, SUBSTITUTION.

3 1. a. If the agency or an officer of the agency
4 under whose authority the adjudicative proceeding is
5 to take place is a named party to that proceeding or a
6 real party in interest to that proceeding, in the
7 discretion of the agency head, the presiding officer
8 may be either the agency head, one or more members of
9 the agency head, or one or more administrative law
10 judges assigned by the office of administrative
11 hearings in accordance with the provisions of section
12 17A.4301. However, the agency head shall designate as
13 the presiding officer an administrative law judge
14 assigned by the office of administrative hearings in
15 accordance with the provisions of section 17A.4301 if
16 any person to whom the agency action is specifically
17 directed timely requests an administrative law judge
18 to preside at the proceeding.

19 b. If the agency or an officer of the agency under
20 whose authority the adjudicative proceeding is to take
21 place is not a named party to that proceeding or a
22 real party in interest to that proceeding, in the
23 discretion of the agency head, the presiding officer
24 may be either the agency head, one or more members of
25 the agency head, an administrative law judge assigned
26 by the office of administrative hearings in accordance
27 with the provisions of section 17A.4301, or any other
28 qualified person designated as a presiding officer by
29 the agency head. Any other person designated as a
30 presiding officer by the agency head may be employed
31 by and officed in the agency for which that person
32 acts as a presiding officer, but such a person shall
33 not perform duties inconsistent with that person's
34 duties and responsibilities as a presiding officer and
35 shall be governed by the merit system provisions of
36 chapter 19A.

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

42 3. Any party may timely request the
43 disqualification of a person after receipt of notice
44 indicating that the person will preside or upon
45 discovering facts establishing grounds for
46 disqualification, whichever is later.

47 4. A person whose disqualification is requested
48 shall determine whether to grant the request, stating
49 facts and reasons for the determination.

50 5. If a substitute is required for a person who is

H-1682

Page 35

1 disqualified or becomes unavailable for any other
2 reason, the substitute must be appointed by either of
3 the following:

4 a. The governor, if the disqualified or
5 unavailable person is an elected official.

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

8 6. Any action taken by a duly-appointed substitute
9 for a disqualified or unavailable person is as
10 effective as if taken by the latter.

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

12 1. Any party may participate in the hearing in
13 person or, if the party is a corporation or other
14 artificial person, by a duly authorized
15 representative.

16 2. Whether or not participating in person, any
17 party may be advised and represented at the party's
18 own expense by counsel or, if permitted by any
19 provision of law, other representative.

20 3. Any party may designate in writing with an
21 agency an authorized representative to act on behalf
22 of that party in a particular proceeding. An attorney
23 licensed to practice in this state who files an
24 appearance or a pleading with an agency on behalf of a
25 party shall be deemed to be the designated authorized
26 representative of the party in that proceeding. If an
27 authorized representative has been designated, notice
28 to a party required under this article must be
29 satisfied by providing the notice to that
30 representative.

31 Sec. 43. NEW SECTION. 17A.4204 PREHEARING
32 CONFERENCE -- AVAILABILITY -- NOTICE.

33 The presiding officer designated to conduct the
34 hearing may determine, subject to the agency's rules,
35 whether a pre-hearing conference will be conducted.
36 If the conference is conducted the following apply:

37 1. The presiding officer shall promptly notify the
38 agency of the determination that a prehearing
39 conference will be conducted. If the presiding
40 officer decides that another presiding officer should
41 conduct that conference, the agency shall assign or
42 request the office of administrative hearings to
43 assign a presiding officer for the prehearing
44 conference, exercising the same discretion as is
45 provided by section 17A.4202 concerning the selection
46 of a presiding officer for a hearing.

47 2. The presiding officer for the prehearing
48 conference shall set the time and place of the
49 conference and give reasonable and timely written
50 notice to all parties and to all persons who have

H-1682

-35-

H-1682

Page 36

1 filed written petitions to intervene in the matter.
2 The agency shall also give such notice to other
3 persons entitled to notice under any provision of law.
4 3. The notice must include all of the following:
5 a. The names of all parties, and the mailing
6 addresses of all parties or the names and mailing
7 addresses of their designated representatives, and the
8 names and mailing addresses of all other persons to
9 whom notice is being given by the presiding officer.
10 b. The name, official title, mailing address, and
11 telephone number of any counsel or employee who has
12 been designated to appear for the agency.
13 c. The official file or other reference number,
14 the name of the proceeding, and a general description
15 of the subject matter.
16 d. A statement of the time, place, and nature of
17 the prehearing conference.
18 e. A statement of the legal authority and
19 jurisdiction under which the prehearing conference and
20 the hearing are to be held.
21 f. The name, official title, mailing address and
22 telephone number of the presiding officer for the
23 prehearing conference.
24 g. A statement that at the prehearing conference
25 the proceeding, without further notice, may be
26 converted into a conference adjudicative hearing or a
27 summary adjudicative proceeding for disposition of the
28 matter as provided by this chapter.
29 h. A statement that a party who fails to attend or
30 participate in a prehearing conference, hearing, or
31 other stage of an adjudicative proceeding may be held
32 in default under this chapter.
33 4. The notice may include a statement that each
34 party must bring to the prehearing conference
35 specified listed materials or information, as
36 determined by the presiding officer, and that a
37 failure to do so, without good cause, will preclude
38 that party from subsequently introducing those
39 materials or that information in the proceeding. The
40 notice may also include any other matters that the
41 presiding officer considers desirable to expedite the
42 proceedings.

43 Sec. 44. NEW SECTION. 17A.4205 PREHEARING
44 CONFERENCE -- PROCEDURE AND PREHEARING ORDER.
45 1. The presiding officer may conduct all or part
46 of the prehearing conference by telephone,
47 videoconference, or other electronic means if each
48 participant in the conference has an opportunity to
49 participate in, to hear, and, if technically feasible,
50 to see the entire proceeding while it is taking place.

H-1682

H-1682

Page 37

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

24 3. If a prehearing conference is not held, the
25 presiding officer for the hearing may issue a
26 prehearing order, based on the pleadings, to regulate
27 the conduct of the proceedings.

28 Sec. 45. NEW SECTION. 17A.4206 NOTICE OF
29 HEARING.

30 1. The presiding officer for the hearing, or
31 another person authorized to do so by rule of the
32 agency, shall set the time and place of the hearing
33 and give reasonable and timely written notice to all
34 parties and to all persons who have filed written
35 petitions to intervene in the matter.

36 2. The notice must include a copy of any
37 prehearing order issued in the matter unless the
38 parties and persons who have filed written petitions
39 to intervene have already been furnished with a copy
40 of such an order.

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

44 a. The names of all parties, and the mailing
45 addresses of all parties or the names and mailing
46 addresses of their designated representatives, and the
47 names and mailing addresses of all other persons to
48 whom notice is being given.

49 b. The name, official title, mailing address and
50 telephone number of any counsel or employee who has

H-1682

-37-

H-1682

Page 38

1 been designated to appear for the agency.

2 c. The official file or other reference number,
3 the name of the proceeding, and a general description
4 of the subject matter.

5 d. A statement of the time, place, and nature of
6 the hearing.

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

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

11 g. To the extent known to the person giving
12 notice, a short and plain statement of the issues
13 involved and of the matters asserted by the parties.

14 h. A statement that a party who fails to attend or
15 participate in a prehearing conference, hearing, or
16 other stage of an adjudicative proceeding may be held
17 in default under this chapter.

18 4. The notice may include any other matters the
19 presiding officer considers desirable to expedite the
20 proceedings.

21 5. The agency shall give notice to persons
22 entitled to notice under any provision of law who have
23 not been given notice by the presiding officer.
24 Notice under this subsection may include all types of
25 information provided in subsections 1 through 4 or may
26 consist of a brief statement indicating the subject
27 matter, parties, time, place, and nature of the
28 hearing, manner in which copies of the notice to the
29 parties may be inspected and copied, and name and
30 telephone number of the presiding officer.

31 Sec. 46. NEW SECTION. 17A.4207 PLEADINGS,
32 BRIEFS, MOTIONS, SERVICE.

33 1. The presiding officer, at appropriate stages of
34 the proceedings, shall give all parties full
35 opportunity to file pleadings, motions, and
36 objections.

37 2. The presiding officer, at appropriate stages of
38 the proceedings, may give all parties full opportunity
39 to file briefs, proposed findings of fact and
40 conclusions of law, and proposed initial or final
41 orders.

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

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

46 1. If a party fails to attend or participate in a
47 prehearing conference, hearing, or other stage of an
48 adjudicative proceeding, the presiding officer shall
49 serve all parties by certified mail written notice of
50 a proposed default order, including a statement of the

H-1682

-38-

H-1682

Page 39

1 grounds.

2 2. Within fifteen days or such longer period
3 specified by rule after the mailing by certified mail
4 of a proposed default order, the party against whom it
5 was issued may file a written motion requesting that
6 the proposed default order be vacated and stating the
7 grounds relied upon. A proposed default order may be
8 vacated for any reason specified in the rules of civil
9 procedure or for any other reason specified by agency
10 rule. During the time within which a party may file a
11 written motion under this subsection, the presiding
12 officer may adjourn the proceedings or conduct them
13 without the participation of the party against whom a
14 proposed default order was issued, having due regard
15 for the interests of justice and the orderly and
16 prompt conduct of the proceedings.

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

21 4. After issuing a default order, the presiding
22 officer shall conduct any further proceedings
23 necessary to complete the adjudication without the
24 participation of the party in default and shall
25 determine all issues in the adjudication, including
26 those affecting the defaulting party.

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

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

30 a. The petition is submitted in writing to the
31 presiding officer, with copies mailed to all parties
32 named in the presiding officer's notice of the
33 hearing, at least twenty days before the hearing.

34 b. The petition states facts demonstrating that
35 the petitioner's legal rights, duties, privileges,
36 immunities, or other legal interests may be
37 substantially affected by the proceeding or that the
38 petitioner qualifies as an intervenor under any
39 provision of law.

40 c. The presiding officer determines that the
41 interests of justice and the orderly and prompt
42 conduct of the proceedings will not be impaired by
43 allowing the intervention.

44 2. The presiding officer may grant a petition for
45 intervention at any time, upon determining that the
46 intervention sought is in the interests of justice and
47 will not impair the orderly and prompt conduct of the
48 proceedings.

49 3. If a petitioner qualifies for intervention, the
50 presiding officer may impose conditions upon the

H-1682

-39-

H-1682

Page 40

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

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

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

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

16 4. The presiding officer shall issue an order
17 granting or denying each pending petition for
18 intervention, specifying any conditions, and briefly
19 stating the reasons for the order. The presiding
20 officer may modify the order at any time, stating the
21 reasons for the modification. The presiding officer
22 shall promptly give notice of an order granting,
23 denying, or modifying intervention to the petitioner
24 for intervention and to all parties.

25 Sec. 49. NEW SECTION. 17A.4210 SUBPOENAS,
26 DISCOVERY, AND PROTECTIVE ORDERS.

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

35 2. Any party or person to whom the subpoena or
36 similar process is directed may object to the issuance
37 of the subpoena or process. The presiding officer and
38 any reviewing district court shall sustain the
39 subpoena or similar process only to the extent that it
40 is found to be in accordance with the law applicable
41 to the issuance of subpoenas or discovery in civil
42 actions.

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

46 4. An agency party that relies on a witness in an
47 adjudicative proceeding, whether or not an agency
48 employee, who has made prior statements or reports to
49 the agency with respect to the subject matter of the
50 witness' testimony, shall, on request, make such

H-1682

-40-

H-1682

Page 41

1 statements or reports available prior to hearing to
2 parties for use on cross-examination, unless those
3 statements or reports are otherwise expressly exempt
4 from disclosure by constitution or statute.
5 Identifiable agency records that are relevant to
6 disputed material facts involved in an adjudicative
7 proceeding, shall, upon request, promptly be made
8 available to a party unless the requested records are
9 expressly exempt from disclosure by constitution or
10 statute.

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

22 a. The whereabouts of the persons who are the
23 subject of the agency investigation are unknown and
24 could not be ascertained with reasonable efforts.

25 b. Such notice to the persons who are the subject
26 of the agency investigation would seriously interfere
27 with the agency's ability to obtain the evidence
28 necessary to perform its law enforcement
29 responsibilities.

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

33 Sec. 50. NEW SECTION. 17A.4211 PROCEDURE AT
34 HEARING.

35 At a hearing, all of the following apply:

36 1. The presiding officer shall regulate the course
37 of the proceedings in conformity with any prehearing
38 order.

39 2. To the extent necessary for full disclosure of
40 all relevant facts and issues, the presiding officer
41 shall afford to all parties the opportunity to
42 respond, present evidence and argument, conduct cross-
43 examination, and submit rebuttal evidence, except as
44 restricted by a limited grant of intervention or by
45 the prehearing order.

46 3. The presiding officer may conduct all or part
47 of the hearing by telephone, videoconference, or other
48 electronic means, if each participant in the hearing
49 has an opportunity to participate in, to hear, and, if
50 technically feasible, to see the entire proceeding

H-1682

-41-

H-1682

Page 42

1 while it is taking place.

2 4. The presiding officer shall cause the hearing
3 to be recorded at the agency's expense. The agency is
4 not required, at its expense, to prepare a transcript,
5 unless required to do so by a provision of law. Any
6 party, at the party's expense, may cause a reporter
7 approved by the agency to prepare a transcript from
8 the agency's record, or cause additional recordings to
9 be made during the hearing if the making of the
10 additional recordings does not cause distraction or
11 disruption. The recording or stenographic notes of
12 oral proceedings or the transcription thereof shall be
13 filed with and maintained by the agency for at least
14 three years from the later of the date of the final
15 agency order in that case, or the date any proceedings
16 for judicial review of that case become final.

17 5. The hearing is open to public observation,
18 except for the parts that the presiding officer states
19 to be closed pursuant to a provision of law expressly
20 authorizing closure. To the extent that a hearing is
21 conducted by telephone, videoconference, or other
22 electronic means, and is not closed, the availability
23 of public observation is satisfied by giving members
24 of the public an opportunity to observe and hear that
25 communication at the location of any one of the
26 participants, as designated by the presiding officer,
27 or if that is not feasible, at reasonable times, to
28 hear or inspect the agency's record, and to inspect
29 any transcript obtained by the agency.

30 Sec. 51. NEW SECTION. 17A.4212 EVIDENCE --
31 OFFICIAL NOTICE.

32 1. Upon proper objection, the presiding officer
33 shall exclude evidence that is irrelevant, immaterial,
34 unduly repetitious, or excludable on constitutional or
35 statutory grounds or on the basis of evidentiary
36 privilege recognized in the courts of this state. In
37 the absence of proper objection, the presiding officer
38 may exclude objectionable evidence after notifying the
39 parties of an intention to do so and providing the
40 parties with an opportunity to object to that
41 exclusion. Evidence shall not be excluded solely
42 because it is hearsay.

43 2. All testimony of parties and witnesses must be
44 made under oath or affirmation.

45 3. Any part of the evidence may be received in
46 written form if doing so will expedite the hearing
47 without substantial prejudice to the interests of any
48 party.

49 4. Documentary evidence may be received in the
50 form of a copy or excerpt. Upon request, parties must

H-1682

-42-

H-1682

Page 43

1 be given an opportunity to compare the copy with the
2 original if available.
3 5. Official notice may be taken of any fact that
4 could be judicially noticed in the courts of this
5 state, the record of other proceedings before the
6 agency, technical or scientific matters within the
7 agency's specialized knowledge, and codes or standards
8 that have been adopted by an agency of the United
9 States, of this state, or of another state, or by a
10 nationally recognized organization or association.
11 Parties must be notified before or during the hearing,
12 or before the issuance of any initial or final order
13 that is based in whole or in part on facts or material
14 noticed, of the specific facts or material noticed and
15 the source thereof, including any staff memoranda and
16 data, and be afforded an opportunity to contest and
17 rebut the facts or material so noticed. However, if
18 the required notification of the parties is infeasible
19 or impracticable prior to the issuance of such an
20 initial or final order, the notification may first
21 occur in that order itself, as long as the parties are
22 afforded, through the granting of a motion for
23 reconsideration timely filed with the presiding
24 officer, an opportunity, after the order is issued, to
25 contest and rebut the facts or material so noticed
26 before that order becomes final.

27 Sec. 52. NEW SECTION. 17A.4213 EX PARTE

28 COMMUNICATIONS.

29 1. Except as provided in subsection 2, or unless
30 required for the disposition of ex parte matters
31 specifically authorized by statute, a presiding
32 officer serving in an adjudicative proceeding shall
33 not communicate, directly or indirectly, regarding any
34 issue in the proceeding other than inquiries about
35 scheduling, while the proceeding is pending, with any
36 party, with any person who has a direct or indirect
37 interest in the outcome of the proceeding, or with any
38 person who presided at a previous stage of the
39 proceeding, without notice and opportunity for all
40 parties to participate in the communication.

41 2. A member of a multi-member panel of presiding
42 officers may communicate with other members of the
43 panel regarding a matter pending before the panel, and
44 any presiding officer may receive aid from staff
45 assistants if the assistants do not receive ex parte
46 communications of a type that the presiding officer
47 would be prohibited from receiving or that furnish,
48 augment, diminish, or modify the evidence in the
49 record.

50 3. Unless required for the disposition of ex parte

H-1682

-43-

H-1682

Page 44

1 matters specifically authorized by statute, a party to
2 an adjudicative proceeding, and a person who has a
3 direct or indirect interest in the outcome of the
4 proceeding or who presided at a previous stage of the
5 proceeding, shall not communicate, directly or
6 indirectly, in connection with any issue in that
7 proceeding other than inquiries about scheduling,
8 while the proceeding is pending, with any person
9 serving as presiding officer, without notice and
10 opportunity for all parties to participate in the
11 communication.

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

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

32 6. When necessary to eliminate the effect of an ex
33 parte communication received in violation of this
34 section, a presiding officer who receives the
35 communication shall be disqualified and the portions
36 of the record pertaining to the communication shall be
37 sealed by protective order.

38 7. The agency and any party may report any
39 violation of this section to appropriate authorities
40 for any disciplinary proceedings provided by law. In
41 addition, each agency by rule may provide for
42 appropriate sanctions, including default, suspending
43 or revoking a privilege to practice before the agency,
44 and for censuring, suspending, or dismissing agency
45 personnel, for any violations of this section.

46 8. In a proceeding for judicial review, the burden
47 shall be on the party seeking to uphold the validity
48 of an order to demonstrate that any violation of
49 subsections 1 through 5 relating to the issuance of
50 that order did not prejudice the substantial rights of

H-1682

-44-

H-1682

Page 45

1 the party seeking its invalidation.

2 Sec. 53. NEW SECTION. 17A.4214 SEPARATION OF
3 FUNCTIONS.

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

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

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

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

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

34 Sec. 54. NEW SECTION. 17A.4215 FINAL ORDER --
35 INITIAL ORDER.

36 1. If the presiding officer is the agency head,
37 the presiding officer shall issue a final order.

38 2. If the presiding officer is not the agency
39 head, the presiding officer shall issue an initial
40 order, which becomes a final order unless reviewed in
41 accordance with section 17A.4216.

42 3. A final order and an initial order must include
43 the date of its issuance and, separately stated,
44 findings of fact, conclusions of law, and policy
45 reasons for the decision if it is an exercise of the
46 agency's discretion, for all aspects of the order,
47 including the remedy prescribed and, if applicable,
48 the action taken on a petition for stay of
49 effectiveness. The order must include an explanation
50 of why the evidence in the record supports each

H-1682

-45-

H-1682

Page 46

1 finding of fact and why the evidence in the record
2 that is contrary to a finding does not preclude it.
3 Findings of fact, if set forth in language that is no
4 more than mere repetition or paraphrase of the
5 relevant provision of law, must also be accompanied by
6 a concise and explicit statement of each of the
7 underlying facts in the record that support those
8 findings. Each conclusion of law must be supported by
9 cited authority or by a reasoned explanation. If a
10 party has submitted proposed findings of fact,
11 conclusions of law, or policy reasons, the order must
12 include a ruling on the proposed findings. The order
13 must also include a statement of the available
14 procedures and time limits for seeking reconsideration
15 or other administrative relief from that final or
16 initial order. An initial order must include a
17 statement of any circumstances under which the initial
18 order, without further notice, may become a final
19 order.

20 4. Findings of fact must be based exclusively upon
21 the evidence of record in the adjudicative proceeding
22 and on matters officially noticed in that proceeding.
23 Findings must be based upon the kind of evidence on
24 which reasonably prudent persons are accustomed to
25 rely in the conduct of their serious affairs and may
26 be based upon such evidence even if it would be
27 inadmissible in a civil trial. The presiding
28 officer's experience, technical competence, and
29 specialized knowledge may be utilized in evaluating
30 evidence, but only in accordance with section
31 17A.4212, subsection 5. Unless provided otherwise by
32 another provision of law, findings of fact shall be
33 based upon a preponderance of the evidence and the
34 burden of proof shall be on the proponent of the
35 agency action requested.

36 5. If a person serving or designated to serve as
37 presiding officer becomes unavailable, for any reason,
38 before issuance of the final order or initial order, a
39 substitute presiding officer must be appointed as
40 provided in section 17A.4202. The substitute
41 presiding officer shall use any existing record and
42 may conduct any further proceedings appropriate in the
43 interests of justice; but if demeanor of witnesses is
44 a substantial factor and the original presiding
45 officer is unavailable the portions of the hearing
46 involving demeanor heard by the original presiding
47 officer shall be heard again by the new presiding
48 officer.

49 6. The presiding officer may allow the parties a
50 designated amount of time after conclusion of the

H-1682

-46-

H-1682

Page 47

1 hearing for the submission of proposed findings.

2 7. A final order or initial order must be issued
3 in writing within ninety days after the later of the
4 conclusion of the hearing or after submission of
5 proposed findings in accordance with subsection 6, or
6 the timely submission of any post-hearing briefs,
7 unless this period is waived, extended with the
8 written consent of all parties, or extended for good
9 cause shown. Violation of this subsection may not be
10 relied on as a basis for the invalidation of an order
11 in any circumstances where that result would prejudice
12 any party other than the agency.

13 8. The presiding officer shall cause copies of the
14 final order or initial order to be mailed or otherwise
15 delivered to each party within two working days from
16 the time the order is issued.

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

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

23 a. A provision of law precludes or limits agency
24 review of the initial order.

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

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

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

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

35 2. Unless provided otherwise by statute, a
36 petition for appeal from an initial order must be
37 filed with the agency head, or with any person
38 designated for this purpose by rule of the agency,
39 within twenty days after issuance of the initial order
40 or within such lesser time period that exceeds ten
41 days, as established by rule of the agency. If the
42 agency head on its own motion decides to review an
43 initial order, the agency head shall give written
44 notice of its intention to review the initial order
45 within a time period established by rule of the agency
46 that is no longer than twenty days after its issuance.
47 The time period for a party to file a petition for
48 appeal or for the agency head to give notice of its
49 intention to review an initial order on the agency
50 head's own motion is tolled by the submission of a

H-1682

-47-

H-1682

Page 48

1 timely petition for reconsideration of the initial
2 order pursuant to section 17A.4218, and a new time
3 period starts to run upon disposition of the petition
4 for reconsideration. If an initial order is subject
5 both to a timely petition for reconsideration and to a
6 petition for appeal or to review by the agency head on
7 its own motion, the petition for reconsideration must
8 be disposed of first, unless the agency head
9 determines that action on the petition for
10 reconsideration has been unreasonably delayed.

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

15 4. The presiding officer for the review of an
16 initial order shall exercise all the decision-making
17 power that the presiding officer would have had to
18 issue a final order had the presiding officer presided
19 over the hearing, except to the extent that the issues
20 subject to review are limited by a provision of law or
21 by the presiding officer upon notice to all parties.

22 5. The presiding officer shall afford each party
23 an opportunity to present briefs and may afford each
24 party an opportunity to present oral argument.

25 6. Before issuing a final order, the presiding
26 officer may cause a transcript to be prepared, at the
27 agency's expense, of such portions of the proceeding
28 under review as the presiding officer considers
29 necessary.

30 7. The presiding officer may issue a final order
31 disposing of the proceeding or may remand the matter
32 for further proceedings with instructions to the
33 person who issued the initial order. Upon remanding a
34 matter, the presiding officer may order such temporary
35 relief as is authorized and appropriate.

36 8. A final order or an order remanding the matter
37 for further proceedings must be issued in writing
38 within sixty days after receipt of briefs and oral
39 argument unless that period is waived, extended with
40 the written consent of all parties, extended for good
41 cause shown, or extended by rule for that class of
42 cases for an additional period of not longer than
43 thirty days.

44 9. A final order or an order remanding the matter
45 for further proceedings under this section must
46 identify any difference between this order and the
47 initial order and must include, or incorporate by
48 express reference to the initial order, all the
49 matters required by section 17A.4215, subsection 3.

50 10. The presiding officer shall cause copies of

H-1682

-48-

H-1682

Page 49

1 the final order or order remanding the matter for
2 further proceedings to be mailed or otherwise
3 delivered to each party within two working days from
4 the time the order is issued.

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

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

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

17 Unless otherwise provided by statute or rule the
18 following apply:

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

28 2. The petition must be disposed of by the same
29 person or persons who issued the initial or final
30 order, if available.

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

43 Sec. 58. NEW SECTION. 17A.4219 REVIEW BY
44 SUPERIOR AGENCY.

45 If, pursuant to statute, an agency may review the
46 final order of another agency, the review is deemed to
47 be a continuous proceeding as if before a single
48 agency. Except to the extent another statute provides
49 otherwise, the final order of the first agency is
50 treated as an initial order and the second agency

H-1682

-49-

1 functions as though it were reviewing an initial order
2 in accordance with section 17A.4216.

3 Sec. 59. NEW SECTION. 17A.4220 EFFECTIVENESS OF
4 ORDERS.

5 1. Unless a later date is stated in a final order
6 or a stay is granted, a final order is effective
7 twenty days after issuance, except for any of the
8 following:

9 a. A party shall not be required to comply with a
10 final order unless the party has been served with or
11 has actual knowledge of the final order.

12 b. A final order shall not be invoked for any
13 purpose against any person unless the agency has made
14 the final order available for public inspection and
15 copying or the person has actual knowledge of the
16 final order.

17 c. A final order may become effective on a
18 specified date stated in the order that is earlier
19 than twenty days after its issuance if any of the
20 following exist:

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

23 (2) The order only confers a benefit or relieves a
24 restriction on the parties other than the agency
25 issuing the order.

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

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

33 a. When the initial order is issued, if
34 administrative review is unavailable.

35 b. When the agency head issues an order stating,
36 after a petition for appeal has been filed, that
37 review will not be exercised, if discretion is
38 available to make a determination to this effect.

39 c. Twenty days after issuance of the initial
40 order, if within that period, no party has filed a
41 petition for appeal and the agency head has not given
42 written notice of its intention to exercise review.

43 3. Unless a later date is stated in an initial
44 order or a stay is granted, an initial order that
45 becomes a final order in accordance with subsection 2
46 and section 17A.4215 is effective twenty days after
47 becoming a final order, except for any of the
48 following:

49 a. A party shall not be required to comply with
50 the final order unless the party has been served with

H-1682

Page 51

1 or has actual knowledge of the initial order or of an
2 order stating that review will not be exercised.

3 b. An initial order shall not be invoked for any
4 purpose against any person unless the agency has made
5 the initial order available for public inspection and
6 copying or the person has actual knowledge of the
7 initial order or of an order stating that review will
8 not be exercised.

9 c. An initial order that becomes a final order may
10 become effective on a specified date stated in the
11 order that is earlier than twenty days after it
12 becomes a final order if it satisfies the requirements
13 of subsection 1, paragraph "a", "b", or "c".

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

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

18 1. An agency shall maintain an official record of
19 each adjudicative proceeding under this part for a
20 period of at least three years from the later of the
21 date of the final agency decision in that case or the
22 date any proceedings for judicial review of that case
23 became final.

24 2. The agency record consists only of all of the
25 following:

26 a. Notices of all proceedings.

27 b. Any prehearing order.

28 c. Any motions, pleadings, briefs, petitions,
29 requests, and intermediate rulings.

30 d. Evidence received or considered.

31 e. A statement of matters officially noticed.

32 f. Proffers of proof and objections and rulings
33 thereon.

34 g. Proposed findings, requested orders, and
35 exceptions.

36 h. The record prepared for the presiding officer
37 at the hearing, together with any transcript of all or
38 part of the hearing considered before final
39 disposition of the proceeding.

40 i. Any final order, initial order, or order on
41 reconsideration.

42 j. Staff memoranda or data submitted to the
43 presiding officer, unless prepared and submitted by
44 personal assistants and not inconsistent with section
45 17A.4213, subsection 2.

46 k. Matters placed on the record after an ex parte
47 communication.

48 3. Except to the extent that this chapter or
49 another statute provides otherwise, the agency record
50 constitutes the exclusive basis for agency action in

H-1682

-51-

H-1682

Page 52

1 adjudicative proceedings under this part and for
2 judicial review thereof.

3

PART 3

4

OFFICE OF ADMINISTRATIVE HEARINGS

5

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

8

9 1. An independent office of administrative
10 hearings is created to be headed by a director
11 appointed by the governor and confirmed by the senate.
12 The director serves at the pleasure of the governor.

13 2. The office shall employ administrative law
14 judges as necessary to conduct proceedings required by
15 this chapter or any other provision of law.

16 Administrative law judges employed by the office shall
17 not perform duties inconsistent with their duties and
18 responsibilities as administrative law judges and
19 shall not be located in offices within the agencies
20 for which they act as presiding officers.

21 Administrative law judges shall be covered by the
22 merit system provisions of chapter 19A. Subject to
23 the approval of the department of personnel, the
24 office shall, insofar as practicable, provide for
25 different classes of administrative law judges with
26 different salary scales. The office shall also
27 facilitate, insofar as practicable, specialization by
28 its administrative law judges so that particular
29 judges may become expert in presiding over cases in
30 particular agencies.

31 3. If the office cannot furnish one of its
32 administrative law judges in response to an agency
33 request, the director shall designate in writing a
34 full-time employee of an agency other than the
35 requesting agency to serve as administrative law judge
36 for the proceeding, but only with the consent of the
37 employing agency. The designee must possess the same
38 qualifications required of administrative law judges
39 employed by the office.

40 4. The director may furnish administrative law
41 judges on a contract basis to any governmental entity
42 to conduct any proceeding not subject to this chapter.

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

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

50 a. To establish qualifications for administrative
51 law judges employed by the office, and, subject to the
52 approval of the department of personnel, procedures by

H-1682

-52-

H-1682

Page 53

1 which candidates for a position as an administrative
2 law judge in the office will be considered for
3 employment and the manner in which public notice of
4 vacancies for positions as administrative law judges
5 in the office will be given.

6 b. To establish procedures for agencies to request
7 and for the director to assign administrative law
8 judges employed by the office; however, an agency
9 shall not select or reject any individual
10 administrative law judge for any proceeding except in
11 accordance with this chapter.

12 c. To establish procedures and adopt forms,
13 consistent with this chapter and other provisions of
14 law, to govern administrative law judges employed by
15 the office, but any rules adopted under this paragraph
16 shall be applicable to a particular adjudicative
17 proceeding only to the extent that they are not
18 inconsistent with the rules of the agency under whose
19 authority that proceeding is conducted.

20 d. To establish standards and procedures for the
21 evaluation, training, promotion, and discipline by the
22 office of administrative law judges employed by the
23 office.

24 e. To establish, consistent with the provisions of
25 this chapter, a code of administrative judicial
26 conduct that is similar in function and substantially
27 equivalent to the Iowa code of judicial conduct, to
28 govern the actions of all persons who act as presiding
29 officers under the authority of section 17A.4202,
30 subsection 1.

31 f. To facilitate the performance of the
32 responsibilities conferred upon the office by this
33 chapter.

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

35 a. Maintain a staff of reporters and other
36 personnel.

37 b. Administer the provisions of this section and
38 rules adopted under its authority.

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

42 PART 4

43 CONFERENCE ADJUDICATIVE HEARING

44 Sec. 62. NEW SECTION. 17A.4401 CONFERENCE
45 ADJUDICATIVE HEARING -- APPLICABILITY.

46 A conference adjudicative hearing may be used if
47 its use in the circumstances does not violate any
48 provision of law and the matter is entirely within one
49 or more categories for which the agency by rule has
50 adopted this part. However, those categories may

H-1682

-53-

H-1682

Page 54

1 include only the following:

2 1. A matter in which there is no disputed issue of
3 material fact.

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

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

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

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

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

31 e. A matter as to which there is no constitutional
32 or statutory right, prior to the issuance of an order,
33 to an opportunity for an evidentiary hearing that is
34 required to be determined on the record of that
35 proceeding.

36 Sec. 63. NEW SECTION. 17A.4402 CONFERENCE
37 ADJUDICATIVE HEARING -- PROCEDURES.

38 The procedures of this chapter pertaining to formal
39 adjudicative hearings apply to a conference
40 adjudicative hearing, except to the following extent:

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

44 2. The provisions of section 17A.4210 do not apply
45 to conference adjudicative hearings insofar as those
46 provisions authorize the issuance and enforcement of
47 subpoenas and discovery orders, but do apply to
48 conference adjudicative hearings insofar as those
49 provisions authorize the presiding officer to issue
50 protective orders at the request of any party or upon

H-1682

-54-

H-1682

Page 55

1 the presiding officer's motion.

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

4 a. The presiding officer shall regulate the course
5 of the proceedings.

6 b. Only the parties may testify and present
7 written exhibits.

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

11 4. The provisions of section 17A.4215, subsection
12 4, requiring findings of fact to be based exclusively
13 on the evidence of record and on matters officially
14 noticed, and section 17A.4221 do not apply; instead,
15 the provisions of section 17A.4601 apply.

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

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

30 2. If a party has reason to believe that essential
31 facts must be obtained in order to permit an adequate
32 presentation of the case, the party may inform the
33 presiding officer regarding the general nature of the
34 facts and the sources from which the party would
35 propose to obtain those facts if the proceeding were
36 converted to a formal adjudicative hearing.

37 PART 5

38 EMERGENCY AND SUMMARY ADJUDICATIVE PROCEEDINGS

39 Sec. 65. NEW SECTION. 17A.4501 EMERGENCY
40 ADJUDICATIVE PROCEEDINGS.

41 1. An agency may use emergency adjudicative
42 proceedings in a situation involving an immediate
43 danger to the public health, safety, or welfare
44 requiring immediate agency action.

45 2. The agency may take only such action as is
46 necessary to prevent or avoid the immediate danger to
47 the public health, safety, or welfare that justifies
48 use of emergency adjudication.

49 3. The agency shall issue an order, including a
50 brief statement of findings of fact, conclusions of

H-1682

-55-

H-1682

Page 56

1 law, and policy reasons for the decision if it is an
2 exercise of the agency's discretion, to justify the
3 determination of an immediate danger and the agency's
4 decision to take the specific action.

5 4. The agency shall give such notice as is
6 practicable to persons who are required to comply with
7 the order. The order is effective when issued.

8 5. After issuing an order pursuant to this
9 section, the agency shall proceed as quickly as
10 feasible to complete any proceedings that would be
11 required if the matter did not involve an immediate
12 danger.

13 6. The agency record consists of any documents
14 regarding the matter that were considered or prepared
15 by the agency. The agency shall maintain these
16 documents as its official record.

17 7. Unless otherwise required by a provision of
18 law, the agency record need not constitute the
19 exclusive basis for agency action in emergency
20 adjudicative proceedings or for judicial review
21 thereof.

22 Sec. 66. NEW SECTION. 17A.4502 SUMMARY
23 ADJUDICATIVE PROCEEDINGS -- APPLICABILITY.

24 An agency may use summary adjudicative proceedings
25 if all of the following apply:

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

28 2. The protection of the public interest does not
29 require the agency to give notice and an opportunity
30 to participate to persons other than the parties.

31 3. The matter is entirely within one or more
32 categories for which the agency by rule has adopted
33 this section and sections 17A.4503 to 17A.4505;
34 however, those categories may include only the
35 following:

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

38 b. A disciplinary sanction against a student which
39 does not involve expulsion or suspension for more than
40 ten days from an educational institution, or a
41 reprimand, warning, disciplinary report, or other
42 similar sanction without continuing impact against a
43 public employee.

44 c. The denial of an application after the
45 applicant has abandoned the application.

46 d. The denial of an application for admission to
47 an educational institution or for employment by an
48 agency.

49 e. The denial, in whole or in part, of an
50 application if the applicant has an opportunity for

H-1682

-56-

H-1682

Page 57

1 administrative review in accordance with section
2 17A.4504.

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

5 g. The acquisition, leasing, or disposal of
6 property or the procurement of goods or services by
7 contract.

8 h. A matter as to which there is no disputed issue
9 of material fact and as to which, even if there were
10 such a disputed issue of fact, there would be no
11 constitutional or statutory right, prior to the
12 issuance of an order, to an opportunity for an
13 evidentiary hearing required to be determined on the
14 record of that proceeding.

15 i. A matter that does not qualify for treatment as
16 a conference adjudicative hearing under section
17 17A.4401, subsection 2, paragraphs "a" through "e",
18 and as to which there is no constitutional or
19 statutory right, prior to the issuance of an order, to
20 an opportunity for an evidentiary hearing that is
21 required to be determined on the record of that
22 proceeding.

23 Sec. 67. NEW SECTION. 17A.4503 SUMMARY
24 ADJUDICATIVE PROCEEDINGS -- PROCEDURES.

25 1. The agency head, one or more members of the
26 agency head, one or more administrative law judges
27 assigned by the office of administrative hearings in
28 accordance with section 17A.4301, or, unless
29 prohibited by law, one or more other persons
30 designated by the agency head in the discretion of the
31 agency head, may be the presiding officer. Unless
32 prohibited by law, a person exercising authority over
33 the matter is the presiding officer.

34 2. If the proceeding involves a monetary matter or
35 a suspension, reprimand, warning, disciplinary report,
36 or other similar sanction, against a student or public
37 employee all of the following apply:

38 a. The presiding officer, before taking action,
39 shall give each party an opportunity to be informed of
40 the agency's view of the matter and to explain the
41 party's view of the matter.

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

45 3. An order issued in a proceeding that involves a
46 monetary matter must be in writing. An order in any
47 other summary adjudicative proceeding may be oral or
48 written.

49 4. The agency, by reasonable means, shall furnish
50 to each party notification of the order in a summary

H-1682

-57-

H-1682

Page 58

1 adjudicative proceeding. Notification must at least
2 include a statement of the agency's action.

3 Sec. 68. NEW SECTION. 17A.4504 ADMINISTRATIVE
4 REVIEW OF SUMMARY ADJUDICATIVE PROCEEDINGS --
5 APPLICABILITY.

6 Except to the extent prohibited by any provision of
7 law, an agency, on its own motion, may conduct an
8 administrative review of an order resulting from
9 summary adjudicative proceedings, and shall conduct
10 this review upon the written or oral request of a
11 party if the agency receives the request within ten
12 days after furnishing notification under section
13 17A.4503, subsection 4.

14 Sec. 69. NEW SECTION. 17A.4505 ADMINISTRATIVE
15 REVIEW OF SUMMARY ADJUDICATIVE PROCEEDINGS --
16 PROCEDURES.

17 Unless otherwise provided by statute:

18 1. An agency need not furnish notification of the
19 pendency of administrative review to any person who
20 did not request the review, but the agency shall not
21 take any action on review less favorable to any party
22 than the original order without giving that party
23 notice and an opportunity to explain that party's view
24 of the matter.

25 2. The reviewing officer, in the discretion of the
26 agency head, may be any person who could have presided
27 at the summary adjudicative proceeding, but the
28 reviewing officer must be one who is authorized to
29 grant appropriate relief upon review.

30 3. The reviewing officer shall give each party an
31 opportunity to explain the party's view of the matter
32 unless the party's view is apparent from the written
33 materials in the file submitted to the reviewing
34 officer. The reviewing officer shall make any
35 inquiries necessary to ascertain whether the
36 proceeding must be converted to a conference
37 adjudicative hearing or a formal adjudicative hearing.

38 4. The reviewing officer may issue an order
39 disposing of the proceeding in any manner that was
40 available to the presiding officer at the summary
41 adjudicative proceeding or the reviewing officer may
42 remand the matter for further proceedings, with or
43 without conversion to a conference adjudicative
44 hearing or a formal adjudicative hearing.

45 5. If the order under review is or should have
46 been in writing, the order on review must be in
47 writing, including a brief statement of findings of
48 fact, conclusions of law, and policy reasons for the
49 decision if it is an exercise of the agency's
50 discretion, to justify the order, and a notice of any

H-1682

-58-

H-1682

Page 59

1 further available administrative review.

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

7

PART 6

8 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDING RECORDS

9 Sec. 70. NEW SECTION. 17A.4601 AGENCY RECORD OF
10 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDINGS AND
11 ADMINISTRATIVE REVIEW.

12 1. The agency record consists of any documents
13 regarding the matter that were submitted by a party
14 to, or were considered or prepared by the presiding
15 officer for, that conference or summary adjudicative
16 proceeding or by the presiding or reviewing officer
17 for any subsequent agency review. The agency shall
18 maintain these documents as its official record.

19 2. Unless otherwise required by a provision of
20 law, the agency record need not constitute the
21 exclusive basis for agency action in conference or
22 summary adjudicative proceedings or for judicial
23 review thereof.

24

ARTICLE 5

25

JUDICIAL REVIEW AND CIVIL ENFORCEMENT

26

PART 1

27

JUDICIAL REVIEW

28

29 Sec. 71. NEW SECTION. 17A.5101 EXCLUSIVITY OF
30 JUDICIAL REVIEW PROVISIONS -- RELATIONSHIP BETWEEN
31 JUDICIAL REVIEW PROVISIONS OF THIS CHAPTER AND
32 ANCILLARY PROCEDURAL REQUIREMENTS OF OTHER LAW AND
33 SUPERIOR JUDICIAL REMEDIES.

34 Except as expressly provided otherwise by another
35 statute referring to this chapter by name or number,
36 this chapter establishes the exclusive means of
37 judicial review of agency action, except for any of
38 the following:

39 1. The provisions of this chapter for judicial
40 review do not apply to litigation in which the sole
41 issue is a claim for money damages or compensation and
42 the agency whose action is at issue does not have
43 statutory authority to determine the claim.

44 2. Ancillary procedural matters, including
45 intervention, class actions, consolidation, joinder,
46 severance, transfer, protective orders, and other
47 relief from disclosure of privileged or confidential
48 material, are governed, to the extent not inconsistent
49 with this chapter, by other applicable law.

50 3. If the relief available under other sections of
this chapter is not equal or substantially equivalent

H-1682

-59-

H-1682

Page 60

1 to the relief otherwise available under law, the
2 relief otherwise available and the related procedures
3 supersede and supplement this chapter to the extent
4 necessary for their effectuation. The applicable
5 provisions of this chapter and other law must be
6 combined to govern a single proceeding or, if the
7 court orders, two or more separate proceedings, with
8 or without transfer to other courts, but no type of
9 relief may be sought in a combined proceeding after
10 expiration of the time limit for doing so.

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

13 1. A person who qualifies under this chapter
14 regarding standing in section 17A.5106, exhaustion of
15 administrative remedies in section 17A.5107, and time
16 for filing the petition for review in section
17 17A.5108, and other applicable provisions of law
18 regarding bond, compliance, and other preconditions is
19 entitled to judicial review of final agency action,
20 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
23 17A.5103:

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

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

34 Sec. 73. NEW SECTION. 17A.5103 NONFINAL AGENCY
35 ACTION REVIEWABLE.

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

38 1. It appears likely that the person will qualify
39 under section 17A.5102 for judicial review of the
40 related final agency action.

41 2. Postponement of judicial review would result in
42 an inadequate remedy or irreparable harm
43 disproportionate to the public benefit derived from
44 postponement.

45 Sec. 74. NEW SECTION. 17A.5104 JURISDICTION --
46 VENUE.

47 1. The district court shall conduct judicial
48 review.

49 2. Venue shall be in the Polk county district
50 court or the district court for the county in which

H-1682

-60-

H-1682

Page 61

1 the petitioner resides or has its principal place of
2 business. When a proceeding for judicial review has
3 been commenced, a court may, in the interest of
4 justice, transfer the proceeding to the district court
5 for another county.

6 Sec. 75. NEW SECTION. 17A.5105 FORM OF ACTION --
7 SERVICE -- CONTENTS OF PETITION.

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

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

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

15 a. A person to whom the agency action is
16 specifically directed.

17 b. A person who was a party to the agency
18 proceedings that led to the agency action.

19 c. If the challenged agency action is a rule, a
20 person subject to that rule or an association whose
21 members are subject to that rule.

22 d. A person eligible for standing under another
23 provision of law.

24 e. A person otherwise aggrieved or adversely
25 affected by the agency action. For purposes of this
26 paragraph, a person does not have standing as one
27 otherwise aggrieved or adversely affected unless all
28 of the following apply:

29 (1) The agency action has prejudiced or is likely
30 to prejudice that person.

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

35 (3) A judgment in favor of that person would
36 substantially eliminate or redress the prejudice to
37 that person caused or likely to be caused by the
38 agency action.

39 2. The administrative rules review committee of
40 the general assembly, which is required to exercise
41 general and continuing oversight over administrative
42 rules, may petition for judicial review of any rule.

43 Sec. 77. NEW SECTION. 17A.5107 EXHAUSTION OF
44 ADMINISTRATIVE REMEDIES.

45 A person may file a petition for judicial review
46 under this chapter only after exhausting all
47 administrative remedies available within the agency
48 whose action is being challenged and within any other
49 agency authorized to exercise administrative review,
50 except for any of the following:

H-1682

-61-

H-1682

Page 62

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

5 2. A petitioner for judicial review need not
6 exhaust administrative remedies to the extent that
7 this chapter or any other statute states that
8 exhaustion is not required.

9 3. The court may relieve a petitioner of the
10 requirement to exhaust any or all administrative
11 remedies, to the extent that the administrative
12 remedies are inadequate, or requiring their exhaustion
13 would result in irreparable harm disproportionate to
14 the public benefit derived from requiring exhaustion.

15 Sec. 78. NEW SECTION. 17A.5108 TIME FOR FILING
16 PETITION FOR REVIEW.

17 Subject to other requirements of this chapter or of
18 another statute:

19 1. A petition for judicial review of a rule may be
20 filed at any time, except as limited by section
21 17A.3113, subsection 2.

22 2. A petition for judicial review of an order is
23 not timely unless filed within thirty days after
24 issuance of the order, but the time is extended during
25 the pendency of the petitioner's timely attempts to
26 exhaust administrative remedies, if the attempts are
27 not clearly frivolous or repetitious.

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

32 a. During the pendency of the petitioner's timely
33 attempts to exhaust administrative remedies, if the
34 attempts are not clearly frivolous or repetitious.

35 b. During any period that the petitioner did not
36 know and was under no duty to discover, or did not
37 know and was under a duty to discover but could not
38 reasonably have discovered, that the agency had taken
39 the action or that the agency action had a sufficient
40 effect to confer standing upon the petitioner to
41 obtain judicial review under this chapter.

42 Sec. 79. NEW SECTION. 17A.5109 PETITION FOR
43 REVIEW -- FILING AND CONTENTS.

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

47 2. A petition for review must set forth all of the
48 following:

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

50 b. The name and mailing address of the agency

H-1682

-62-

H-1682

Page 63

1 whose action is at issue.

2 c. Identification of the specific agency action at
3 issue, together with a duplicate copy, summary, or
4 brief description of the agency action.

5 d. Identification of persons who were parties in
6 any adjudicative proceedings that led to the agency
7 action.

8 e. Facts to demonstrate that the petitioner is
9 entitled to obtain judicial review.

10 f. Facts on which venue is based.

11 g. The specific grounds on which relief is sought
12 and the petitioner's reasons for believing that relief
13 should be granted.

14 h. A request for relief, specifying the type and
15 extent of relief requested.

16 A petition for review that is in substantial
17 compliance with the requirements of this subsection
18 shall not be dismissed solely for failure to satisfy
19 its requirements.

20 Sec. 80. NEW SECTION. 17A.5110 PETITION FOR
21 REVIEW -- SERVICE AND NOTIFICATION -- NOTICE OF
22 INTERVENTION.

23 1. Within ten days after the filing of a petition
24 for judicial review of agency action, the petitioner
25 shall serve a file stamped copy of the petition upon
26 the agency in the manner provided by the rules of
27 civil procedure for the personal service of an
28 original notice or shall mail a file stamped copy of
29 the petition to the agency by restricted certified
30 mail.

31 2. Within ten days after the filing of a petition
32 for judicial review of agency action in an
33 adjudicative proceeding, the petitioner shall also
34 give notice of the petition for review to each other
35 party of record in that adjudicative proceeding either
36 by serving a file stamped copy of the petition upon
37 that party in the manner provided by the rules of
38 civil procedure for the personal service of an
39 original notice or by restricted certified mail.

40 3. The personal service or mailing required by
41 this section shall be jurisdictional and may be made
42 on the party or the party's attorney of record in the
43 proceeding before the agency. A mailing shall be
44 addressed to the parties or their attorneys of record
45 at their last known mailing address. Proof of mailing
46 shall be by the return receipt from the restricted
47 certified mail.

48 4. Any party of record in an adjudicative
49 proceeding before an agency who wishes to intervene
50 and participate in the judicial review proceeding must

H-1682

-63-

H-1682

Page 64

1 file an appearance in the court indicating that
2 intention within forty-five days from the date the
3 petition is filed.

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

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

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

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

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

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

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

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

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

33 5. If the court determines that relief should be
34 granted from the agency's action on an application for
35 stay or other temporary remedies, the court may remand
36 the matter to the agency with directions to deny a
37 stay, to grant a stay on appropriate terms, or to
38 grant other temporary remedies, or the court may issue
39 an order denying a stay, granting a stay on
40 appropriate terms, or granting other temporary
41 remedies.

42 Sec. 82. NEW SECTION. 17A.5112 LIMITATION ON NEW
43 ISSUES.

44 A person may obtain judicial review of an issue
45 that was not raised before the agency, only to the
46 extent of any of the following:

47 1. The agency did not have authority to grant an
48 adequate remedy based on a determination of the issue
49 involved because the issue or remedy was not within
50 the jurisdiction of the agency.

H-1682

-64-

H-1682

Page 65

1 2. The person did not know and was under no duty
2 to discover, or did not know and was under a duty to
3 discover but could not reasonably have discovered,
4 facts giving rise to the issue.

5 3. The agency action subject to judicial review is
6 a rule and the person is challenging only the validity
7 of that rule and has not been a party in adjudicative
8 proceedings which provided an adequate opportunity to
9 raise the issue.

10 4. The agency action subject to judicial review is
11 an order and the person was not notified of the
12 adjudicative proceeding in compliance with any
13 provision of law or was notified but was not permitted
14 to participate in that adjudicative proceeding.

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

18 a. A change in controlling law occurring after the
19 agency action.

20 b. Agency action occurring after the person
21 exhausted the last feasible opportunity for seeking
22 relief from the agency.

23 Sec. 83. NEW SECTION. 17A.5113 JUDICIAL REVIEW
24 OF FACTS CONFINED TO RECORD FOR JUDICIAL REVIEW AND
25 ADDITIONAL EVIDENCE TAKEN PURSUANT TO THIS CHAPTER.

26 Judicial review of disputed issues of fact must be
27 confined to the agency record for judicial review as
28 defined in this chapter, supplemented by additional
29 evidence taken pursuant to this chapter.

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

32 1. The court may receive evidence, in addition to
33 that contained in the agency record for judicial
34 review, only if it relates to the validity of the
35 agency action at the time it was taken and is needed
36 to decide disputed issues regarding any of the
37 following:

38 a. Improper constitution as a decision-making
39 body, or improper motive or grounds for
40 disqualification, of those taking the agency action.

41 b. Unlawfulness of procedure or of decision-making
42 process.

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

47 2. The court may remand a matter to the agency,
48 before final disposition of a petition for review,
49 with directions that the agency conduct fact-finding
50 and other proceedings the court considers necessary

H-1682

-65-

H-1682

Page 66

1 and that the agency take such further action on the
2 basis thereof as the court directs, if any of the
3 following apply:

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

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

11 (1) New evidence has become available that relates
12 to the validity of the agency action at the time it
13 was taken, that one or more of the parties did not
14 know and was under no duty to discover, or did not
15 know and was under a duty to discover but could not
16 reasonably have discovered, until after the agency
17 action.

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

20 c. The agency improperly excluded or omitted
21 evidence from the record.

22 d. A relevant provision of law changed after the
23 agency action and the court determines that the new
24 provision may control the outcome.

25 Sec. 85. NEW SECTION. 17A.5115 AGENCY RECORD FOR
26 JUDICIAL REVIEW -- CONTENTS, PREPARATION, TRANSMITTAL,
27 COST.

28 1. Within thirty days after service of the
29 petition, or within further time allowed by the court
30 or by other provision of law, the agency shall
31 transmit to the court the original or a certified copy
32 of the agency record for judicial review of the agency
33 action, consisting of any agency documents expressing
34 the agency action, other documents identified by the
35 agency as having been considered by it before its
36 action and used as a basis for its action, and any
37 other material described in this chapter as the agency
38 record for the type of agency action at issue, subject
39 to the provisions of this section.

40 2. If part of the record has been preserved
41 without a transcript, the agency shall prepare a
42 transcript for inclusion in the record transmitted to
43 the court, except for portions that the parties
44 stipulate to omit in accordance with subsection 4.

45 3. The agency may charge the petitioner with the
46 reasonable cost of preparing any necessary copies and
47 transcripts for transmittal to the court. A failure
48 by the petitioner to pay any of this cost to the
49 agency does not relieve the agency from the
50 responsibility for timely preparation of the record

H-1682

H-1682

Page 67

1 and transmittal to the court.

2 4. By stipulation of all parties to the review
3 proceedings, the record may be shortened, summarized,
4 or organized.

5 5. The court may tax the cost of preparing
6 transcripts and copies for the record in accordance
7 with any of the following:

8 a. Against a party who unreasonably refuses to
9 stipulate to shorten, summarize, or organize the
10 record.

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

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

13 6. Additions to the record pursuant to section
14 17A.5114 must be made as ordered by the court.

15 7. The court may require or permit subsequent
16 corrections or additions to the record.

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

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

22 a. The burden of demonstrating the required
23 prejudice and the invalidity of agency action is on
24 the party asserting invalidity.

25 b. The validity of agency action must be
26 determined in accordance with the standards of review
27 provided in this section, as applied to the agency
28 action at the time that action was taken.

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

32 3. The court shall grant relief from agency action
33 if it determines that substantial rights of the person
34 seeking judicial relief have been prejudiced because
35 the agency action is any of the following:

36 a. Unconstitutional on its face or as applied or
37 is based upon a provision of law that is
38 unconstitutional on its face or as applied.

39 b. Beyond the authority delegated to the agency by
40 any provision of law or in violation of any provision
41 of law.

42 c. Based upon an erroneous interpretation of a
43 provision of law whose interpretation has not clearly
44 been vested by a provision of law in the discretion of
45 the agency.

46 d. Based upon a procedure or decision-making
47 process prohibited by law or was taken without
48 following the prescribed procedure or decision-making
49 process.

50 e. The product of decision making undertaken by

H-1682

-67-

H-1682

Page 68

1 persons who were improperly constituted as a decision-
2 making body, were motivated by an improper purpose, or
3 were subject to disqualification.

4 f. Based upon a determination of fact clearly
5 vested by a provision of law in the discretion of the
6 agency that is not supported by substantial evidence
7 in the record before the court when that record is
8 viewed as a whole. For purposes of this paragraph the
9 following terms have the following meanings:

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

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

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

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

35 h. Action other than a rule that is inconsistent
36 with the agency's prior practice or precedents, unless
37 the agency has justified that inconsistency by stating
38 credible reasons sufficient to indicate a fair and
39 rational basis for the inconsistency.

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

42 j. The product of a decision-making process in
43 which the agency did not consider a relevant and
44 important matter relating to the propriety or
45 desirability of the action in question that a rational
46 decision maker in similar circumstances would have
47 considered prior to taking that action.

48 k. Not required by law and its negative impact on
49 the private rights affected is so grossly
50 disproportionate to the benefits accruing to the

H-1682

-68-

H-1682

Page 69

1 public interest from that action that it must
2 necessarily be deemed to lack any foundation in
3 rational agency policy.

4 1. Based upon an irrational, illogical, or wholly
5 unjustifiable interpretation of a provision of law
6 whose interpretation has clearly been vested by a
7 provision of law in the discretion of the agency.

8 m. Based upon an irrational, illogical, or wholly
9 unjustifiable application of law to fact that has
10 clearly been vested by a provision of law in the
11 discretion of the agency.

12 n. Otherwise unreasonable, arbitrary, capricious,
13 or an abuse of discretion.

14 In making the determinations required by paragraphs
15 "a" through "n" of this subsection, the court:

16 (1) Shall not give any deference to the view of
17 the agency with respect to whether particular matters
18 have been vested by a provision of law in the
19 discretion of the agency.

20 (2) Should not give any deference to the view of
21 the agency with respect to particular matters that
22 have not been vested by a provision of law in the
23 discretion of the agency.

24 (3) Shall give appropriate deference to the view
25 of the agency with respect to particular matters that
26 have been vested by a provision of law in the
27 discretion of the agency.

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

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

32 2. The court may grant other appropriate relief,
33 whether mandatory, injunctive, or declaratory;
34 preliminary or final; temporary or permanent;
35 equitable or legal. In granting relief, the court may
36 order agency action required by law, order agency
37 exercise of discretion required by law, set aside or
38 modify agency action, enjoin or stay the effectiveness
39 of agency action, remand the matter for further
40 proceedings, render a declaratory judgment, or take
41 any other action that is authorized and appropriate.

42 3. The court may also grant necessary ancillary
43 relief to redress the effects of agency action
44 wrongfully taken or withheld, including the taxation
45 of costs, but the court may award attorney's fees or
46 witness fees only to the extent expressly authorized
47 by other law.

48 4. If the court sets aside or modifies agency
49 action or remands the matter to the agency for further
50 proceedings, the court may make any interlocutory

H-1682

-69-

H-1682

Page 70

1 order it finds necessary to preserve the interests of
2 the parties and the public pending further proceedings
3 or agency action.

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

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

17 PART 2

18 CIVIL ENFORCEMENT

19 Sec. 89. NEW SECTION. 17A.5201 PETITION BY
20 AGENCY FOR CIVIL ENFORCEMENT OF RULE OR ORDER.

21 1. In addition to other remedies provided by law,
22 an agency may seek enforcement of its rule or order by
23 filing, under this Part, a petition for civil
24 enforcement in the district court.

25 2. The petition must name, as defendants, each
26 alleged violator against whom the agency seeks to
27 obtain civil enforcement.

28 3. Venue shall be in the district court for the
29 county in which defendant resides or has its principal
30 place of business, or with the consent of the
31 defendant, in the Polk County district court. When a
32 proceeding for enforcement has been commenced, the
33 court may, in the interest of justice, transfer the
34 proceeding to a district court for another county.

35 4. A petition for civil enforcement filed by an
36 agency may request, and the court may grant,
37 declaratory relief, temporary or permanent injunctive
38 relief, any other civil remedy provided by law, or any
39 combination of the foregoing.

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

43 1. Any person authorized by constitution or
44 statute to seek judicial enforcement of an order of a
45 specified agency, and any person who would qualify
46 under this chapter as having standing to obtain
47 judicial review of an agency's failure to enforce its
48 order may file a petition for civil enforcement of
49 that order, but the action shall not be commenced
50 until or under any of the following circumstances:

H-1682

-70-

H-1682

Page 71

1 a. Until at least sixty days after the petitioner
2 has given notice of the alleged violation and of the
3 petitioner's intent to seek civil enforcement to the
4 agency head concerned, to the attorney general, and to
5 each alleged violator against whom the petitioner
6 seeks civil enforcement.

7 b. If the agency has filed and is diligently
8 prosecuting a petition for civil enforcement of the
9 same order against the same defendant.

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

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

16 3. The agency whose order is sought to be enforced
17 may move to dismiss on the grounds that the petition
18 fails to qualify under this section or that
19 enforcement would be contrary to the policy of the
20 agency. The court shall grant the motion to dismiss
21 unless the petitioner demonstrates that the petition
22 qualifies under this section and the agency's failure
23 to enforce its order is based on an exercise of
24 discretion that is improper on one or more of the
25 grounds provided in section 17A.5116, subsection 3,
26 paragraph "h".

27 4. Except to the extent expressly authorized by
28 any provision of law, a petition for civil enforcement
29 filed under this section shall not request, and the
30 court shall not grant, any monetary payment apart from
31 taxable costs.

32 Sec. 91. NEW SECTION. 17A.5203 DEFENSES --
33 LIMITATION ON NEW ISSUES AND NEW EVIDENCE.

34 A defendant, who would be qualified under section
35 17A.5106, subsection 1, section 17A.5107, and section
36 17A.5108 to do so in a proceeding for judicial review,
37 may assert, in a proceeding for civil enforcement any
38 of the following:

39 1. That the rule or order sought to be enforced is
40 invalid on any of the grounds stated in section
41 17A.5116. If that defense is raised, the court may
42 consider issues and receive evidence only within the
43 limitations provided by sections 17A.5112, 17A.5113,
44 and 17A.5114.

45 2. Any of the following defenses on which the
46 court, to the extent necessary for the determination
47 of the matter, may consider new issues or take new
48 evidence:

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

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

H-1682

-71-

H-1682

Page 72

1 c. The party has violated the rule or order but
2 has subsequently complied, but a party who establishes
3 this defense is not necessarily relieved from any
4 sanction provided by law for past violations.

5 d. Any other defense allowed by law.

6 Sec. 92. NEW SECTION. 17A.5204 INCORPORATION OF
7 CERTAIN PROVISIONS ON JUDICIAL REVIEW.

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

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

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

25 Sec. 94. Section 2B.17, subsection 4, Code 1997,
26 is amended to read as follows:

27 4. The Iowa administrative code and the Iowa
28 administrative bulletin shall be cited as provided in
29 section ~~17A.6~~ 17A.2101.

30 Sec. 95. Section 2C.9, subsection 1, Code 1997, is
31 amended to read as follows:

32 1. Investigate, on complaint or on the citizens'
33 aide's own motion, any administrative action of any
34 agency, without regard to the finality of the
35 administrative action, except that the citizens' aide
36 shall not investigate the complaint of an employee of
37 an agency in regard to that employee's employment
38 relationship with the agency. A communication or
39 receipt of information made pursuant to the powers
40 prescribed in this chapter shall not be considered an
41 ex parte communication as described in the provisions
42 of section ~~17A.17~~ 17A.4213.

43 Sec. 96. Section 10A.101, subsection 1, Code 1997,
44 is amended to read as follows:

45 1. "Administrator" means the ~~chief-administrative~~
46 ~~law-judge~~, chief inspector, chief investigator, chief
47 auditor, or the person administering a division of the
48 department.

49 Sec. 97. Section 10A.104, subsection 5, Code 1997,
50 is amended to read as follows:

H-1682

H-1682

Page 73

1 5. Adopt rules deemed necessary for the
2 implementation and administration of this chapter in
3 accordance with chapter 17A, ~~including rules governing~~
4 ~~hearing and appeal proceedings.~~

5 Sec. 98. Section 10A.106, Code 1997, is amended to
6 read as follows:

7 10A.106 DIVISIONS OF THE DEPARTMENT.

8 The department is comprised of the following
9 divisions:

10 ~~1. Appeals and fair hearings division.~~

11 ~~2. 1. Audits division.~~

12 ~~3. 2. Investigations division.~~

13 ~~4. 3. Inspections division.~~

14 The allocation of departmental duties to the
15 divisions of the department in sections ~~10A.202,~~
16 10A.302, 10A.402, and 10A.502 does not prohibit the
17 director from reallocating departmental duties within
18 the department.

19 Sec. 99. Section 10A.601, subsection 7, Code 1997,
20 is amended to read as follows:

21 7. An application for rehearing reconsideration
22 before the appeal board shall be filed pursuant to
23 section ~~17A.16~~ 17A.4218, unless otherwise provided in
24 chapter 19A, 80, 88, 89A, 91C, 96, or 97B. A petition
25 for judicial review of a decision of the appeal board
26 shall be filed pursuant to ~~section 17A.19~~ the
27 provisions for judicial review in chapter 17A, article

28 5. The appeal board may be represented in any such
29 judicial review by an attorney who is a regular
30 salaried employee of the appeal board or who has been
31 designated by the appeal board for that purpose, or at
32 the appeal board's request, by the attorney general.
33 Notwithstanding the petitioner's residency requirement
34 in section ~~17A.19, subsection 2~~ 17A.5104, a petition
35 for judicial review may be filed in the district court
36 of the county in which the petitioner was last
37 employed or resides, provided that if the petitioner
38 does not reside in this state, the action shall be
39 brought in the district court of Polk county, Iowa,
40 and any other party to the proceeding before the
41 appeal board shall be named in the petition.

42 Notwithstanding the thirty-day requirement in section
43 ~~17A.19, subsection 6~~ 17A.5115, the appeal board shall,
44 within sixty days after filing of the petition for
45 judicial review or within a longer period of time
46 allowed by the court, transmit to the reviewing court
47 the original or a certified copy of the entire records
48 of a contested case. The appeal board may also
49 certify to the court, questions of law involved in any
50 decision by the appeal board. Petitions for judicial

H-1682

-73-

H-1682

Page 74

1 review and the questions so certified shall be given
2 precedence over all other civil cases except cases
3 arising under the workers' compensation law of this
4 state. No bond shall be required for entering an
5 appeal from any final order, judgment, or decree of
6 the district court to the supreme court.

7 Sec. 100. Section 21.6, subsection 1, Code 1997,
8 is amended to read as follows:

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

19 Sec. 101. Section 22.7, subsection 15, Code 1997,
20 is amended to read as follows:

21 15. Information concerning the procedures to be
22 used to control disturbances at adult correctional
23 institutions. Such information shall also be exempt
24 from public inspection under ~~section 17A-3~~ sections
25 17A.2101 and 17A.2102. As used in this subsection
26 disturbance means a riot or a condition that can
27 reasonably be expected to cause a riot.

28 Sec. 102. Section 22.8, subsection 4, paragraph f,
29 Code 1997, is amended to read as follows:

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

33 Sec. 103. Section 22.9, unnumbered paragraph 2,
34 Code 1997, is amended to read as follows:

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

42 Sec. 104. Section 22.10, subsection 1, Code 1997,
43 is amended to read as follows:

44 1. The rights and remedies provided by this
45 section are in addition to any rights and remedies
46 provided by ~~section 17A-19~~ chapter 17A, article 5.
47 Any aggrieved person, any taxpayer to or citizen of
48 the state of Iowa, or the attorney general or any
49 county attorney, may seek judicial enforcement of the
50 requirements of this chapter in an action brought

H-1682

-74-

H-1682

Page 75

1 against the lawful custodian and any other persons who
2 would be appropriate defendants under the
3 circumstances. Suits to enforce this chapter shall be
4 brought in the district court for the county in which
5 the lawful custodian has its principal place of
6 business.

7 Sec. 105. Section 68B.2, subsection 13, paragraph
8 b, subparagraph (8), Code 1997, is amended to read as
9 follows:

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

14 Sec. 106. Section 68B.31, subsection 8, Code 1997,
15 is amended to read as follows:

16 8. If a hearing on the complaint is ordered the
17 ethics committee shall receive all admissible
18 evidence, determine any factual or legal issues
19 presented during the hearing, and make findings of
20 fact based upon evidence received. Hearings shall be
21 conducted in the manner prescribed for adjudicative
22 proceedings in section 17A.12 chapter 17A, article 4.
23 The rules of evidence applicable under section ~~17A.14~~
24 17A.4212 shall also apply in hearings before the
25 ethics committee. Clear and convincing evidence shall
26 be required to support a finding that the member of
27 the general assembly or lobbyist before the general
28 assembly has committed a violation of this chapter.
29 Parties to a complaint may, subject to the approval of
30 the ethics committee, negotiate for settlement of
31 disputes that are before the ethics committee. Terms
32 of any negotiated settlements shall be publicly
33 recorded. If a complaint is filed or initiated less
34 than ninety days before the election for a state
35 office, for which the person named in the complaint is
36 the incumbent officeholder, the ethics committee
37 shall, if possible, set the hearing at the earliest
38 available date so as to allow the issue to be resolved
39 before the election. An extension of time for a
40 hearing may be granted when both parties mutually
41 agree on an alternate date for the hearing. The
42 ethics committee shall make every effort to hear all
43 ethics complaints within three months of the date that
44 the complaints are filed. However, after three months
45 from the date of the filing of the complaint,
46 extensions of time for purposes of preparing for
47 hearing may only be granted by the ethics committee
48 when the party charged in the complaint with the
49 ethics violation consents to an extension. If the
50 party charged does not consent to an extension, the

H-1682

-75-

H-1682

Page 76

1 ethics committee shall not grant any extensions of
2 time for preparation prior to hearing. All complaints
3 alleging a violation of this chapter or the code of
4 ethics shall be heard within nine months of the filing
5 of the complaint. Final dispositions of violations,
6 which the ethics committee has found to have been
7 established by clear and convincing evidence, shall be
8 made within thirty days of the conclusion of the
9 hearing on the complaint.

10 Sec. 107. Section 68B.34, Code 1997, is amended to
11 read as follows:

12 68B.34 INVESTIGATION BY INDEPENDENT SPECIAL
13 COUNSEL -- PROBABLE CAUSE.

14 The purpose of an investigation by the independent
15 special counsel is to determine whether there is
16 probable cause to proceed with an adjudicatory hearing
17 on the matter. In conducting investigations and
18 holding hearings, the independent special counsel may
19 require by subpoena the attendance and testimony of
20 witnesses and may subpoena books, papers, records, and
21 any other real evidence relating to the matter before
22 the independent special counsel. The independent
23 special counsel shall have the additional authority
24 provided in section ~~17A.13~~ 17A.4210. If the
25 independent special counsel determines at any stage in
26 the proceedings that take place prior to hearing that
27 the complaint is without merit, the independent
28 special counsel shall report that determination to the
29 appropriate ethics committee and the complaint shall
30 be dismissed and the complainant and the party charged
31 shall be notified. If, after investigation, the
32 independent special counsel determines evidence exists
33 which, if proven, would support a finding of a
34 violation of this chapter, a finding of probable cause
35 shall be made and reported to the ethics committee,
36 and a hearing shall be ordered by the ethics committee
37 as provided in section 68B.31. Independent special
38 counsel investigations are not meetings of a
39 governmental body within the meaning of chapter 21,
40 and records and information obtained by independent
41 special counsel during investigations are confidential
42 until disclosed to a legislative ethics committee
43 under section 68B.31.

44 Sec. 108. Section 80A.17, subsection 1, unnumbered
45 paragraphs 2 and 3, Code 1997, are amended to read as
46 follows:

47 Pursuant to section ~~17A.19,--subsection-6~~ 17A.5115,
48 the department, upon an appeal by the licensee of the
49 decision by the department shall transmit the entire
50 record of the contested case to the reviewing court.

H-1682

-76-

H-1682

Page 77

1 Notwithstanding section ~~17A:19-subsection-6~~
2 17A.5115, if a waiver of privilege has been
3 involuntary and evidence has been received at a
4 disciplinary hearing, the court shall order withheld
5 the identity of the individual whose privilege was
6 waived.

7 Sec. 109. Section 86.17, subsection 1, Code 1997,
8 is amended to read as follows:

9 1. A deputy industrial commissioner may preside
10 over any ~~contested-case~~ adjudicative proceeding
11 brought under this chapter, or chapter 85 or 85A in
12 the manner provided by chapter 17A. The deputy
13 commissioner or the commissioner may make such
14 inquiries and investigation in ~~contested-case~~
15 adjudicative proceedings as shall be deemed necessary,
16 consistent with the provisions of section ~~17A:17~~
17 17A.4213.

18 Sec. 110. Section 86.19, subsection 2, Code 1997,
19 is amended to read as follows:

20 2. Notwithstanding the requirements of section
21 ~~17A:12~~ 17A.4211, subsection 7 4, a certified shorthand
22 reporter, appointed by the presiding officer in a
23 ~~contested-case~~ an adjudicative proceeding or by the
24 industrial commissioner in an appeal proceeding, may
25 maintain and thus have the responsibility for the
26 recording or stenographic notes for the period
27 required by section ~~17A:12~~ 17A.4211, subsection 7 4.

28 Sec. 111. Section 86.24, subsections 2 and 3, Code
29 1997, are amended to read as follows:

30 2. In addition to the provisions of ~~section-17A:15~~
31 sections 17A.4215 and 17A.4216, the industrial
32 commissioner may affirm, modify, or reverse the
33 decision of a deputy commissioner or the commissioner
34 may remand the decision to the deputy commissioner for
35 further proceedings.

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

40 Sec. 112. Section 86.42, Code 1997, is amended to
41 read as follows:

42 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

43 Any party in interest may present a certified copy
44 of an order or decision of the commissioner, from
45 which a timely petition for judicial review has not
46 been filed or if judicial review has been filed, which
47 has not had execution or enforcement stayed as
48 provided in section ~~17A:19-subsection-5~~ 17A.5111, or
49 an order or decision of a deputy commissioner from
50 which a timely appeal has not been taken within the

H-1682

-77-

H-1682

Page 78

1 agency and which has become final by the passage of
2 time as provided by rule and section ~~17A-15~~ 17A.4220,
3 or an agreement for settlement approved by the
4 commissioner, and all papers in connection therewith,
5 to the district court where judicial review of the
6 agency action may be commenced. The court shall
7 render a decree or judgment and cause the clerk to
8 notify the parties. The decree or judgment, in the
9 absence of a petition for judicial review or if
10 judicial review has been commenced, in the absence of
11 a stay of execution or enforcement of the decision or
12 order of the industrial commissioner, or in the
13 absence of an act of any party which prevents a
14 decision of a deputy industrial commissioner from
15 becoming final, has the same effect and in all
16 proceedings in relation thereto is the same as though
17 rendered in a suit duly heard and determined by the
18 court.

19 Sec. 113. Section 89.5, subsection 4, Code 1997,
20 is amended by striking the subsection.

21 Sec. 114. Section 99A.6, unnumbered paragraph 2,
22 Code 1997, is amended to read as follows:

23 Judicial review of actions of the issuing
24 authorities may be sought in accordance with the terms
25 of the Iowa administrative procedure Act.
26 Municipalities acting as issuing authorities shall be
27 deemed state agencies solely for the purposes of
28 bringing their actions under this chapter within the
29 terms of ~~section-17A-19~~ for judicial review in chapter
30 17A, article 5. If the licensee has not filed a
31 petition for judicial review in district court,
32 revocation shall date from the thirty-first day
33 following the date of the order of the issuing
34 authority. If the licensee has filed a petition for
35 judicial review, revocation shall date from the
36 thirty-first day following entry of the order of the
37 district court, if action by the district court is
38 adverse to the licensee.

39 Sec. 115. Section 123.37, unnumbered paragraph 2,
40 Code 1997, is amended to read as follows:

41 The administrator may compromise and settle
42 doubtful and disputed claims for taxes imposed under
43 this chapter or for taxes of doubtful collectibility,
44 notwithstanding section 7D.9. The administrator may
45 enter into informal settlements as permitted pursuant
46 to section ~~17A-10~~ 17A.1106, to compromise and settle
47 doubtful and disputed claims for taxes imposed under
48 this chapter. The administrator may make a claim
49 under a licensee's or permittee's penal bond for taxes
50 of doubtful collectibility. Whenever a compromise or

H-1682

-78-

H-1682

Page 79

1 settlement is made, the administrator shall make a
2 complete record of the case showing the tax assessed,
3 reports and audits, if any, the licensee's or
4 permittee's grounds for dispute or contest, together
5 with all evidence of the dispute or contest, and the
6 amounts, conditions, and settlement or compromise of
7 the dispute or contest.

8 Sec. 116. Section 135.70, Code 1997, is amended to
9 read as follows:

10 135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.

11 The council's decision on an application for
12 certificate of need, when announced pursuant to
13 section 135.69, is a final decision. Any dissatisfied
14 party who is an affected person with respect to the
15 application, and who participated or sought
16 unsuccessfully to participate in the formal review
17 procedure prescribed by section 135.66, may request a
18 rehearing reconsideration in accordance with chapter
19 17A section 17A.4218 and rules of the department. If
20 a rehearing reconsideration is not requested or an
21 affected party remains dissatisfied after the request
22 for rehearing reconsideration, an appeal may be taken
23 in the manner provided by chapter 17A.

24 Notwithstanding the Iowa administrative procedure Act,
25 chapter 17A, a request for rehearing reconsideration
26 is not required, prior to ~~appeal under section 17A.19~~
27 the filing of a petition for judicial review as
28 provided in chapter 17A, article 5.

29 Sec. 117. Section 135C.2, subsection 3, paragraph
30 d, Code 1997, is amended to read as follows:

31 d. Notwithstanding the limitations set out in this
32 subsection regarding rules for intermediate care
33 facilities for persons with mental retardation, the
34 department shall consider the federal interpretive
35 guidelines issued by the federal health care financing
36 administration when interpreting the department's
37 rules for intermediate care facilities for persons
38 with mental retardation. This use of the guidelines
39 is not subject to the rulemaking provisions of
40 sections 17A.4 and 17A.5 chapter 17A, article 3, but
41 the guidelines shall be published in the Iowa
42 administrative bulletin and the Iowa administrative
43 code.

44 Sec. 118. Section 139C.2, subsection 3, Code 1997,
45 is amended to read as follows:

46 3. The department shall establish an expert review
47 panel to determine on a case-by-case basis under what
48 circumstances, if any, a health care provider
49 determined to be infected with HIV or HBV practicing
50 outside the hospital setting or referred to the panel

H-1682

-79-

H-1682

Page 80

1 by a hospital, may perform exposure-prone procedures.
 2 If a health care provider determined to be infected
 3 with HIV or HBV does not comply with the determination
 4 of the expert review panel, the panel shall report the
 5 noncompliance to the examining board with jurisdiction
 6 over the health care provider. A determination of an
 7 expert review panel pursuant to this section is a
 8 final agency action appealable subject to judicial
 9 review pursuant to section-17A-19 chapter 17A, article
 10 5.

11 Sec. 119. Section 147A.5, subsection 3, Code 1997,
 12 is amended to read as follows:

13 3. The department may deny an application for
 14 authorization, or may place on probation, suspend, or
 15 revoke existing authorization if the department finds
 16 reason to believe the program has not been or will not
 17 be operated in compliance with this subchapter and the
 18 rules adopted pursuant to this subchapter, or that
 19 there is insufficient assurance of adequate protection
 20 for the public. The denial or period of probation,
 21 suspension, or revocation shall be effected and
 22 judicial review may be appealed sought as provided by
 23 section-17A-12 for adjudicative proceedings under
 24 chapter 17A, article 5.

25 Sec. 120. Section 147A.7, subsection 2, Code 1997,
 26 is amended to read as follows:

27 2. If clinical issues are involved, the matter
 28 shall be referred to the board for completion of the
 29 investigation and the conduct of any disciplinary
 30 proceeding pursuant to chapter 17A. The findings of
 31 the board shall be the final decision for purposes of
 32 section ~~17A-15~~ 17A.4215 and shall be enforced by the
 33 department.

34 Sec. 121. Section 148C.6A, Code 1997, is amended
 35 to read as follows:

36 148C.6A APPEAL TO BOARD OF MEDICAL EXAMINERS IN
 37 CONTESTED CASES INVOLVING DISCIPLINE.

38 Pursuant to section ~~17A-15~~ 17A.4219, a decision of
 39 the board in ~~a-contested-case~~ an adjudicative
 40 proceeding involving discipline of a person licensed
 41 as a physician assistant may be appealed to the board
 42 of medical examiners.

43 Sec. 122. Section 161A.4, subsection 1, unnumbered
 44 paragraph 1, Code 1997, is amended to read as follows:

45 1. The soil conservation division is established
 46 within the department to perform the functions
 47 conferred upon it in chapters 161A through 161C, 161E,
 48 161F, 207, and 208. The division shall be
 49 administered in accordance with the policies of the
 50 state soil conservation committee, which shall advise

H-1682

H-1682

Page 81

1 the division and which shall approve administrative
2 rules proposed by the division for the administration
3 of chapters 161A through 161C, 161E, 161F, 207, and
4 208 before the rules are adopted pursuant to section
5 ~~17A-5~~ 17A.3115. If a difference exists between the
6 committee and secretary regarding the content of a
7 proposed rule, the secretary shall notify the
8 chairperson of the committee of the difference within
9 thirty days from the committee's action on the rule.

10 The secretary and the committee shall meet to resolve
11 the difference within thirty days after the secretary
12 provides the committee with notice of the difference.

13 Sec. 123. Section 163.30, subsection 3, unnumbered
14 paragraph 3, Code 1997, is amended to read as follows:

15 A permittee shall not represent more than one
16 dealer. Failure of a licensee or permittee to comply
17 with this chapter or a rule made pursuant to this
18 chapter is cause for revocation by the secretary of
19 the permit or license after notice to the alleged
20 offender and the holding of a hearing by the
21 secretary. Rules shall be made in accordance with
22 chapter 17A. A rule, the violation of which is made
23 the basis for revocation, except temporary emergency
24 rules, shall first have been approved after public
25 hearing as provided in section ~~17A-4~~ 17A.3104 after
26 giving twenty days' notice of the hearing as follows:

27 Sec. 124. Section 169.5, subsection 9, paragraph
28 e, Code 1997, is amended to read as follows:

29 e. Hold hearings on all matters properly brought
30 before the board and administer oaths, receive
31 evidence, make the necessary determinations, and enter
32 orders consistent with the findings. The board may
33 require by subpoena the attendance and testimony of
34 witnesses and the production of papers, records, or
35 other documentary evidence and commission depositions.
36 An administrative law judge may be appointed pursuant
37 to ~~section-17A-11, subsection-3~~ chapter 17A, article
38 4, to perform those functions which properly repose in
39 an administrative law judge.

40 Sec. 125. Section 169.5, subsection 9, paragraph
41 i, Code 1997, is amended to read as follows:

42 i. Adopt, amend, or repeal rules relating to the
43 standards of conduct for, testing of, and revocation
44 or suspension of certificates issued to veterinary
45 assistants. However, a certificate shall not be
46 suspended or revoked by less than a two-thirds vote of
47 the entire board in a proceeding conducted in
48 compliance with ~~section-17A-12~~ chapter 17A, article 4.

49 Sec. 126. Section 169.15, Code 1997, is amended to
50 read as follows:

H-1682

-81-

H-1682

Page 82

1 169.15 APPEAL.

2 Any party aggrieved by a decision of the board may
3 ~~appeal the matter to the district court~~ petition for
4 judicial review as provided in ~~section 17A-19~~ chapter
5 17A, article 5.

6 Sec. 127. Section 172D.1, subsection 14, Code
7 1997, is amended to read as follows:

8 14. "Rule of the department" means a rule as
9 defined in section ~~17A-2~~ 17A.1102 which materially
10 affects the operation of a feedlot and which has been
11 adopted by the department. The term includes a rule
12 which was in effect prior to July 1, 1975. Except as
13 specifically provided in section 172D.3, subsection 2,
14 paragraph "b", subparagraph (5), and paragraph "c",
15 subparagraph (5), nothing in this chapter shall be
16 deemed to empower the department to make any rule.

17 Sec. 128. Section 200.3, subsection 20, Code 1997,
18 is amended to read as follows:

19 20. "Rule" means a rule as defined in section
20 ~~17A-2~~ 17A.1102 which materially affects the operation
21 of an anhydrous ammonia plant. The term includes a
22 rule which was in effect prior to July 1, 1984.

23 Sec. 129. Section 203C.10, unnumbered paragraph 2,
24 Code 1997, is amended to read as follows:

25 If upon the filing of the information or complaint
26 the department finds that the licensee has failed to
27 meet the warehouse operator's obligation or otherwise
28 has violated or failed to comply with the provisions
29 of this chapter or any rule ~~promulgated~~ adopted under
30 this chapter, and if the department finds that the
31 public health, safety or welfare imperatively requires
32 emergency action, then the department without hearing
33 may order a summary suspension of the license in the
34 manner provided in section ~~17A-18~~ 17A.4105. When so
35 ordered, a copy of the order of suspension shall be
36 served upon the licensee at the time the information
37 or complaint is served as provided in this section.

38 Sec. 130. Section 207.14, subsection 2, unnumbered
39 paragraph 2, Code 1997, is amended to read as follows:

40 If upon expiration of the time as fixed the
41 administrator finds in writing that the violation has
42 not been abated, the administrator, notwithstanding
43 ~~section 17A-18~~ sections 17A.4105 and 17A.4501, shall
44 immediately order a cessation of coal mining and
45 reclamation operations relating to the violation until
46 the order is modified, vacated, or terminated by the
47 administrator pursuant to procedures outlined in this
48 section. In the order of cessation issued by the
49 administrator under this subsection, the administrator
50 shall include the steps necessary to abate the

H-1682

-82-

H-1682

Page 83

1 violation in the most expeditious manner possible.

2 Sec. 131. Section 207.15, subsection 5, unnumbered
3 paragraph 2, Code 1997, is amended to read as follows:

4 Notwithstanding section ~~17A-20~~ 17A.5118, an appeal
5 bond shall be required for an appeal of a judgment
6 assessing a civil penalty.

7 Sec. 132. Section 216.15, subsection 3, paragraph
8 b, Code 1997, is amended to read as follows:

9 b. For purposes of this chapter, an administrative
10 law judge issuing a determination of probable cause or
11 no probable cause under this section is exempt from
12 ~~section-17A-17~~ sections 17A.4213 and 17A.4214.

13 Sec. 133. Section 216.17, subsection 1, unnumbered
14 paragraphs 2 and 3, Code 1997, are amended to read as
15 follows:

16 For purposes of the time limit for filing a
17 petition for judicial review under the Iowa
18 administrative procedure Act, specified by section
19 ~~17A-19~~ 17A.5108, the issuance of a final decision of
20 the commission under this chapter occurs on the date
21 notice of the decision is mailed by certified mail, to
22 the parties.

23 Notwithstanding the time limit provided in section
24 ~~17A-19, -subsection-3~~ 17A.5108, a petition for judicial
25 review of no-probable-cause decisions and other final
26 agency actions which are not of general applicability
27 must be filed within thirty days of the issuance of
28 the final agency action.

29 Sec. 134. Section 216.17, subsection 6, Code 1997,
30 is amended to read as follows:

31 6. In the enforcement proceeding the court shall
32 determine its order on the same basis as it would in a
33 proceeding reviewing commission action under section
34 ~~17A-19, -subsection-8~~ 17A.5117.

35 Sec. 135. Section 217.30, subsection 8, Code 1997,
36 is amended to read as follows:

37 8. The provisions of this section shall take
38 precedence over section ~~17A-12~~ 17A.4211, subsection 7
39 4.

40 Sec. 136. Section 225C.29, Code 1997, is amended
41 to read as follows:

42 225C.29 COMPLIANCE.

43 Except for a violation of section 225C.28B,
44 subsection 2, the sole remedy for violation of a rule
45 adopted by the commission to implement sections
46 225C.25 through 225C.28B shall be by a proceeding for
47 compliance initiated by request to the division
48 pursuant to chapter 17A. Any decision of the division
49 shall be in accordance with due process of law and is
50 subject to ~~appeal-to-the-Iowa-district-court~~ judicial

H-1682

-83-

H-1682

Page 84

1 review pursuant to ~~sections 17A.19 and 17A.20~~ chapter
2 17A, article 5, and appeal pursuant to section
3 17A.5118 by any aggrieved party. Either the division
4 or a party in interest may apply to the Iowa district
5 court for an order to enforce the decision of the
6 division. Any rules adopted by the commission to
7 implement sections 225C.25 through 225C.28B do not
8 create any right, entitlement, property or liberty
9 right or interest, or private cause of action for
10 damages against the state or a political subdivision
11 of the state or for which the state or a political
12 subdivision of the state would be responsible. Any
13 violation of section 225C.28B, subsection 2, shall
14 solely be subject to the enforcement by the
15 commissioner of insurance and penalties granted by
16 chapter 507B for a violation of section 507B.4,
17 subsection 7.

18 Sec. 137. Section 229.23, subsection 3, Code 1997,
19 is amended to read as follows:

20 3. In addition to protection of the person's
21 constitutional rights, enjoyment of other legal,
22 medical, religious, social, political, personal and
23 working rights and privileges which the person would
24 enjoy if the person were not so hospitalized or
25 detained, so far as is possible consistent with
26 effective treatment of that person and of the other
27 patients of the hospital. If the patient's rights are
28 restricted, the physician's direction to that effect
29 shall be noted on the patient's record. The
30 department of human services shall, in accordance with
31 chapter 17A establish rules setting forth the specific
32 rights and privileges to which persons so hospitalized
33 or detained are entitled under this section ~~and the~~
34 ~~exceptions provided by section 17A.27, subsection 10,~~
35 ~~paragraphs "a" and "k", shall not be applicable to the~~
36 ~~rules so established.~~ The patient or the patient's
37 next of kin or friend shall be advised of these rules
38 and be provided a written copy upon the patient's
39 admission to or arrival at the hospital.

40 Sec. 138. Section 249A.3, subsection 11, paragraph
41 b, Code 1997, is amended to read as follows:

42 b. The department shall exercise the option
43 provided in 42 U.S.C. § 1396p(c) to provide a period
44 of ineligibility for medical assistance due to a
45 transfer of assets by a noninstitutionalized
46 individual or the spouse of a noninstitutionalized
47 individual. For noninstitutionalized individuals, the
48 number of months of ineligibility shall be equal to
49 the total, cumulative uncompensated value of all
50 assets transferred by the individual or the

H-1682

-84-

H-1682

Page 85

1 individual's spouse on or after the look-back date
2 specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by
3 the average monthly cost to a private patient for
4 nursing facility services in Iowa at the time of
5 application. The services for which
6 noninstitutionalized individuals shall be made
7 ineligible shall include any long-term care services
8 for which medical assistance is otherwise available.
9 Notwithstanding ~~section 17A.4~~ sections 17A.3103
10 through 17A.3107, the department may adopt rules
11 providing a period of ineligibility for medical
12 assistance due to a transfer of assets by a
13 noninstitutionalized individual or the spouse of a
14 noninstitutionalized individual without notice of
15 opportunity for public comment, to be effective
16 immediately upon filing under section ~~17A.5~~ 17A.3115,
17 subsection 2, paragraph "b", subparagraph (1).

18 Sec. 139. Section 252.27, unnumbered paragraph 2,
19 Code 1997, is amended to read as follows:

20 The board shall record its proceedings relating to
21 the provision of assistance to specific persons under
22 this chapter. A person who is aggrieved by a decision
23 of the board may ~~appeal~~ seek judicial review of the
24 decision as if it were ~~a contested case~~ an
25 adjudicative proceeding before an agency and as if the
26 person had exhausted administrative remedies in
27 accordance with the procedures and standards ~~in~~
28 ~~section 17A.19, subsections 2 to 8 except paragraphs~~
29 ~~"b" and "e" of subsection 8, and section 17A.20~~ for
30 judicial review in chapter 17A, article 5, except for
31 section 17A.5116, subsection 3, paragraphs "b" and
32 "g", and for appeal in section 17A.5118.

33 Sec. 140. Section 252J.8, subsection 4, paragraph
34 d, Code 1997, is amended to read as follows:

35 d. If the licensing authority's rules and
36 procedures conflict with the additional requirements
37 of this section, the requirements of this section
38 shall apply. Notwithstanding ~~section 17A.18~~ 17A.4105,
39 the obligor does not have a right to a hearing before
40 the licensing authority to contest the authority's
41 actions under this chapter but may request a court
42 hearing pursuant to section 252J.9 within thirty days
43 of the provision of notice under this section.

44 Sec. 141. Section 256B.6, unnumbered paragraph 3,
45 Code 1997, is amended to read as follows:

46 Notwithstanding ~~section 17A.11~~ chapter 17A, article
47 4, the state board of education shall adopt rules for
48 the appointment of an impartial administrative law
49 judge for special education appeals. The rules shall
50 comply with federal statutes and regulations.

H-1682

-85-

1 Sec. 142. Section 261B.3, subsection 2, Code 1997,
2 is amended to read as follows:

3 2. The secretary may request additional
4 information as necessary to enable the secretary to
5 determine the accuracy and completeness of the
6 information contained in the registration application.
7 If the secretary believes that false, misleading, or
8 incomplete information has been submitted in
9 connection with an application for registration, the
10 secretary may deny registration. The secretary shall
11 conduct a hearing on the denial if a hearing is
12 requested by a school. The secretary may withhold an
13 acknowledgment of document filed pending the outcome
14 of the hearing. Upon a finding after the hearing that
15 information contained in the registration application
16 is false, misleading, or incomplete, the secretary
17 shall deny an acknowledgment of document filed to the
18 school. The secretary shall make the final decision
19 on each registration. However, the decision of the
20 secretary is subject to judicial review in accordance
21 with ~~section 17A:19~~ chapter 17A, article 5.

22 Sec. 143. Section 262.69, unnumbered paragraph 3,
23 Code 1997, is amended to read as follows:

24 Notwithstanding the provisions of chapter 17A, a
25 proceeding conducted by the state board of regents or
26 an institution governed by the state board of regents
27 to determine the validity of an assessment of a
28 violation of traffic control and parking rules is not
29 ~~a-contested-case~~ an adjudicative proceeding as defined
30 in section ~~17A:27-subsection-5~~ 17A.1102.

31 Sec. 144. Section 267.6, Code 1997, is amended to
32 read as follows:

33 267.6 IOWA ADMINISTRATIVE PROCEDURE ACT.

34 The provisions of chapter 17A shall not apply to
35 the council or any actions taken by it, except that
36 any recommendations adopted by the council pursuant to
37 section 267.5, subsection 3, and any rules adopted by
38 the council shall be adopted, amended, or repealed
39 only after compliance with the provisions of sections
40 ~~17A:47-17A:57-and-17A:6~~ chapter 17A, article 3.

41 Sec. 145. Section 272C.6, subsection 4, unnumbered
42 paragraphs 2 and 3, Code 1997, are amended to read as
43 follows:

44 Pursuant to the provisions of section ~~17A:197~~
45 ~~subsection-6~~ 17A.5115, a licensing board upon an
46 appeal seeking of judicial review by the licensee of
47 the decision by the licensing board, shall transmit
48 the entire record of the ~~contested-case~~ adjudicative
49 proceeding to the reviewing court.

50 Notwithstanding the provisions of section ~~17A:197~~

H-1682

Page 87

1 ~~subsection-6~~ 17A.5115, if a waiver of privilege has
2 been involuntary and evidence has been received at a
3 disciplinary hearing, the court shall order withheld
4 the identity of the individual whose privilege was
5 waived.

6 Sec. 146. Section 316.9, subsection 4, Code 1997,
7 is amended to read as follows:

8 4. A person aggrieved by a determination as to
9 eligibility for assistance or a payment authorized by
10 this chapter, or the amount of a payment, upon
11 application may have the matter reviewed. Rules
12 governing reviews shall provide for a prompt one-step
13 uncomplicated fact-finding process. Such a review is
14 an appeal of an agency action as defined in section
15 ~~17A-27~~-subsection-2 17A.1102, and is not a ~~contested~~
16 case an adjudicative proceeding. The decision
17 rendered shall be the displacing agency's final agency
18 action.

19 Sec. 147. Section 321.52, subsection 3, unnumbered
20 paragraph 2, Code 1997, is amended to read as follows:

21 However, upon application the department upon a
22 showing of good cause may issue a certificate of title
23 after the fourteen-day period for a junked vehicle for
24 which a junking certificate has been issued. For
25 purposes of this subsection, "good cause" means that
26 the junking certificate was obtained by mistake or
27 inadvertence. If a person's application to the
28 department is denied, the person may make application
29 for a certificate of title under the bonding procedure
30 as provided in section 321.24, if the vehicle
31 qualifies as an antique vehicle under section 321.115,
32 subsection 1, or the person may seek judicial review
33 as provided under ~~sections-17A-19-and-17A-20~~ chapter
34 17A, article 5, and appellate review under section
35 17A.5118.

36 Sec. 148. Section 321.253A, subsection 1, Code
37 1997, is amended to read as follows:

38 1. The department shall place and maintain
39 directional signs upon primary highways which provide
40 information about historic sites which are located on
41 land owned or managed by an agency as defined in
42 section ~~17A-2~~ 17A.1102. The signs shall conform to
43 the manual of uniform traffic devices. However, the
44 directional signs are not subject to requirements
45 applicable to tourist-oriented directional signs.

46 Sec. 149. Section 321.556, subsections 1 and 2,
47 Code 1997, are amended to read as follows:

48 1. If, upon review of the record of convictions of
49 any person, the department determines that the person
50 appears to be a habitual offender, the department

H-1682

-87-

H-1682

Page 88

1 shall immediately notify the person in writing and
 2 afford the licensee an opportunity for a hearing. The
 3 notice shall direct the person named in the notice to
 4 appear for hearing and show cause why the person
 5 should not be barred from operating a motor vehicle on
 6 the highways of this state. The notice shall meet the
 7 requirements of section ~~17A:12~~ 17A.4206 and shall be
 8 served in the manner provided in that section.
 9 Service of notice on any nonresident of this state may
 10 be made in the same manner as provided in sections
 11 321.498 through 321.506. A peace officer stopping a
 12 person for whom a notice to appear for hearing has
 13 been issued under the provisions of this section may
 14 personally serve the notice upon forms approved by the
 15 department to satisfy the notice requirements of this
 16 section. A peace officer may confiscate the motor
 17 vehicle license of a person if the license has been
 18 revoked or has been suspended subsequent to a hearing
 19 and the person has not forwarded the motor vehicle
 20 license to the department as required.

21 2. The hearing shall be conducted as provided in
 22 ~~section 17A:12~~ for an adjudicative proceeding in
 23 chapter 17A, article 4, before the department in the
 24 county where the alleged events occurred, unless the
 25 director and the person agree that the hearing may be
 26 held in some other county, or the hearing may be held
 27 by telephone conference at the discretion of the
 28 agency conducting the hearing. The hearing shall be
 29 recorded and its scope shall be limited to the issue
 30 of whether the person notified is a habitual offender.

31 Sec. 150. Section 321.560, Code 1997, is amended
 32 to read as follows:

33 321.560 PERIOD OF REVOCATION.

34 A license to operate a motor vehicle in this state
 35 shall not be issued to any person declared to be a
 36 habitual offender under section 321.555, subsection 1,
 37 for a period of not less than two years nor more than
 38 six years from the date of the final decision of the
 39 department under section ~~17A:19~~ 17A.4215 or the date
 40 on which the district court upholds the final decision
 41 of the department, whichever occurs later. However, a
 42 temporary restricted permit may be issued to a person
 43 declared to be a habitual offender under section
 44 321.555, subsection 1, paragraph "c", pursuant to
 45 section 321.215, subsection 2. A license to operate a
 46 motor vehicle in this state shall not be issued to any
 47 person declared to be a habitual offender under
 48 section 321.555, subsection 2, for a period of one
 49 year from the date of the final decision of the
 50 department under section ~~17A:19~~ 17A.4215 or the date

H-1682

H-1682

Page 89

1 on which the district court upholds the final decision
2 of the department, whichever occurs later. The
3 department shall adopt rules under chapter 17A which
4 establish a point system which shall be used to
5 determine the period for which a person who is
6 declared to be a habitual offender under section
7 321.555, subsection 1, shall not be issued a license.
8 Sec. 151. Section 368.22, unnumbered paragraph 4,
9 and subsections 1, 2, and 3, Code 1997, are amended to
10 read as follows:

11 The judicial review provisions of this section and
12 chapter 17A, article 5, shall be the exclusive means
13 by which a person or party who is aggrieved or
14 adversely affected by agency action may seek judicial
15 review of that agency action. The court's review on
16 appeal of a decision is limited to questions relating
17 to jurisdiction, regularity of proceedings, and
18 whether the decision appealed from is arbitrary,
19 unreasonable, or without substantial supporting
20 evidence. The court may reverse and remand a decision
21 of the board or a committee, with appropriate
22 directions. ~~The following portions of section 17A:19~~
23 ~~provisions of chapter 17A~~ are not applicable to this
24 chapter:

25 ~~1. The part of subsection 2 which relates to where~~
26 ~~proceedings for judicial review shall be instituted.~~
27 Section 17A.5104, subsection 2.

28 ~~2. Subsection 5.~~ Section 17A.5111.

29 ~~3. Subsection 8.~~ Section 17A.5116.

30 ~~4. Section 17A.5117.~~

31 Sec. 152. Section 421.17, subsection 20,
32 unnumbered paragraph 2, Code 1997, is amended to read
33 as follows:

34 The provisions of ~~sections 17A:10 to 17A:18~~ chapter
35 17A, article 4, relating to ~~contested cases~~
36 adjudicative proceedings shall not apply to any
37 matters involving the equalization of valuations of
38 classes of property as authorized by this chapter and
39 chapter 441. This exemption shall not apply to a
40 hearing before the state board of tax review.

41 Sec. 153. Section 422.21, unnumbered paragraph 5,
42 Code 1997, is amended to read as follows:

43 The director shall determine for the 1989 and each
44 subsequent calendar year the annual and cumulative
45 inflation factors for each calendar year to be applied
46 to tax years beginning on or after January 1 of that
47 calendar year. The director shall compute the new
48 dollar amounts as specified to be adjusted in section
49 422.5 by the latest cumulative inflation factor and
50 round off the result to the nearest one dollar. The

H-1682

-89-

H-1682

Page 90

1 annual and cumulative inflation factors determined by
2 the director are not rules as defined in section
3 ~~17A-27-subsection-10~~ 17A.1102. The director shall
4 determine for the 1990 calendar year and each
5 subsequent calendar year the annual and cumulative
6 standard deduction factors to be applied to tax years
7 beginning on or after January 1 of that calendar year.
8 The director shall compute the new dollar amounts of
9 the standard deductions specified in section 422.9,
10 subsection 1, by the latest cumulative standard
11 deduction factor and round off the result to the
12 nearest ten dollars. The annual and cumulative
13 standard deduction factors determined by the director
14 are not rules as defined in section ~~17A-27-subsection~~
15 ~~10~~ 17A.1102.

16 Sec. 154. Section 422.53, subsection 5, Code 1997,
17 is amended to read as follows:

18 5. If the holder of a permit fails to comply with
19 any of the provisions of this division or any order or
20 rule of the department adopted under this division or
21 is substantially delinquent in the payment of a tax
22 administered by the department or the interest or
23 penalty on the tax, or if the person is a corporation
24 and if any officer having a substantial legal or
25 equitable interest in the ownership of the corporation
26 owes any delinquent tax of the permit-holding
27 corporation, or interest or penalty on the tax,
28 administered by the department, the director may
29 revoke the permit. The director shall send notice by
30 mail to a permit holder informing that person of the
31 director's intent to revoke the permit and of the
32 permit holder's right to a hearing on the matter. If
33 the permit holder petitions the director for a hearing
34 on the proposed revocation, after giving ten days'
35 notice of the time and place of the hearing in
36 accordance with section ~~17A-187-subsection-3~~ 17A.4105,
37 the matter may be heard and a decision rendered. The
38 director may restore permits after revocation. The
39 director shall adopt rules setting forth the period of
40 time a retailer must wait before a permit may be
41 restored or a new permit may be issued. The waiting
42 period shall not exceed ninety days from the date of
43 the revocation of the permit.

44 Sec. 155. Section 424.5, subsection 6, Code 1997,
45 is amended to read as follows:

46 6. To revoke a permit the director shall serve
47 notice as required by section ~~17A-10~~ 17A.4105 to the
48 permit holder informing that person of the director's
49 intent to revoke the permit and of the permit holder's
50 right to a hearing on the matter. If the permit

H-1682

-90-

H-1682

Page 91

1 holder petitions the director for a hearing on the
2 proposed revocation, after giving ten days' notice of
3 the time and place of the hearing in accordance with
4 section ~~17A:187-subsection-3~~ 17A.4105, the matter may
5 be heard and a decision rendered. The director may
6 restore permits after revocation. The director shall
7 adopt rules setting forth the period of time a
8 depositor must wait before a permit may be restored or
9 a new permit may be issued. The waiting period shall
10 not exceed ninety days from the date of the revocation
11 of the permit.

12 Sec. 156. Section 441.21, subsection 11, Code
13 1997, is amended to read as follows:

14 11. The percentage of actual value computed by the
15 director for agricultural property, residential
16 property, commercial property, industrial property and
17 property valued by the department of revenue and
18 finance pursuant to chapters 428, 433, 434, 436, 437,
19 and 438 and used to determine assessed values of those
20 classes of property does not constitute a rule as
21 defined in section ~~17A:27-subsection-10~~ 17A.1102.

22 Sec. 157. Section 441.49, unnumbered paragraph 7,
23 Code 1997, is amended to read as follows:

24 Tentative and final equalization orders issued by
25 the director of revenue and finance are not rules as
26 defined in section ~~17A:27-subsection-7~~ 17A.1102.

27 Sec. 158. Section 455B.105, subsection 9, Code
28 1997, is amended to read as follows:

29 9. Upon request of at least four members of the
30 commission before adopting or modifying a rule, the
31 director shall prepare and publish with the notice
32 required under section ~~17A:4~~ 17A.3103, subsection 1,
33 ~~paragraph-"a"~~, a comprehensive estimate of the
34 economic impact of the proposed rule or modification.

35 Sec. 159. Section 455B.446, subsection 4, Code
36 1997, is amended to read as follows:

37 4. Notice of the hearing in the form provided in
38 section ~~17A:127-subsection-27~~ 17A.4206 shall be
39 published in a newspaper of general circulation in
40 each city and county in which the proposed site is
41 located once a week for two consecutive weeks with the
42 second publication being at least twenty days prior to
43 the date of the hearing.

44 Sec. 160. Section 455G.4, subsection 3, paragraph
45 b, Code 1997, is amended by striking the paragraph.

46 Sec. 161. Section 476.6, subsection 19, paragraph
47 c, Code 1997, is amended to read as follows:

48 c. The board shall conduct ~~contested-case~~
49 adjudicative proceedings for review of energy
50 efficiency plans and budgets filed by gas and electric

H-1682

-91-

H-1682

Page 92

1 utilities required to be rate-regulated under this
 2 chapter. The board may approve, reject, or modify the
 3 plans and budgets. Notwithstanding the provisions of
 4 section 17A.19, subsection 5, in an application for
 5 judicial review of the board's decision concerning a
 6 utility's energy efficiency plan or budget, the
 7 reviewing court shall not order a stay. Whenever a
 8 request to modify an approved plan or budget is filed
 9 subsequently by the office of consumer advocate or a
 10 gas or electric utility required to be rate-regulated
 11 under this chapter, the board shall promptly initiate
 12 a formal proceeding if the board determines that any
 13 reasonable ground exists for investigating the
 14 request. The formal proceeding may be initiated at
 15 any time by the board on its own motion.

16 Implementation of board-approved plans or budgets
 17 shall be considered continuous in nature and shall be
 18 subject to investigation at any time by the board or
 19 the office of the consumer advocate.

20 Sec. 162. Section 476A.1, subsection 1, Code 1997,
 21 is amended to read as follows:

22 1. "Agency" means an agency as defined in section
 23 ~~17A.27-subsection-1~~ 17A.1102.

24 Sec. 163. Section 476A.4, subsection 3, Code 1997,
 25 is amended to read as follows:

26 3. Notice of the proceeding in the form provided
 27 in section ~~17A.127-subsection-2~~ 17A.4206 shall be
 28 published in a newspaper of general circulation in
 29 each county in which the proposed site is located once
 30 a week for two consecutive weeks with the second
 31 publication being at least twenty days prior to the
 32 date of the hearing. The board shall be responsible
 33 for publication and delivery of notices required by
 34 this section.

35 Sec. 164. Section 479.29, subsection 1, Code 1997,
 36 is amended to read as follows:

37 1. The board shall, pursuant to chapter 17A, adopt
 38 rules establishing standards for the protection of
 39 underground improvements during the construction of
 40 pipelines, to protect soil conservation and drainage
 41 structures from being permanently damaged by pipeline
 42 construction and for the restoration of agricultural
 43 lands after pipeline construction. To ensure that all
 44 interested persons are informed of this rulemaking
 45 procedure and are afforded a right to participate, the
 46 board shall schedule an opportunity for oral
 47 presentations on the proposed rulemaking, and, in
 48 addition to the requirements of ~~section-17A.4~~ sections
 49 17A.3103 and 17A.3104, shall distribute copies of the
 50 notice of intended action and opportunity for oral

H-1682

H-1682

Page 93

1 presentations to each county board of supervisors.
2 Any county board of supervisors may, under the
3 provisions of chapter 17A, and subsequent to the
4 rulemaking proceedings, petition under those
5 provisions for additional rulemaking to establish
6 standards to protect soil conservation practices,
7 structures and drainage structures within that county.
8 Upon the request of the petitioning county the board
9 shall schedule a hearing to consider the merits of the
10 petition. Rules adopted under this section shall not
11 apply within the boundaries of a city, unless the land
12 is used for agricultural purposes.

13 Sec. 165. Section 479A.14, subsection 1, Code
14 1997, is amended to read as follows:

15 1. The board shall adopt rules establishing
16 standards to protect underground improvements during
17 the construction of pipelines, to protect soil
18 conservation and drainage structures from being
19 permanently damaged by pipeline construction, and for
20 the restoration of agricultural lands after pipeline
21 construction. To ensure that all interested persons
22 are informed of this rulemaking procedure and are
23 afforded a right to participate, the board shall
24 schedule an opportunity for oral presentations on the
25 proposed rulemaking and, in addition to the
26 requirements of ~~section 17A.4~~ sections 17A.3103 and
27 17A.3104, shall distribute copies of the notice of
28 intended action and opportunity for oral presentations
29 to each county board of supervisors. A county board
30 of supervisors may, under chapter 17A and subsequent
31 to the rulemaking proceedings, petition for additional
32 rulemaking to establish standards to protect soil
33 conservation practices, structures, and drainage
34 structures within that county. Upon the request of
35 the petitioning county, the board shall schedule a
36 hearing to consider the merits of the petition. Rules
37 adopted under this section do not apply within the
38 boundaries of a city, unless the land is used for
39 agricultural purposes.

40 Sec. 166. Section 479B.20, subsection 1, Code
41 1997, is amended to read as follows:

42 1. The board, pursuant to chapter 17A, shall adopt
43 rules establishing standards for the protection of
44 underground improvements during the construction of
45 pipelines or underground storage facilities, to
46 protect soil conservation and drainage structures from
47 being permanently damaged by construction of the
48 pipeline or underground storage facility, and for the
49 restoration of agricultural lands after pipeline or
50 underground storage facility construction. To ensure

H-1682

-93-

H-1682

Page 94

1 that all interested persons are informed of this
2 rulemaking procedure and are afforded a right to
3 participate, the board shall schedule an opportunity
4 for oral presentations on the proposed rulemaking,
5 and, in addition to the requirements of ~~section-17A-4~~
6 sections 17A.3103 and 17A.3104, shall distribute
7 copies of the notice of intended action and
8 opportunity for oral presentations to each county
9 board of supervisors. Any county board of supervisors
10 may, under the provisions of chapter 17A, and
11 subsequent to the rulemaking proceedings, petition
12 under those provisions for additional rulemaking to
13 establish standards to protect soil conservation
14 practices, structures, and drainage structures within
15 that county. Upon the request of the petitioning
16 county, the board shall schedule a hearing to consider
17 the merits of the petition. Rules adopted under this
18 section shall not apply within the boundaries of a
19 city unless the land is used for agricultural
20 purposes.

21 Sec. 167. Section 514B.4A, subsection 2, Code
22 1997, is amended to read as follows:

23 2. Rules proposed by the commissioner for adoption
24 for the direct provision of health care services by a
25 health maintenance organization, shall be forwarded by
26 the commissioner to the director of public health for
27 review, comment, and recommendation, prior to
28 submission to the administrative rules coordinator
29 pursuant to ~~section 17A-4~~ 17A.3103.

30 Sec. 168. Section 519A.4, subsection 1, unnumbered
31 paragraph 1, Code 1997, is amended to read as follows:

32 The association shall submit a plan of operation to
33 the commissioner, together with any amendments
34 necessary or suitable to assure the fair, reasonable,
35 and equitable administration of the association
36 consistent with sections 519A.2 to 519A.13. The plan
37 of operation and any amendments thereto shall become
38 effective only after ~~promulgation~~ adoption of the plan
39 or amendment by the commissioner as a rule pursuant to
40 ~~section-17A-4~~ chapter 17A, article 3: Provided that
41 the initial plan may in the discretion of the
42 commissioner become effective immediately upon filing
43 with the secretary of state pursuant to ~~section 17A-5~~
44 17A.3115, subsection 2, paragraph "b", subparagraph
45 (1).

46 Sec. 169. Section 524.228, subsection 4, Code
47 1997, is amended to read as follows:

48 4. A hearing provided for in this section shall be
49 presided over by an administrative law judge appointed
50 in accordance with ~~section-17A-11~~ chapter 17A, article

H-1682

-94-

H-1682

Page 95

1 4. The hearing shall be private, unless the
2 superintendent determines after full consideration of
3 the views of the party afforded the hearing, that a
4 public hearing is necessary to protect the public
5 interest. After the hearing, and within thirty days
6 after the case has been submitted for decision, the
7 superintendent shall review the proposed order of the
8 administrative law judge and render a final decision,
9 including findings of fact upon which the decision is
10 predicated, and issue and serve upon each party to the
11 proceeding an order consistent with this section.

12 Sec. 170. Section 533.6A, subsection 4, Code 1997,
13 is amended to read as follows:

14 4. A hearing provided for in this section shall be
15 presided over by an administrative law judge appointed
16 in accordance with ~~section 17A.11~~ chapter 17A, article
17 4. The hearing shall be private, unless the
18 superintendent determines after full consideration of
19 the views of the party afforded the hearing, that a
20 public hearing is necessary to protect the public
21 interest. After the hearing, and within thirty days
22 after the case has been submitted for decision, the
23 superintendent shall review the proposed order of the
24 administrative law judge and render a final decision,
25 including findings of fact upon which the decision is
26 predicated, and issue and serve upon each party to the
27 proceeding an order consistent with this section.

28 Sec. 171. Section 534.405, unnumbered paragraph 7,
29 Code 1997, is amended to read as follows:

30 Actions taken by the superintendent under this
31 section are not subject to ~~section 17A.18, subsection~~
32 3 17A.4105.

33 Sec. 172. Section 535B.7, subsection 2, unnumbered
34 paragraph 1, Code 1997, is amended to read as follows:

35 The administrator may order an emergency suspension
36 of a licensee's license pursuant to ~~section 17A.18, subsection-3~~ 17A.4501. A written order containing the
37 facts or conduct which warrants the emergency action
38 shall be timely sent to the licensee by restricted
39 certified mail. Upon issuance of the suspension
40 order, the licensee must also be notified of the right
41 to an evidentiary hearing. A suspension proceeding
42 shall be promptly instituted and determined. **IW**

44 Sec. 173. Section 542B.27, subsection 6, Code
45 1997, is amended to read as follows:

46 6. A person aggrieved by the imposition of a civil
47 penalty under this section may seek judicial review in
48 accordance with ~~section 17A.19~~ chapter 17A, article 5.

49 Sec. 174. Section 544A.15, subsection 3, paragraph
50 f, Code 1997, is amended to read as follows

H-1682

-95-

H-1682

Page 96

1 f. A person aggrieved by the imposition of a civil
2 penalty under this subsection may seek judicial review
3 in accordance with ~~section 17A.19~~ chapter 17A, article
4 5.

5 Sec. 175. Section 904.602, subsection 9,
6 unnumbered paragraph 2, Code 1997, is amended to read
7 as follows:

8 These records are exempt from the public inspection
9 requirements in ~~section 17A.3~~ sections 17A.2101,
10 17A.2102, and section 22.2.

11 Sec. 176. Section 906.3, Code 1997, is amended to
12 read as follows:

13 906.3 DUTIES OF PAROLE BOARD.

14 The board of parole shall adopt rules regarding a
15 system of paroles from correctional institutions, and
16 shall direct, control, and supervise the
17 administration of the system of paroles. The board of
18 parole shall consult with the director of the
19 department of corrections on rules regarding a system
20 of work release and shall assist in the direction,
21 control, and supervision of the work release system.
22 The board shall determine which of those persons who
23 have been committed to the custody of the director of
24 the Iowa department of corrections, by reason of their
25 conviction of a public offense, shall be released on
26 parole or work release. The grant or denial of parole
27 or work release is not ~~a-contested-case~~ an
28 adjudicative proceeding as defined in ~~section 17A.2~~
29 17A.1102.

30 Sec. 171.

31 1. Sections 17A.1 through 17A.33, Code 1997, are
32 repealed.

33 2. Sections 10A.201 and 10A.202, Code 1997, are
34 repealed.

35 Sec. 177. EFFECTIVE DATE. This Act takes effect
36 July 1, 1998."

By MILLAGE of Scott

H-1682 FILED APRIL 10, 1997

WITHDRAWN

3/10/98

HOUSE FILE 667
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 230)

(As Amended and Passed by the House, March 10, 1998)

(P. 1592)
Passed House, Date 4-14-98

(P. 1117)
Passed Senate, Date 4/17/98

Vote: Ayes 97 Nays 0

Vote: Ayes 49 Nays 0

Approved May 19, 1998

Passed 4-14-98
Vote 48-0 (P. 1252)

A BILL FOR

1 An Act relating to the Iowa administrative procedure Act and
2 providing an effective and applicability date.

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

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New Language _____

1 Section 1. Section 10A.101, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. "Administrator" means the ~~chief-administrative-law~~
4 ~~judge~~, chief inspector, chief investigator, chief auditor, or
5 the person administering a division of the department.

6 Sec. 2. Section 10A.104, subsection 2, Code 1997, is
7 amended to read as follows:

8 2. Appoint the administrators of the divisions within the
9 department and all other personnel deemed necessary for the
10 administration of this chapter, except the state public
11 defender, assistant state public defenders, administrator of
12 the racing and gaming commission, members of the employment
13 appeal board, the chief administrative law judge,
14 administrative law judges, and administrator of the state
15 citizen foster care review board. All persons appointed and
16 employed in the department are covered by the provisions of
17 chapter 19A, but persons not appointed by the director are
18 exempt from the merit system provisions of chapter 19A, except
19 as provided in section 10A.801.

20 Sec. 3. Section 10A.104, subsection 5, Code 1997, is
21 amended to read as follows:

22 5. Adopt rules deemed necessary for the implementation and
23 administration of this chapter in accordance with chapter 17A
24 ~~including-rules-governing-hearing-and-appeal-proceedings.~~

25 Sec. 4. Section 10A.106, Code 1997, is amended to read as
26 follows:

27 10A.106 DIVISIONS OF THE DEPARTMENT.

28 The department is comprised of the following divisions:

29 ~~1--Appeals-and-fair-hearings-division-~~

30 ~~2-~~ 1. Audits division.

31 ~~3-~~ 2. Investigations division.

32 ~~4-~~ 3. Inspections division.

33 The allocation of departmental duties to the divisions of
34 the department in sections ~~10A-202~~, 10A.302, 10A.402, and
35 10A.502 does not prohibit the director from reallocating

1 departmental duties within the department. The director shall
2 not reallocate any of the duties of the office of
3 administrative hearings, created by section 10A.801, to any
4 other unit of the department.

5 Sec. 5. NEW SECTION. 10A.801 OFFICE OF ADMINISTRATIVE
6 HEARINGS -- CREATION, POWERS, DUTIES.

7 1. An independent office of administrative hearings within
8 the department is created to be headed and administered by a
9 chief administrative law judge appointed by the governor for a
10 term of six years subject to confirmation by the senate. The
11 chief administrative law judge may be removed by the governor
12 at any time for good cause.

13 2. a. The chief administrative law judge shall employ a
14 sufficient number of administrative law judges to conduct
15 proceedings for which agencies are required, by section 17A.11
16 or any other provision of law, to use an administrative law
17 judge employed by the office. An administrative law judge
18 employed by the office shall not perform duties inconsistent
19 with the judge's duties and responsibilities as an
20 administrative law judge and shall be located in an office
21 that is entirely separated from the offices of the agencies
22 for which that person acts as a presiding officer.
23 Administrative law judges shall be covered by the merit system
24 provisions of chapter 19A.

25 b. Subject to the approval of the department of personnel,
26 the office shall, insofar as practicable, provide for
27 different classes of administrative law judges with different
28 salary scales. The office shall also facilitate, insofar as
29 practicable, specialization by its administrative law judges
30 so that particular judges may become expert in presiding over
31 cases in particular agencies. An agency may, by rule,
32 identify particular classes of its contested cases for which
33 the administrative law judge who acts as presiding officer
34 shall have specified technical expertness. After the adoption
35 of such a rule, the office may assign administrative law

1 judges to preside over those identified particular classes of
2 contested cases only if the agency responsible for those cases
3 has certified, either at the time of the initial hiring of the
4 administrative law judge by the office or at a subsequent
5 time, that the agency was satisfied that the particular
6 administrative law judge designated to preside possessed the
7 necessary technical expertness.

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

16 4. The office may furnish administrative law judges on a
17 contract basis to any governmental entity to conduct any
18 proceeding.

19 5. After the effective date of this Act, a person shall
20 not be newly employed by the office as an administrative law
21 judge to preside over contested case proceedings unless that
22 person has a license to practice law in this state.

23 6. The office shall adopt rules pursuant to this chapter
24 and chapter 17A to do all of the following:

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

32 b. To establish procedures for agencies to request and for
33 the chief administrative law judge to assign administrative
34 law judges employed by the office.

35 c. To establish procedures and adopt forms, consistent

1 with chapter 17A and other provisions of law, to govern
2 administrative law judges employed by the office, but any
3 rules adopted under this paragraph shall be applicable to a
4 particular contested case proceeding only to the extent that
5 they are not inconsistent with the rules of the agency under
6 whose authority that proceeding is conducted. Nothing in this
7 paragraph precludes an agency from establishing procedural
8 requirements otherwise within its authority to govern its
9 contested case proceedings, including requirements with
10 respect to the timeliness of decisions rendered for it by
11 administrative law judges.

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. Those
15 procedures shall include provisions for each agency for whom a
16 particular administrative law judge presides to submit to the
17 office on a periodic basis the agency's views with respect to
18 the performance of that administrative law judge or the need
19 for specified additional training for that administrative law
20 judge. However, the evaluation, training, promotion, and
21 discipline of all administrative law judges employed by the
22 office shall remain solely within the authority of the office.

23 e. To establish, consistent with the provisions of this
24 section and chapter 17A, a code of administrative judicial
25 conduct that is similar in function and substantially
26 equivalent to the Iowa code of judicial conduct, to govern the
27 conduct, in relation to their quasi-judicial functions in
28 contested cases, of all persons who act as presiding officers
29 under the authority of section 17A.11, subsection 1. The code
30 of administrative judicial conduct shall separately specify
31 which provisions are applicable to agency heads or members of
32 multimembered agency heads when they act as presiding
33 officers, taking into account the objectives of the code and
34 the fact that agency heads, unlike administrative law judges,
35 have other duties imposed upon them by law. The code of

1 administrative judicial conduct may also contain separate
2 provisions, that are appropriate and consistent with the
3 objectives of such a code, to govern the conduct of agency
4 heads or the members of multimember agency heads when they act
5 as presiding officers. However, a provision of the code of
6 administrative judicial conduct shall not be made applicable
7 to agency heads or members of multimember agency heads unless
8 the application of that provision to agency heads and members
9 of multimember agency heads has previously been approved by
10 the administrative rules coordinator.

11 f. To facilitate the performance of the responsibilities
12 conferred upon the office by this section, chapter 17A, and
13 any other provision of law.

14 7. The office may do all of the following:

15 a. Provide administrative law judges, upon request, to any
16 agency that is required to or wishes to utilize the services
17 of an administrative law judge employed by the office.

18 b. Maintain a staff of reporters and other personnel.

19 c. Administer the provisions of this section and rules
20 adopted under its authority.

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

24 9. Except to the extent specified otherwise by statute,
25 decisions of administrative law judges employed by the office
26 are subject to review by the agencies for which they act as
27 presiding officers as provided by section 17A.15 or any other
28 provision of law.

29 Sec. 6. Section 17A.2, Code 1997, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 9A. "Provision of law" means the whole or
32 part of the Constitution of the United States of America or
33 the Constitution of the State of Iowa, or of any federal or
34 state statute, court rule, executive order of the governor, or
35 agency rule.

1 Sec. 7. Section 17A.2, subsection 10, unnumbered paragraph
2 1, Code 1997, is amended to read as follows:

3 "Rule" means each agency statement of general applicability
4 that implements, interprets, or prescribes law or policy, or
5 that describes the organization, procedure, or practice
6 requirements of any agency. Notwithstanding any other
7 ~~provision-of-law statute~~, the term includes an executive order
8 or directive of the governor which creates an agency or
9 establishes a program or which transfers a program between
10 agencies established by statute or rule. The term includes
11 the amendment or repeal of an existing rule, but does not
12 include:

13 Sec. 8. Section 17A.2, subsection 10, paragraph b, Code
14 1997, is amended to read as follows:

15 b. A declaratory ~~ruling~~ order issued pursuant to section
16 17A.9, or an interpretation issued by an agency with respect
17 to a specific set of facts and intended to apply only to that
18 specific set of facts.

19 Sec. 9. Section 17A.3, subsection 1, Code 1997, is amended
20 by adding the following new paragraph after paragraph b and
21 relettering the subsequent paragraphs:

22 NEW PARAGRAPH. c. As soon as feasible and to the extent
23 practicable, adopt rules, in addition to those otherwise
24 required by this chapter, embodying appropriate standards,
25 principles, and procedural safeguards that the agency will
26 apply to the law it administers.

27 Sec. 10. Section 17A.4, subsection 1, paragraph b, Code
28 1997, is amended to read as follows:

29 b. Afford all interested persons not less than twenty days
30 to submit data, views, or arguments in writing. If timely
31 requested in writing by twenty-five interested persons, by a
32 governmental subdivision, by the administrative rules review
33 committee, by an agency, or by an association having not less
34 than twenty-five members, the agency must give interested
35 persons an opportunity to make oral presentation. The

1 opportunity for oral presentation must be held at least twenty
2 days after publication of the notice of its time and place in
3 the Iowa administrative bulletin. The agency shall consider
4 fully all written and oral submissions respecting the proposed
5 rule. Within one hundred eighty days following either the
6 notice published according to the provisions of paragraph "a"
7 or within one hundred eighty days after the last date of the
8 oral presentations on the proposed rule, whichever is later,
9 the agency shall adopt a rule pursuant to the rulemaking
10 proceeding or shall terminate the proceeding by publishing
11 notice of termination in the Iowa administrative bulletin. If

12 An agency shall include in a preamble to each rule it
13 adopts a brief explanation of the principal reasons for its
14 action and, if applicable, a brief explanation of the
15 principal reasons for its failure to provide in that rule for
16 the waiver of the rule in specified situations if no such
17 waiver provision is included in the rule. This explanatory
18 requirement does not apply when the agency adopts a rule that
19 only defines the meaning of a provision of law if the agency
20 does not possess delegated authority to bind the courts to any
21 extent with its definition. In addition, if requested to do
22 so by an interested person, either prior to adoption or within
23 thirty days thereafter, the agency shall issue a concise
24 statement of the principal reasons for and against the rule it
25 adopted, incorporating therein the reasons for overruling
26 considerations urged against the rule. This concise statement
27 shall be issued either at the time of the adoption of the rule
28 or within thirty-five days after the agency receives the
29 request.

30 Sec. 11. Section 17A.4, subsection 1, paragraph c, Code
31 1997, is amended by striking the paragraph.

32 Sec. 12. NEW SECTION. 17A.4A REGULATORY ANALYSIS.

33 1. An agency shall issue a regulatory analysis of a
34 proposed rule that complies with subsection 2, paragraph "a",
35 if, within thirty-two days after the published notice of

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

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

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

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

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

1 (4) A comparison of the probable costs and benefits of the
2 proposed rule to the probable costs and benefits of inaction.

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

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

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

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

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

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

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

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

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

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

34 4. Upon receipt by an agency of a timely request for a
35 regulatory analysis, the agency shall extend the period

1 specified in this chapter for each of the following until at
2 least twenty days after publication in the administrative
3 bulletin of a concise summary of the regulatory analysis:

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

6 b. The end of the period during which an oral proceeding
7 may be requested.

8 c. The date of any required oral proceeding on the
9 proposed rule.

10 In the case of a rule adopted without prior notice and an
11 opportunity for public participation in reliance upon section
12 17A.4, subsection 2, the summary must be published within
13 seventy days of the request.

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

19 Agencies shall make available to the public, to the maximum
20 extent feasible, the published summary and the full text of
21 the regulatory analysis described in this subsection in an
22 electronic format, including, but not limited to, access to
23 the documents through the internet.

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

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

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

34 b. It has either twenty or fewer full-time equivalent
35 positions or less than one million dollars in annual gross

1 revenues in the preceding fiscal year.

2 For purposes of this definition, "dominant in its field of
3 operation" means having more than twenty full-time equivalent
4 positions and more than one million dollars in annual gross
5 revenues, and "affiliate or subsidiary of an entity dominant
6 in its field of operation" means an entity which is at least
7 twenty percent owned by an entity dominant in its field of
8 operation, or by partners, officers, directors, majority
9 stockholders, or their equivalent, of an entity dominant in
10 that field of operation.

11 Sec. 13. Section 17A.7, Code 1997, is amended to read as
12 follows:

13 17A.7 PETITION FOR ADOPTION OF RULES AND REQUEST FOR
14 REVIEW OF RULES.

15 1. An interested person may petition an agency requesting
16 the promulgation adoption, amendment, or repeal of a rule.
17 Each agency shall prescribe by rule the form for petitions and
18 the procedure for their submission, consideration, and
19 disposition. Within sixty days after submission of a
20 petition, the agency either shall deny the petition in writing
21 on the merits, stating its reasons for the denial, or initiate
22 rulemaking proceedings in accordance with section 17A.4, or
23 issue a rule if it is not required to be issued according to
24 the procedures of section 17A.4, subsection 1.

25 2. The administrative rules review committee, the
26 administrative rules coordinator, a political subdivision, an
27 agency, twenty-five persons signing one request, or an
28 association having not less than twenty-five members, may
29 request an agency to conduct a formal review of a specified
30 rule of that agency to determine whether the rule should be
31 repealed or amended or a new rule adopted instead.

32 If the agency has not conducted such a review of the
33 specified rule within a period of five years prior to the
34 filing with the agency of that written request, the agency
35 shall prepare within a reasonable time a written report with

1 respect to the rule summarizing the agency's findings, its
2 supporting reasons, and any proposed course of action. The
3 report must include, for the specified rule, a concise
4 statement of all of the following:

5 a. The rule's effectiveness in achieving its objectives,
6 including a summary of any available data supporting the
7 conclusions reached.

8 b. Written criticisms of the rule received during the
9 previous five years, including a summary of any petitions for
10 waiver of the rule tendered to the agency or granted by the
11 agency.

12 c. Alternative solutions regarding the subject matter of
13 the criticisms and the reasons they were rejected or the
14 changes made in the rule in response to those criticisms and
15 the reasons for the changes.

16 A copy of the report shall be sent to the administrative
17 rules review committee and the administrative rules
18 coordinator and shall be made available for public inspection.

19 Sec. 14. Section 17A.8, subsection 9, Code 1997, is
20 amended to read as follows:

21 9. Upon a vote of two-thirds of its members, the
22 administrative rules review committee may delay the effective
23 date of a rule until the adjournment of the next regular
24 session of the general assembly. The committee shall refer a
25 rule whose effective date has been delayed to the speaker of
26 the house of representatives and the president of the senate
27 who shall refer the rule to the appropriate standing
28 committees of the general assembly. A standing committee
29 shall review a rule within twenty-one days after the rule is
30 referred to the committee by the speaker of the house of
31 representatives or the president of the senate and shall take
32 formal committee action by sponsoring a joint resolution to
33 disapprove the rule, by proposing legislation relating to the
34 rule, or by refusing to propose a joint resolution or
35 legislation concerning the rule. The standing committee shall

1 inform the administrative rules review committee of the
2 committee action taken concerning the rule. If the general
3 assembly has not disapproved of the rule by a joint
4 resolution, the rule shall become effective. The speaker of
5 the house of representatives and the president of the senate
6 shall notify the administrative code editor of the final
7 disposition of each rule delayed pursuant to this subsection.
8 If a rule is disapproved, it shall not become effective and
9 the agency shall rescind the rule. This section shall not
10 apply to rules made effective under section 17A.5, subsection
11 2, paragraph "b".

12 Sec. 15. Section 17A.9, Code 1997, is amended by striking
13 the section and inserting in lieu thereof the following:

14 17A.9 DECLARATORY ORDERS.

15 1. Any person may petition an agency for a declaratory
16 order as to the applicability to specified circumstances of a
17 statute, rule, or order within the primary jurisdiction of the
18 agency. An agency shall issue a declaratory order in response
19 to a petition for that order unless the agency determines that
20 issuance of the order under the circumstances would be
21 contrary to a rule adopted in accordance with subsection 2.

22 However, an agency shall not issue a declaratory order that
23 would substantially prejudice the rights of a person who would
24 be a necessary party and who does not consent in writing to
25 the determination of the matter by a declaratory order
26 proceeding.

27 2. Each agency shall adopt rules that provide for the
28 form, contents, and filing of petitions for declaratory
29 orders, the procedural rights of persons in relation to the
30 petitions, and the disposition of the petitions. The rules
31 must describe the classes of circumstances in which the agency
32 will not issue a declaratory order and must be consistent with
33 the public interest and with the general policy of this
34 chapter to facilitate and encourage agency issuance of
35 reliable advice.

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

5 4. Persons who qualify under any applicable provision of
6 law as an intervenor and who file timely petitions for
7 intervention according to agency rules may intervene in
8 proceedings for declaratory orders. The provisions of
9 sections 17A.10 through 17A.18 apply to agency proceedings for
10 declaratory orders only to the extent an agency so provides by
11 rule or order.

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

15 a. Issue an order declaring the applicability of the
16 statute, rule, or order in question to the specified
17 circumstances.

18 b. Set the matter for specified proceedings.

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

20 d. Decline to issue a declaratory order, stating the
21 reasons for its action.

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

25 7. A declaratory order has the same status and binding
26 effect as any final order issued in a contested case
27 proceeding. A declaratory order must contain the names of all
28 parties to the proceeding on which it is based, the particular
29 facts on which it is based, and the reasons for its
30 conclusion.

31 8. If an agency has not issued a declaratory order within
32 sixty days after receipt of a petition therefor, or such later
33 time as agreed by the parties, the petition is deemed to have
34 been denied. Once a petition for a declaratory order is
35 deemed denied or if the agency declines to issue a declaratory

1 order pursuant to subsection 5, paragraph "d", a party to that
2 proceeding may either seek judicial review or await further
3 agency action with respect to its petition for a declaratory
4 order.

5 Sec. 16. NEW SECTION. 17A.10A CONTESTED CASES -- NO
6 FACTUAL DISPUTE.

7 Upon petition by a party in a matter that would be a
8 contested case if there was a dispute over the existence of
9 material facts, all of the provisions of this chapter
10 applicable to contested cases, except those relating to
11 presentation of evidence, shall be applicable even though
12 there is no factual dispute in the particular case.

13 Sec. 17. Section 17A.11, Code 1997, is amended by striking
14 the section and inserting in lieu thereof the following:

15 17A.11 PRESIDING OFFICER, DISQUALIFICATION, SUBSTITUTION.

16 1. a. If the agency or an officer of the agency under
17 whose authority the contested case is to take place is a named
18 party to that proceeding or a real party in interest to that
19 proceeding the presiding officer may be, in the discretion of
20 the agency head, either the agency head, one or more members
21 of the agency head, or one or more administrative law judges
22 assigned by the office of administrative hearings in
23 accordance with the provisions of section 10A.801.

24 b. If the agency or an officer of the agency under whose
25 authority the contested case is to take place is not a named
26 party to that proceeding or a real party in interest to that
27 proceeding the presiding officer may be, in the discretion of
28 the agency head, either the agency head, one or more members
29 of the agency head, an administrative law judge assigned by
30 the office of administrative hearings in accordance with the
31 provisions of section 10A.801, or any other qualified person
32 designated as a presiding officer by the agency head. Any
33 other person designated as a presiding officer by the agency
34 head may be employed by and officed in the agency for which
35 that person acts as a presiding officer, but such a person

1 shall not perform duties inconsistent with that person's
2 duties and responsibilities as a presiding officer.

3 c. For purposes of paragraph "a", the office of
4 administrative hearings established in section 10A.801 shall
5 be treated as a wholly separate agency from the department of
6 inspections and appeals.

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

11 3. Any party may timely request the disqualification of a
12 person as a presiding officer by filing a motion supported by
13 an affidavit asserting an appropriate ground for
14 disqualification, after receipt of notice indicating that the
15 person will preside or upon discovering facts establishing
16 grounds for disqualification, whichever is later.

17 4. A person whose disqualification is requested shall
18 determine whether to grant the request, stating facts and
19 reasons for the determination.

20 5. If a substitute is required for a person who is
21 disqualified or becomes unavailable for any other reason, the
22 substitute shall be appointed by either of the following:

23 a. The governor, if the disqualified or unavailable person
24 is an elected official.

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

27 6. Any action taken by a duly-appointed substitute for a
28 disqualified or unavailable person is as effective as if taken
29 by the latter.

30 Sec. 18. Section 17A.12, subsection 3, Code 1997, is
31 amended by striking the subsection and inserting in lieu
32 thereof the following:

33 3. a. If a party fails to appear or participate in a
34 contested case proceeding, the presiding officer shall serve
35 all parties by certified mail written notice of a proposed

1 default order, including a statement of the grounds.

2 b. Within fifteen days or such longer period specified by
3 agency rule after the mailing by certified mail of a proposed
4 default order, the party against whom it was issued may file a
5 written motion requesting that the proposed default order be
6 vacated and stating the grounds relied upon. A proposed
7 default order may be vacated for any reason specified in the
8 rules of civil procedure or for any other reason specified by
9 agency rule. At the time a party fails to appear or
10 participate in a contested case proceeding, or during the time
11 within which a party may file a written motion under this
12 subsection, the presiding officer may adjourn the proceedings
13 or conduct them without the participation of the party against
14 whom a proposed default order was issued, having due regard
15 for the interests of justice and the orderly and prompt
16 conduct of the proceedings.

17 c. The presiding officer shall either issue or vacate the
18 default order promptly after expiration of the time within
19 which the party may file a written motion under paragraph "b".

20 d. After issuing a default order, the presiding officer
21 shall conduct any further proceedings necessary to complete
22 the contested case proceeding without the participation of the
23 party in default and shall determine all issues in the
24 contested case including those affecting the defaulting party.

25 e. If the presiding officer conducts further proceedings
26 after the issuance of a proposed default order, the time
27 period for seeking judicial review of a decision in that
28 contested case proceeding shall begin to run from the date of
29 the issuance of the final decision in that case, if any, or
30 the date of the issuance of a default order, whichever is
31 later.

32 Sec. 19. Section 17A.16, subsection 1, Code 1997, is
33 amended to read as follows:

34 1. A proposed or final decision or order in a contested
35 case shall be in writing or stated in the record. A proposed

1 or final decision shall include findings of fact and
2 conclusions of law, separately stated. Findings of fact, if
3 set forth in statutory language, shall be accompanied by a
4 concise and explicit statement of underlying facts supporting
5 the findings. The decision shall include an explanation of
6 why the evidence in the record supports each finding of fact
7 and why the evidence in the record that is contrary to a
8 finding does not preclude it. If, in accordance with agency
9 rules, a party submitted proposed findings of fact, the
10 decision shall include a ruling upon each proposed finding.
11 Each conclusion of law shall be supported by cited authority
12 or by a reasoned opinion. Parties shall be promptly notified
13 of each proposed or final decision or order by the delivery to
14 them of a copy of such decision or order in the manner
15 provided by section 17A.12, subsection 1.

16 Sec. 20. Section 17A.17, Code 1997, is amended to read as
17 follows:

18 17A.17 EX PARTE COMMUNICATIONS AND SEPARATION OF
19 FUNCTIONS.

20 1. Unless required for the disposition of ex parte matters
21 specifically authorized by statute, ~~individuals assigned to~~
22 ~~render a proposed or final decision or to make findings of~~
23 ~~fact and conclusions of law~~ a presiding officer in a contested
24 case, shall not communicate, directly or indirectly, in
25 connection with any issue of fact or law in that contested
26 case, with any person or party, except upon notice and
27 opportunity for all parties to participate as shall be
28 provided for by agency rules.

29 However, without such notice and opportunity for all
30 parties to participate, ~~individuals assigned to render a~~
31 ~~proposed or final decision or to make findings of fact and~~
32 ~~conclusions of law~~ a presiding officer in a contested case may
33 communicate with members of the agency, and may have the aid
34 and advice of persons other than those with a personal
35 interest in, or those engaged in personally investigating,

1 prosecuting or advocating in, either the case under
2 consideration or a pending factually related case involving
3 the same parties so long as those persons do not directly or
4 indirectly communicate to the presiding officer any ex parte
5 communications they have received of a type that the presiding
6 officer would be prohibited from receiving or that furnish,
7 augment, diminish, or modify the evidence in the record.

8 2. Unless required for the disposition of ex parte matters
9 specifically authorized by statute, parties or their
10 representatives in a contested case and persons with a direct
11 or indirect interest in such a case shall not communicate,
12 directly or indirectly, in connection with any issue of fact
13 or law in that contested case, with ~~individuals assigned to~~
14 ~~render a proposed or final decision or to make findings of~~
15 ~~fact and conclusions of law~~ a presiding officer in that
16 contested case, except upon notice and opportunity for all
17 parties to participate as shall be provided for by agency
18 rules. ~~The agency's rules may require the recipient of a~~
19 ~~prohibited communication to submit the communication if~~
20 ~~written or a summary of the communication if oral for~~
21 ~~inclusion in the record of the proceeding. As sanctions for~~
22 ~~violations, the rules may provide for a decision against a~~
23 ~~party who violates the rules, for censuring, suspending or~~
24 ~~revoking a privilege to practice before the agency, and for~~
25 ~~censuring, suspending or dismissing agency personnel.~~

26 3. If, before serving as the presiding officer in a
27 contested case, a person receives an ex parte communication
28 relating directly to the merits of the proceeding over which
29 that person subsequently presides, the person, promptly after
30 starting to serve, shall disclose to all parties any material
31 factual information so received and not otherwise disclosed to
32 those parties pursuant to section 17A.13, subsection 2, or
33 through discovery.

34 4. A presiding officer who receives an ex parte
35 communication in violation of this section shall place on the

1 record of the pending matter all such written communications
2 received, all written responses to the communications, and a
3 memorandum stating the substance of all such oral and other
4 communications received, all responses made, and the identity
5 of each person from whom the presiding officer received a
6 prohibited ex parte communication, and shall advise all
7 parties that these matters have been placed on the record.
8 Any party desiring to rebut the prohibited ex parte
9 communication must be allowed to do so, upon requesting the
10 opportunity for rebuttal within ten days after notice of the
11 communication.

12 5. If the effect of an ex parte communication received in
13 violation of this section is so prejudicial that it cannot be
14 cured by the procedure in subsection 4, a presiding officer
15 who receives the communication shall be disqualified and the
16 portions of the record pertaining to the communication shall
17 be sealed by protective order.

18 6. The agency and any party may report any violation of
19 this section to appropriate authorities for any disciplinary
20 proceedings provided by law. In addition, each agency by rule
21 shall provide for appropriate sanctions, including default,
22 suspending or revoking a privilege to practice before the
23 agency, and censuring, suspending, or dismissing agency
24 personnel, for any violations of this section.

25 7. A party to a contested case proceeding may file a
26 timely and sufficient affidavit alleging a violation of any
27 provision of this section. The agency shall determine the
28 matter as part of the record in the case. When an agency in
29 these circumstances makes such a determination with respect to
30 an agency member, that determination shall be subject to de
31 novo judicial review in any subsequent review proceeding of
32 the case.

33 ~~3.~~ 8. No An individual who participates in the making of
34 any proposed or final decision in a contested case shall not
35 have personally investigated, prosecuted, or advocated in

1 connection with that case, the specific controversy underlying
2 that case, or another pending factually related contested
3 case, or pending factually related controversy that may
4 culminate in a contested case, involving the same parties.
5 ~~Nor shall any~~ In addition, such an individual shall not be
6 subject to the authority, direction, or discretion of any
7 person who has personally investigated, prosecuted, or
8 advocated in connection with that contested case, the specific
9 controversy underlying that contested case, or a pending
10 factually related contested case or controversy, involving the
11 same parties. However, this section shall not be construed to
12 preclude a person from serving as a presiding officer solely
13 because that person determined there was probable cause to
14 initiate the proceeding.

15 ~~4.--A party to a contested case proceeding may file a~~
16 ~~timely and sufficient affidavit asserting disqualification~~
17 ~~according to the provisions of subsection 3, or asserting~~
18 ~~personal bias of an individual participating in the making of~~
19 ~~any proposed or final decision in that case.--The agency shall~~
20 ~~determine the matter as part of the record in the case.--When~~
21 ~~an agency in these circumstances makes such a determination~~
22 ~~with respect to an agency member, that determination shall be~~
23 ~~subject to de novo judicial review in any subsequent review~~
24 ~~proceeding of the case.~~

25 Sec. 21. Section 17A.18, subsection 3, Code 1997, is
26 amended to read as follows:

27 3. No revocation, suspension, annulment or withdrawal, in
28 whole or in part, of any license is lawful unless, prior to
29 the institution of agency proceedings, the agency gave
30 written, timely notice by personal service as in civil actions
31 or by restricted certified mail to the licensee of facts or
32 conduct and the provisions provision of law which warrant
33 warrants the intended action, and the licensee was given an
34 opportunity to show, in an evidentiary hearing conducted
35 according to the provisions of this chapter for contested

1 cases, compliance with all lawful requirements for the
2 retention of the license. ~~If the agency finds that public~~
3 ~~health, safety or welfare imperatively requires emergency~~
4 ~~action, and incorporates a finding to that effect in its~~
5 ~~order, summary suspension of a license may be ordered pending~~
6 ~~proceedings for revocation or other action. These proceedings~~
7 ~~shall be promptly instituted and determined.~~

8 Sec. 22. NEW SECTION. 17A.18A EMERGENCY ADJUDICATIVE
9 PROCEEDINGS.

10 1. Notwithstanding any other provision of this chapter and
11 to the extent consistent with the Constitution, an agency may
12 use emergency adjudicative proceedings in a situation
13 involving an immediate danger to the public health, safety, or
14 welfare requiring immediate agency action.

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

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

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

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

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

35 7. Unless otherwise required by a provision of law, the

1 agency record need not constitute the exclusive basis for
2 agency action in emergency adjudicative proceedings or for
3 judicial review thereof.

4 Sec. 23. Section 17A.19, subsection 1, Code 1997, is
5 amended to read as follows:

6 1. A person or party who has exhausted all adequate
7 administrative remedies and who is aggrieved or adversely
8 affected by any final agency action is entitled to judicial
9 review thereof under this chapter. When agency action is
10 pursuant to rate regulatory powers over public utilities or
11 common carriers and the aggrievement or adverse effect is to
12 the rates or charges of a public utility or common carrier,
13 the agency action shall not be final until all agency remedies
14 have been exhausted and a decision prescribing rates which
15 satisfy the requirements of those provisions of the Code has
16 been rendered. A preliminary, procedural or intermediate
17 agency action is immediately reviewable if all adequate
18 administrative remedies have been exhausted and review of the
19 final agency action would not provide an adequate remedy. If
20 a declaratory ruling order has not been rendered within thirty
21 sixty days after the filing of a petition therefor under
22 section 17A.9, or by such later time as agreed by the parties,
23 or if the agency declines to issue such a declaratory ruling
24 order after receipt of a petition therefor, any administrative
25 remedy available under section 17A.9 shall be deemed
26 inadequate or exhausted.

27 Sec. 24. Section 17A.19, subsection 5, Code 1997, is
28 amended to read as follows:

29 5. a. The filing of the petition for review does not
30 itself stay execution or enforcement of any agency action.
31 ~~Upon application the agency or the reviewing court may, in~~
32 ~~appropriate cases, order such a stay pending the outcome of~~
33 ~~the judicial review proceedings~~ Unless precluded by law, the
34 agency may grant a stay on appropriate terms or other
35 temporary remedies during the pendency of judicial review.

1 b. A party may file an interlocutory motion in the
2 reviewing court, during the pendency of judicial review,
3 seeking review of the agency's action on an application for
4 stay or other temporary remedies.

5 c. If the agency refuses to grant an application for stay
6 or other temporary remedies, or application to the agency for
7 a stay or other temporary remedies is an inadequate remedy,
8 the court may grant relief but only after a consideration and
9 balancing of all of the following factors:

10 (1) The extent to which the applicant is likely to prevail
11 when the court finally disposes of the matter.

12 (2) The extent to which the applicant will suffer
13 irreparable injury if relief if not granted.

14 (3) The extent to which the grant of relief to the
15 applicant will substantially harm other parties to the
16 proceedings.

17 (4) The extent to which the public interest relied on by
18 the agency is sufficient to justify the agency's action in the
19 circumstances.

20 d. If the court determines that relief should be granted
21 from the agency's action on an application for stay or other
22 temporary remedies, the court may remand the matter to the
23 agency with directions to deny a stay, to grant a stay on
24 appropriate terms, or to grant other temporary remedies, or
25 the court may issue an order denying a stay, granting a stay
26 on appropriate terms, or granting other temporary remedies.

27 Sec. 25. Section 17A.19, subsection 8, Code 1997, is
28 amended by striking the subsection and inserting in lieu
29 thereof the following:

30 8. Except to the extent that this chapter provides
31 otherwise, in suits for judicial review of agency action all
32 of the following apply:

33 a. The burden of demonstrating the required prejudice and
34 the invalidity of agency action is on the party asserting
35 invalidity.

1 b. The validity of agency action must be determined in
2 accordance with the standards of review provided in this
3 section, as applied to the agency action at the time that
4 action was taken.

5 9. The court shall make a separate and distinct ruling on
6 each material issue on which the court's decision is based.

7 10. The court may affirm the agency action or remand to
8 the agency for further proceedings. The court shall reverse,
9 modify, or grant other appropriate relief from agency action,
10 equitable or legal and including declaratory relief, if it
11 determines that substantial rights of the person seeking
12 judicial relief have been prejudiced because the agency action
13 is any of the following:

14 a. Unconstitutional on its face or as applied or is based
15 upon a provision of law that is unconstitutional on its face
16 or as applied.

17 b. Beyond the authority delegated to the agency by any
18 provision of law or in violation of any provision of law.

19 c. Based upon an erroneous interpretation of a provision
20 of law whose interpretation has not clearly been vested by a
21 provision of law in the discretion of the agency.

22 d. Based upon a procedure or decision-making process
23 prohibited by law or was taken without following the
24 prescribed procedure or decision-making process.

25 e. The product of decision making undertaken by persons
26 who were improperly constituted as a decision-making body,
27 were motivated by an improper purpose, or were subject to
28 disqualification.

29 f. Based upon a determination of fact clearly vested by a
30 provision of law in the discretion of the agency that is not
31 supported by substantial evidence in the record before the
32 court when that record is viewed as a whole. For purposes of
33 this paragraph, the following terms have the following
34 meanings:

35 (1) "Substantial evidence" means the quantity and quality

1 of evidence that would be presented by a neutral,
2 detached, and reasonable person to establish the fact at
3 issue when the consequences resulting from the establishment
4 of that fact are understood to be serious and of great
5 importance.

6 (2) "Record before the court" means the agency record for
7 judicial review, as defined by this chapter, supplemented by
8 any additional evidence received by the court under the
9 provisions of this chapter.

10 (3) "When that record is viewed as a whole" means that the
11 adequacy of the evidence in the record before the court to
12 support a particular finding of fact must be judged in light
13 of all the relevant evidence in the record cited by any party
14 that detracts from that finding as well as all of the relevant
15 evidence in the record cited by any party that supports it,
16 including any determinations of veracity by the presiding
17 officer who personally observed the demeanor of the witnesses
18 and the agency's explanation of why the evidence in the record
19 supports its finding of fact and why the evidence in the
20 record that is contrary to its finding does not preclude that
21 finding.

22 g. Action other than a rule that is inconsistent with a
23 rule of the agency.

24 h. Action other than a rule that is inconsistent with the
25 agency's prior practice or precedents, unless the agency has
26 justified that inconsistency by stating credible reasons
27 sufficient to indicate a fair and rational basis for the
28 inconsistency.

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

31 j. The product of a decision-making process in which the
32 agency did not consider a relevant and important matter
33 relating to the propriety or desirability of the action in
34 question that a rational decision maker in similar
35 circumstances would have considered prior to taking that

1 action.

2 k. Not required by law and its negative impact on the
3 private rights affected is so grossly disproportionate to the
4 benefits accruing to the public interest from that action that
5 it must necessarily be deemed to lack any foundation in
6 rational agency policy.

7 l. Based upon an irrational, illogical, or wholly
8 unjustifiable interpretation of a provision of law whose
9 interpretation has clearly been vested by a provision of law
10 in the discretion of the agency.

11 m. Based upon an irrational, illogical, or wholly
12 unjustifiable application of law to fact that has clearly been
13 vested by a provision of law in the discretion of the agency.

14 n. Otherwise unreasonable, arbitrary, capricious, or an
15 abuse of discretion.

16 11. In making the determinations required by subsection
17 10, paragraphs "a" through "n", the court shall do all of the
18 following:

19 a. Shall not give any deference to the view of the agency
20 with respect to whether particular matters have been vested by
21 a provision of law in the discretion of the agency.

22 b. Should not give any deference to the view of the agency
23 with respect to particular matters that have not been vested
24 by a provision of law in the discretion of the agency.

25 c. Shall give appropriate deference to the view of the
26 agency with respect to particular matters that have been
27 vested by a provision of law in the discretion of the agency.

28 12. A defendant in a suit for civil enforcement of agency
29 action may defend on any of the grounds specified in
30 subsection 10, paragraphs "a" through "n", if that defendant,
31 at the time the enforcement suit was filed, would have been
32 entitled to rely upon any of those grounds as a basis for
33 invalidating the agency action in a suit for judicial review
34 of that action brought at the time the enforcement suit was
35 filed. If a suit for civil enforcement of agency action in a

1 contested case is filed within the time period in which the
2 defendant could have filed a petition for judicial review of
3 that agency action, and the agency subsequently dismisses its
4 suit for civil enforcement of that agency action against the
5 defendant, the defendant may, within thirty days of that
6 dismissal, file a petition for judicial review of the original
7 agency action at issue if the defendant relied upon any of the
8 grounds for judicial review in subsection 10, paragraphs "a"
9 through "n", in a responsive pleading to the enforcement
10 action, or if the time to file a responsive pleading had not
11 yet expired at the time the enforcement action was dismissed.

12 Sec. 26. Section 17A.33, Code 1997, is amended to read as
13 follows:

14 17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW COMMITTEE.

15 The administrative rules review committee shall review
16 existing rules, as time permits, to determine if there are
17 adverse or beneficial effects from these rules. The committee
18 shall give a high priority to rules that are referred to it by
19 small business as defined in section ~~17A.31~~ 17A.4A. The
20 review of these rules shall be forwarded to the appropriate
21 standing committees of the house and senate.

22 Sec. 27. Section 19A.1A, Code 1997, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 4. Reduction in force appeals shall be
25 subject to review by the director.

26 Sec. 28. Section 20.6, subsection 4, Code 1997, is amended
27 to read as follows:

28 4. Hold hearings and administer oaths, examine witnesses
29 and documents, take testimony and receive evidence, issue
30 subpoenas to compel the attendance of witnesses and the
31 production of records, and delegate such power to a member of
32 the board, or persons appointed or employed by the board,
33 including administrative law judges, or administrative law
34 judges employed by the office of administrative hearings
35 created by section 10A.801, for the performance of its

1 functions. The board may petition the district court at the
2 seat of government or of the county where a hearing is held to
3 enforce a board order compelling the attendance of witnesses
4 and production of records.

5 Sec. 29. Section 86.17, subsection 1, Code 1997, is
6 amended to read as follows:

7 1. A Notwithstanding the provisions of section 17A.11, the
8 industrial commissioner or a deputy industrial commissioner
9 may shall preside over any contested case proceeding brought
10 under this chapter, chapter 85, or 85A, or 85B in the manner
11 provided by chapter 17A. The deputy commissioner or the
12 commissioner may make such inquiries ~~and investigation~~ in
13 contested case proceedings as shall be deemed necessary,
14 ~~consistent with~~ so long as such inquiries do not violate any
15 of the provisions of section 17A.17.

16 Sec. 30. Section 137E.12, Code 1997, is amended to read as
17 follows:

18 137E.12 REVOCATION OR ORDER FOR DISCONTINUANCE.

19 A license issued under this chapter may be revoked by the
20 regulatory authority for violation by the licensee of a
21 provision of this chapter or an applicable rule of the
22 department. In lieu of license revocation, the regulatory
23 authority may require the immediate discontinuance of
24 operation of a vending machine or commissary if it finds
25 unsanitary conditions or other conditions which constitute a
26 substantial hazard to the public health. The order shall
27 apply only to the vending machines, commissary, or product
28 involved. A person whose license is revoked, or who is
29 ordered to discontinue the operation of a vending machine or
30 commissary, may appeal that decision to the director. The
31 director or ~~the chief~~ an administrative law judge of the
32 department appointed according to the requirements of section
33 17A.11, subsection 1, shall schedule and hold a hearing upon
34 the appeal not later than thirty days from the time of
35 revocation or the order of discontinuance. The director or

1 the chief administrative law judge shall issue a decision
2 immediately following the hearing. Judicial review may be
3 sought in accordance with ~~the Iowa administrative procedure~~
4 Act chapter 17A.

5 Sec. 31. Section 148.7, subsection 3, Code 1997, is
6 amended to read as follows:

7 3. The hearing shall be before a member or members
8 designated by the board or before an administrative law judge
9 appointed by the board according to the requirements of
10 section 17A.11, subsection 1. The presiding board member or
11 administrative law judge may issue subpoenas, administer
12 oaths, and take or cause depositions to be taken in connection
13 with the hearing. The presiding board member or
14 administrative law judge shall issue subpoenas at the request
15 and on behalf of the licensee. The hearing shall be open to
16 the public.

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

27 Sec. 32. Section 169.5, subsection 9, paragraph e, Code
28 1997, is amended to read as follows:

29 e. Hold hearings on all matters properly brought before
30 the board and administer oaths, receive evidence, make the
31 necessary determinations, and enter orders consistent with the
32 findings. The board may require by subpoena the attendance
33 and testimony of witnesses and the production of papers,
34 records, or other documentary evidence and commission
35 depositions. An administrative law judge may be appointed

1 pursuant to section 17A.11~~7~~-~~subsection-3~~ to perform those
2 functions which properly repose in an administrative law
3 judge.

4 Sec. 33. Section 169.14, subsection 3, Code 1997, is
5 amended to read as follows:

6 3. The hearing shall be before a member or members
7 designated by the board or before an administrative law judge
8 appointed by the board according to the requirements of
9 section 17A.11, subsection 1. The presiding board member or
10 administrative law judge may issue subpoenas, administer
11 oaths, and take or cause depositions to be taken in connection
12 with the hearing. The member or officer shall issue subpoenas
13 at the request and on behalf of the licensee.

14 Sec. 34. Section 203C.10, unnumbered paragraph 2, Code
15 1997, is amended to read as follows:

16 If upon the filing of the information or complaint the
17 department finds that the licensee has failed to meet the
18 warehouse operator's obligation or otherwise has violated or
19 failed to comply with the provisions of this chapter or any
20 rule promulgated under this chapter, and if the department
21 finds that the public health, safety or welfare imperatively
22 requires emergency action, then the department without hearing
23 may order a summary suspension of the license in the manner
24 provided in section ~~17A.18~~ 17A.18A. When so ordered, a copy
25 of the order of suspension shall be served upon the licensee
26 at the time the information or complaint is served as provided
27 in this section.

28 Sec. 35. Section 207.14, subsection 2, unnumbered
29 paragraph 2, Code 1997, is amended to read as follows:

30 If upon expiration of the time as fixed the administrator
31 finds in writing that the violation has not been abated, the
32 administrator, notwithstanding ~~section~~ sections 17A.18 and
33 17A.18A, shall immediately order a cessation of coal mining
34 and reclamation operations relating to the violation until the
35 order is modified, vacated, or terminated by the administrator

1 pursuant to procedures outlined in this section. In the order
2 of cessation issued by the administrator under this
3 subsection, the administrator shall include the steps
4 necessary to abate the violation in the most expeditious
5 manner possible.

6 Sec. 36. Section 216.15, subsection 3, paragraph a, Code
7 1997, is amended to read as follows:

8 a. After the filing of a verified complaint, a true copy
9 shall be served within twenty days by certified mail on the
10 person against whom the complaint is filed. An authorized
11 member of the commission staff shall make a prompt
12 investigation and shall issue a recommendation to an
13 administrative law judge ~~under the jurisdiction of~~ employed
14 either by the commission or by the office of administrative
15 hearings created by section 10A.801, who shall then issue a
16 determination of probable cause or no probable cause.

17 Sec. 37. Section 216.17, subsection 6, Code 1997, is
18 amended to read as follows:

19 6. In the enforcement proceeding the court shall determine
20 its order on the same basis as it would in a proceeding
21 reviewing commission action under section 17A.19~~7~~-subsection
22 8.

23 Sec. 38. Section 252.27, unnumbered paragraph 2, Code
24 1997, is amended to read as follows:

25 The board shall record its proceedings relating to the
26 provision of assistance to specific persons under this
27 chapter. A person who is aggrieved by a decision of the board
28 may appeal the decision as if it were a contested case before
29 an agency and as if the person had exhausted administrative
30 remedies in accordance with the procedures and standards in
31 section 17A.19, subsections 2 to 8 12 except subsection 10,
32 paragraphs "b" and "e"-of-subsection-8 "g", and section
33 17A.20.

34 Sec. 39. Section 256.7, subsection 6, Code 1997, is
35 amended to read as follows:

1 6. Hear appeals of persons aggrieved by decisions of
2 boards of directors of school corporations under chapter 290
3 and other appeals prescribed by law. The state board may
4 review the record and shall review the decision of the
5 director of the department of education or the administrative
6 law judge designated ~~by the director in~~ for any appeals heard
7 and decided by the director under chapter 290, and may affirm,
8 modify, or vacate the decision, or may direct a rehearing
9 before the director.

10 Sec. 40. Section 368.22, Code 1997, is amended by adding
11 the following new subsections:

12 NEW SUBSECTION. 4. Subsection 9.

13 NEW SUBSECTION. 5. Subsection 10.

14 NEW SUBSECTION. 6. Subsection 11.

15 Sec. 41. Section 421.17, subsection 20, unnumbered
16 paragraph 2, Code Supplement 1997, is amended to read as
17 follows:

18 The provisions of sections 17A.10 to ~~17A.18~~ 17A.18A
19 relating to contested cases shall not apply to any matters
20 involving the equalization of valuations of classes of
21 property as authorized by this chapter and chapter 441. This
22 exemption shall not apply to a hearing before the state board
23 of tax review.

24 Sec. 42. Section 535B.7, subsection 2, unnumbered
25 paragraph 1, Code 1997, is amended to read as follows:

26 The administrator may order an emergency suspension of a
27 licensee's license pursuant to section ~~17A.187-subsection-3~~
28 17A.18A. A written order containing the facts or conduct
29 which warrants the emergency action shall be timely sent to
30 the licensee by restricted certified mail. Upon issuance of
31 the suspension order, the licensee must also be notified of
32 the right to an evidentiary hearing. A suspension proceeding
33 shall be promptly instituted and determined.

34 Sec. 43. Section 602.9206, unnumbered paragraph 2, Code
35 1997, is amended to read as follows:

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

10 Sec. 44. Section 903A.1, Code 1997, is amended to read as
11 follows:

12 903A.1 CONDUCT REVIEW.

13 The director of the Iowa department of corrections shall
14 appoint independent administrative law judges whose duties
15 shall include but are not limited to review, as provided in
16 section 903A.3, of the conduct of inmates in institutions
17 under the department. Sections 10A.801 and 17A.11 do not
18 apply to administrative law judges appointed pursuant to this
19 section.

20 Sec. 45. Sections 10A.201, 10A.202, 17A.31, and 17A.32,
21 Code 1997, are repealed.

22 Sec. 46. EFFECTIVE DATE. This Act takes effect July 1,
23 1999, and applies to agency proceedings commenced on or after
24 that date, except that this Act shall apply to any agency
25 proceedings conducted on a remand from a court or another
26 agency on or after that date.

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HOUSE FILE 667

H-8244

- 1 Amend House File 667 as follows:
- 2 1. Page 32, line 18, by inserting after the word
- 3 "Code" the following: "Supplement".
- 4 2. Page 33, line 24, by striking the figure
- 5 "1998" and inserting the following: "1999".

By MILLAGE of Scott

H-8244 FILED MARCH 5, 1998

adopted 3/10/98 (P 569)

HOUSE FILE 667

H-8256

- 1 Amend House File 667 as follows:
- 2 1. Page 10, line 18, by inserting after the word
- 3 "provided." the following: "Agencies shall make
- 4 available to the public, to the maximum extent
- 5 feasible, the published summary and the full text of
- 6 the regulatory analysis described in this subsection
- 7 in an electronic format, including, but not limited
- 8 to, access to the documents through the internet."

By KREIMAN of Davis

H-8256 FILED MARCH 5, 1998

*adopted
3/10/98*

HOUSE FILE 667

S-5293

1 Amend House File 667 as follows:
2 1. Page 15, line 16, by inserting before the word
3 "If" the following:
4 "The presiding officer in evidentiary hearings
5 required to be conducted by an agency according to the
6 provisions of this chapter governing contested cases
7 shall, except as otherwise provided by law or pursuant
8 to paragraph "b", be one or more administrative law
9 judges assigned by the office of administrative
10 hearings in accordance with section 10A.801.
11 b. If an administrative law judge with the
12 requisite expertness as to the contested case is not
13 available and each real party in interest to the
14 contested case agrees to permit the appropriate agency
15 head to designate the presiding officer, the presiding
16 officer shall be determined as follows:
17 (1)".
18 2. Page 15, line 20, by striking the words "head,
19 one" and inserting the following: "head or one".
20 3. Page 15, by striking lines 21 through 23 and
21 inserting the following: "of the agency head."
22 4. Page 15, line 24, by striking the word "b."
23 and inserting the following: "(2)".
24 5. Page 15, by striking lines 29 through 31 and
25 inserting the following: "of the agency head, or any
26 other qualified person".
27 6. Page 28, by inserting after line 11 the
28 following:
29 "Sec. ____ . Section 17A.23, Code 1997, is amended
30 by adding the following new unnumbered paragraph:
31 NEW UNNUMBERED PARAGRAPH. An agency shall have
32 only that authority or discretion delegated to or
33 conferred upon the agency by law and shall not expand
34 or enlarge its authority or discretion beyond the
35 powers delegated to or conferred upon the agency."
36 7. Page 29, by inserting after line 15 the
37 following:
38 "Sec. ____ . Section 96.6, subsection 3, unnumbered
39 paragraph I, Code 1997, is amended to read as follows:
40 Unless the appeal is withdrawn, an administrative
41 law judge, after affording the parties reasonable
42 opportunity for fair hearing, shall affirm or modify
43 the findings of fact and decision of the
44 representative. The hearing shall be conducted
45 pursuant to the provisions of chapter 17A relating to
46 hearings for contested cases. Before the hearing is
47 scheduled, the parties shall be afforded the
48 opportunity to choose either a telephone hearing or an
49 in-person hearing. A request for an in-person hearing
50 shall be approved unless the in-person hearing would

S-5293

-1-

S-5293

Page 2

1 be impractical because of the distance between the
2 parties to the hearing. A telephone or in-person
3 hearing shall not be scheduled before the seventh
4 calendar day after the parties receive notice of the
5 hearing. Reasonable requests for the postponement of
6 a hearing shall be granted. If no postponement of a
7 hearing is granted and a party fails to appear for a
8 hearing after proper service of notice, the
9 administrative law judge may, notwithstanding any
10 provision of section 17A.12, subsection 3, to the
11 contrary, proceed with the hearing and make a decision
12 in the absence of the party. The parties shall be
13 duly notified of the administrative law judge's
14 decision, together with the administrative law judge's
15 reasons for the decision, which is the final decision
16 of the department, unless within fifteen days after
17 the date of notification or mailing of the decision,
18 further appeal is initiated pursuant to this section.
19 If a decision is rendered against a party who failed
20 to appear for the hearing and the administrative law
21 judge is requested by that party to vacate the
22 decision for good cause within fifteen days after the
23 date of notification or mailing of the decision, the
24 time for initiating a further appeal pursuant to this
25 section is stayed pending a determination by the
26 administrative law judge to grant or deny the request.
27 If adequate reasons are provided showing good cause
28 for the party's failure to appear, the administrative
29 law judge shall vacate the decision and, after proper
30 service of notice, conduct another evidentiary
31 hearing. If adequate reasons are not provided showing
32 good cause for the party's failure to appear, the
33 administrative law judge shall not vacate the decision
34 and the decision shall then become the final decision
35 of the department, unless within fifteen days after
36 the date of notification or mailing of the
37 determination not to vacate, further appeal is
38 initiated pursuant to this section."

39 8. By renumbering, relettering, or redesignating
40 and correcting internal references as necessary.

By COMMITTEE ON JUDICIARY
ANDY MCKEAN, Chairperson

S-5293 FILED MARCH 19, 1998

WITHDRAWN

4-7-98

(p. 1116)

HOUSE FILE 667

S-5457

Amend the amendment, S-5293, to House File 667, as amended, passed, and reprinted by the House as follows:

1. Page 1, by striking lines 1 through 26 and inserting the following:

"Amend House File 667, as amended, passed, and reprinted by the House, as follows:

____. Page 15, line 20, by striking the words "head, either the agency head" and inserting the following: ", either the agency".

____. Page 15, line 21, by striking the words "the agency head" and inserting the following: "a multimember agency".

____. Page 15, line 23, by inserting after the figure "10A.801." the following: "However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the office of administrative hearings. Except as otherwise provided by statute, the agency shall grant a request by a party for an administrative law judge unless the agency finds, and states reasons for the finding, that any of the following conditions exist:

(1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

(2) A qualified administrative law judge is unavailable to hear the case within a reasonable time.

(3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

(4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

(5) Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

(6) The request was not timely filed.

(7) There is other identified good cause, as specified by rule, for denying the request."

____. Page 15, line 28, by striking the words "head, either the agency head" and inserting the following: ", either the agency".

____. Page 15, line 29, by striking the words "the agency head" and inserting the following: "a multimember agency".

____. Page 15, line 32, by striking the word "head".

____. Page 15, line 34, by striking the word "head".

2. By renumbering as necessary.

By MARY NEUHAUSER

S-5457 FILED APRIL 1, 1998

*o/ order 4-7-98
(P. 1116)*

HOUSE FILE 667

S-5559

1 Amend the amendment, S-5556, to House File 667, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 5, by inserting after line 11 the
5 following:

6 "____. Page 17, by inserting before line 32 the
7 following:

8 "Sec. ____ . Section 17A.15, subsection 3, Code
9 1997, is amended to read as follows:

10 3. When the presiding officer makes a proposed
11 decision, that decision then becomes the final
12 decision of the agency without further proceedings
13 unless there is an appeal to, or review on motion of,
14 the agency within the time provided by rule. On
15 appeal from or review of the proposed decision, the
16 agency has all the power which it would have in
17 initially making the final decision except as it may
18 limit the issues on notice to the parties or by rule.
19 The agency may review or modify any finding of fact or
20 conclusion of law in the proposed decision if the
21 agency shows by a preponderance of the evidence that
22 the finding of fact or conclusion of law was in error.
23 In cases where there is an appeal from a proposed
24 decision or where a proposed decision is reviewed on
25 motion of the agency, an opportunity shall be afforded
26 to each party to file exceptions, present briefs and,
27 with the consent of the agency, present oral arguments
28 to the agency members who are to render the final
29 decision.""

30 2. By renumbering as necessary.

By STEVE KING

S-5559 FILED APRIL 7, 1998

LOST

(P. 1116)

HOUSE FILE 667

S-5556

1 Amend House File 667, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by striking lines 1 through 5.

4 2. Page 1, line 13, by striking the words "the
5 chief administrative law judge,".

6 3. Page 1, by striking lines 29 through 32 and
7 inserting the following:

8 "1. ~~Appeals-and-fair~~ Administrative hearings
9 division.

10 2. Audits division.

11 3. Investigations division.

12 4. Inspections division."

13 4. Page 2, line 2, by striking the word "office"
14 and inserting the following: "division".

15 5. Page 2, line 5, by striking the word "OFFICE"
16 and inserting the following: "DIVISION".

17 6. Page 2, by striking lines 7 through 12 and
18 inserting the following:

19 "1. DEFINITIONS. For purposes of this section,
20 unless the context otherwise requires:

21 a. "Administrator" means the chief administrative
22 law judge who shall coordinate the administration of
23 the division.

24 b. "Division" means the administrative hearings
25 division of the department of inspections and appeals.

26 2. The administrator shall coordinate the
27 division's conduct of appeals and administrative
28 hearings as otherwise provided by law."

29 7. Page 2, by striking line 13 and inserting the
30 following:

31 "3. a. The administrator shall employ a".

32 8. Page 2, line 17, by striking the word "office"
33 and inserting the following: "division".

34 9. Page 2, line 18, by striking the word "office"
35 and inserting the following: "division".

36 10. Page 2, line 21, by striking the word
37 "entirely".

38 11. Page 2, by striking lines 25 through 28 and
39 inserting the following:

40 "b. The division shall facilitate, insofar as".

41 12. Page 2, line 35, by striking the word
42 "office" and inserting the following: "division".

43 13. Page 3, by striking lines 2 through 7 and
44 inserting the following: "contested cases only if the
45 administrative law judge possesses the technical
46 expertness specified by agency rule. The division may
47 charge the applicable agency for the costs of any
48 training required by the division's administrative law
49 judges to acquire or maintain the technical expertise
50 specified by agency rule."

S-5556

-1-

S-5556

Page 2

- 1 14. Page 3, line 8, by striking the figure "3"
- 2 and inserting the following: "4".
- 3 15. Page 3, line 8, by striking the word "office"
- 4 and inserting the following: "division".
- 5 16. Page 3, lines 9 and 10, by striking the words
- 6 "chief administrative law judge" and inserting the
- 7 following: "administrator".
- 8 17. Page 3, line 15, by striking the word
- 9 "office" and inserting the following: "division".
- 10 18. Page 3, line 16, by striking the figure "4"
- 11 and inserting the following: "5".
- 12 19. Page 3, line 16, by striking the word
- 13 "office" and inserting the following: "division".
- 14 20. Page 3, line 19, by striking the figure "5"
- 15 and inserting the following: "6".
- 16 21. Page 3, line 20, by striking the word
- 17 "office" and inserting the following: "division".
- 18 22. Page 3, line 23, by striking the figure "6"
- 19 and inserting the following: "7".
- 20 23. Page 3, line 23, by striking the word
- 21 "office" and inserting the following: "division".
- 22 24. Page 3, by striking lines 25 through 31.
- 23 25. Page 3, line 32, by striking the letter "b"
- 24 and inserting the following: "a".
- 25 26. Page 3, line 33, by striking the words "chief
- 26 administrative law judge" and inserting the following:
- 27 "administrator".
- 28 27. Page 3, line 34, by striking the word
- 29 "office" and inserting the following: "division".
- 30 28. Page 3, line 35, by striking the letter "c"
- 31 and inserting the following: "b".
- 32 29. Page 4, line 2, by striking the word "office"
- 33 and inserting the following: "division".
- 34 30. Page 4, line 12, by striking the letter "d"
- 35 and inserting the following: "c".
- 36 31. Page 4, lines 13 and 14, by striking the
- 37 words "by the office of" and inserting the following:
- 38 "for the".
- 39 32. Page 4, line 14, by striking the word
- 40 "office" and inserting the following: "division".
- 41 33. Page 4, line 17, by striking the word
- 42 "office" and inserting the following: "division".
- 43 34. Page 4, line 22, by striking the words
- 44 "office shall" and inserting the following: "division
- 45 shall".
- 46 35. Page 4, line 22, by striking the words "the
- 47 office" and inserting the following: "the division".
- 48 36. Page 4, line 23, by striking the letter "e"
- 49 and inserting the following: "d".
- 50 37. Page 5, line 11, by striking the letter "f"

S-5556

-2-

S-5556

Page 3

1 and inserting the following: "e".
2 38. Page 5, line 12, by striking the word
3 "office" and inserting the following: "division".
4 39. Page 5, line 14, by striking the figure "7"
5 and inserting the following: "8".
6 40. Page 5, line 14, by striking the word
7 "office" and inserting the following: "division".
8 41. Page 5, line 17, by striking the word
9 "office" and inserting the following: "division".
10 42. Page 5, line 21, by striking the figure "8"
11 and inserting the following: "9".
12 43. Page 5, line 21, by striking the word
13 "office" and inserting the following: "division".
14 44. Page 5, line 24, by striking the figure "9"
15 and inserting the following: "10".
16 45. Page 5, line 25, by striking the word
17 "office" and inserting the following: "division".
18 46. Page 11, by striking lines 25 through 31 and
19 inserting the following:
20 "2. Any interested person, association, agency, or
21 political subdivision may submit a written request to
22 the administrative rules coordinator for an agency to
23 conduct a formal review of a specified rule of that
24 agency to determine whether the rule should be
25 repealed or amended or a new rule adopted instead.
26 The administrative rules coordinator shall determine
27 whether the request is reasonable and does not place
28 an unreasonable burden upon the agency."
29 47. Page 11, by striking line 34 and inserting
30 the following: "filing of the written request, and
31 upon a determination by the administrative rules
32 coordinator that the request is reasonable and does
33 not place an unreasonable burden upon the agency, the
34 agency".
35 48. Page 15, line 20, by striking the words
36 "head, either the agency head" and inserting the
37 following: ", either the agency".
38 49. Page 15, line 21, by striking the words "the
39 agency head" and inserting the following: "a
40 multimember agency".
41 50. Page 15, line 22, by striking the word
42 "office" and inserting the following: "division".
43 51. Page 15, line 23, by inserting after the
44 figure "10A.801." the following: "However, a party
45 may, within a time period specified by rule, request
46 that the presiding officer be an administrative law
47 judge assigned by the division of administrative
48 hearings. Except as otherwise provided by statute,
49 the agency shall grant a request by a party for an
50 administrative law judge unless the agency finds, and

S-5556

-3-

S-5556

Page 4

1 states reasons for the finding, that any of the
2 following conditions exist:

3 (1) There is a compelling need to expedite
4 issuance of a final decision in order to protect the
5 public health, safety, or welfare.

6 (2) A qualified administrative law judge is
7 unavailable to hear the case within a reasonable time.

8 (3) The case involves significant policy issues of
9 first impression that are inextricably intertwined
10 with the factual issues presented.

11 (4) The demeanor of the witnesses is likely to be
12 dispositive in resolving the disputed factual issues.

13 (5) Funds are unavailable to pay the costs of an
14 administrative law judge and an intra-agency appeal.

15 (6) The request was not timely filed.

16 (7) There is other identified good cause, as
17 specified by rule, for denying the request."

18 52. Page 15, line 28, by striking the words
19 "head, either the agency head" and inserting the
20 following: ", either the agency".

21 53. Page 15, line 29, by striking the words "the
22 agency head" and inserting the following: "a
23 multimember agency".

24 54. Page 15, line 30, by striking the word
25 "office" and inserting the following: "division".

26 55. Page 15, line 32, by striking the word
27 "head".

28 56. Page 15, line 34, by striking the word
29 "head".

30 57. Page 16, line 3, by striking the word
31 "office" and inserting the following: "division".

32 58. By striking page 16, line 33, through page
33 17, line 31, and inserting the following:

34 "3. If a party fails to appear or participate in a
35 contested case proceeding, the presiding officer may,
36 if no adjournment is granted, proceed with the hearing
37 and make a decision in the absence of the party. The
38 parties shall be duly notified of the decision,
39 together with the presiding officer's reasons for the
40 decision, which is the final decision of the agency,
41 unless within fifteen days after the date of
42 notification or mailing of the decision, further
43 appeal is initiated. If a decision is rendered
44 against a party who failed to appear for the hearing
45 and the presiding officer is requested by that party
46 to vacate the decision for good cause within fifteen
47 days after the date of notification or mailing of the
48 decision, the time for initiating a further appeal is
49 stayed pending a determination by the presiding
50 officer to grant or deny the request. If adequate

S-5556

S-5556

Page 5

1 reasons are provided showing good cause for the
2 party's failure to appear, the presiding officer shall
3 vacate the decision and, after proper service of
4 notice, conduct another evidentiary hearing. If
5 adequate reasons are not provided showing good cause
6 for the party's failure to appear, the presiding
7 officer shall not vacate the decision and the decision
8 shall then become the final decision of the agency,
9 unless within fifteen days after the date of
10 notification or mailing of the determination not to
11 vacate, further appeal is initiated."

12 59. Page 18, by striking lines 6 through 8 and
13 inserting the following: "why the relevant evidence
14 in the record supports each material finding of fact.
15 If, in accordance with agency".

16 60. Page 26, by striking lines 18 through 21 and
17 inserting the following: "and the agency's
18 explanation of why the relevant evidence in the record
19 supports its material findings of fact."

20 61. Page 28, by inserting after line 11 the
21 following:

22 "Sec. ____ . Section 17A.23, Code 1997, is amended
23 by adding the following new unnumbered paragraph:
24 NEW UNNUMBERED PARAGRAPH. An agency shall have
25 only that authority or discretion delegated to or
26 conferred upon the agency by law and shall not expand
27 or enlarge its authority or discretion beyond the
28 powers delegated to or conferred upon the agency."

29 62. Page 28, line 34, by striking the word
30 "office" and inserting the following: "division".

31 63. Page 32, line 14, by striking the word
32 "office" and inserting the following: "division".

33 64. By renumbering as necessary.

By MARY NEUHAUSER

S-5556 FILED APRIL 7, 1998

ADOPTED

(p.117)

HOUSE FILE 667

S-5562

1 Amend the amendment, S-5556, to House File 667, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 5, by inserting after line 11 the
5 following:

6 " ____ . Page 17, by inserting before line 32 the
7 following:

8 "Sec. ____ . Section 17A.15, subsection 3, Code
9 1997, is amended to read as follows:

10 3. When the presiding officer makes a proposed
11 decision, that decision then becomes the final
12 decision of the agency without further proceedings
13 unless there is an appeal to, or review on motion of,
14 the agency within the time provided by rule. On
15 appeal from or review of the proposed decision, the
16 agency has all the power which it would have in
17 initially making the final decision except as it may
18 limit the issues on notice to the parties or by rule.
19 The agency may reverse or modify any finding of fact
20 or conclusion of law if a preponderance of the
21 evidence will support a determination to reverse or
22 modify such a finding or conclusion. In cases where
23 there is an appeal from a proposed decision or where a
24 proposed decision is reviewed on motion of the agency,
25 an opportunity shall be afforded to each party to file
26 exceptions, present briefs and, with the consent of
27 the agency, present oral arguments to the agency
28 members who are to render the final decision.""

29 2. By renumbering as necessary.

By STEVE KING

S-5562 FILED APRIL 7, 1998

ADOPTED

(P. 1116)

HOUSE FILE 667

S-5560

- 1 Amend the amendment, S-5556, to House File 667, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 5, by inserting after line 30 the
5 following:
6 "____. Page 29, by inserting after line 15 the
7 following:
8 "Sec. ____ Section 96.6, subsection 3, unnumbered
9 paragraph 2, Code 1997, is amended to read as follows:
10 Appeals from the initial determination shall be
11 heard by an administrative law judge employed by the
12 department division of administrative hearings created
13 by section 10A.801. An administrative law judge's
14 decision may be appealed by any party to the
15 employment appeal board created in section 10A.601.
16 The decision of the appeal board is final agency
17 action and an appeal of the decision shall be made
18 directly to the district court."
19 2. By renumbering as necessary.

By STEVE KING

S-5560 FILED APRIL 7, 1998

LOST

(P.1117)

HOUSE FILE 667

S-5561

- 1 Amend the amendment, S-5556, to House File 667, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 1, line 3, by striking the figure "5" and
5 inserting the following: "19".
6 2. Page 1, by striking lines 4 and 5.
7 3. Page 1, line 31, by striking the word
8 "administrator" and inserting the following:
9 "department".
10 4. By renumbering as necessary.

By STEVE KING

S-5561 FILED APRIL 7, 1998

ADOPTED

(P.1116)

SENATE AMENDMENT TO HOUSE FILE 667

H-8997

- 1 Amend House File 667, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, by striking lines 1 through 19.
4 2. Page 1, by striking lines 29 through 32 and
5 inserting the following:
6 "1. ~~Appeals-and-fair~~ Administrative hearings
7 division.
8 2. Audits division.
9 3. Investigations division.
10 4. Inspections division."
11 3. Page 2, line 2, by striking the word "office"
12 and inserting the following: "division".
13 4. Page 2, line 5, by striking the word "OFFICE"
14 and inserting the following: "DIVISION".
15 5. Page 2, by striking lines 7 through 12 and
16 inserting the following:
17 "1. DEFINITIONS. For purposes of this section,
18 unless the context otherwise requires:
19 a. "Administrator" means the chief administrative
20 law judge who shall coordinate the administration of
21 the division.
22 b. "Division" means the administrative hearings
23 division of the department of inspections and appeals.
24 2. The administrator shall coordinate the
25 division's conduct of appeals and administrative
26 hearings as otherwise provided by law."
27 6. Page 2, by striking line 13 and inserting the
28 following:
29 "3. a. The department shall employ a".
30 7. Page 2, line 17, by striking the word "office"
31 and inserting the following: "division".
32 8. Page 2, line 18, by striking the word "office"
33 and inserting the following: "division".
34 9. Page 2, line 21, by striking the word
35 "entirely".
36 10. Page 2, by striking lines 25 through 28 and
37 inserting the following:
38 "b. The division shall facilitate, insofar as".
39 11. Page 2, line 35, by striking the word
40 "office" and inserting the following: "division".
41 12. Page 3, by striking lines 2 through 7 and
42 inserting the following: "contested cases only if the
43 administrative law judge possesses the technical
44 expertness specified by agency rule. The division may
45 charge the applicable agency for the costs of any
46 training required by the division's administrative law
47 judges to acquire or maintain the technical expertise
48 specified by agency rule."
49 13. Page 3, line 8, by striking the figure "3"
50 and inserting the following: "4".

H-8997

H-8997

Page 2

- 1 14. Page 3, line 8, by striking the word "office"
2 and inserting the following: "division".
3 15. Page 3, lines 9 and 10, by striking the words
4 "chief administrative law judge" and inserting the
5 following: "administrator".
6 16. Page 3, line 15, by striking the word
7 "office" and inserting the following: "division".
8 17. Page 3, line 16, by striking the figure "4"
9 and inserting the following: "5".
10 18. Page 3, line 16, by striking the word
11 "office" and inserting the following: "division".
12 19. Page 3, line 19, by striking the figure "5"
13 and inserting the following: "6".
14 20. Page 3, line 20, by striking the word
15 "office" and inserting the following: "division".
16 21. Page 3, line 23, by striking the figure "6"
17 and inserting the following: "7".
18 22. Page 3, line 23, by striking the word
19 "office" and inserting the following: "division".
20 23. Page 3, by striking lines 25 through 31.
21 24. Page 3, line 32, by striking the letter "b"
22 and inserting the following: "a".
23 25. Page 3, line 33, by striking the words "chief
24 administrative law judge" and inserting the following:
25 "administrator".
26 26. Page 3, line 34, by striking the word
27 "office" and inserting the following: "division".
28 27. Page 3, line 35, by striking the letter "c"
29 and inserting the following: "b".
30 28. Page 4, line 2, by striking the word "office"
31 and inserting the following: "division".
32 29. Page 4, line 12, by striking the letter "d"
33 and inserting the following: "c".
34 30. Page 4, lines 13 and 14, by striking the
35 words "by the office of" and inserting the following:
36 "for the".
37 31. Page 4, line 14, by striking the word
38 "office" and inserting the following: "division".
39 32. Page 4, line 17, by striking the word
40 "office" and inserting the following: "division".
41 33. Page 4, line 22, by striking the words
42 "office shall" and inserting the following: "division
43 shall".
44 34. Page 4, line 22, by striking the words "the
45 office" and inserting the following: "the division".
46 35. Page 4, line 23, by striking the letter "e"
47 and inserting the following: "d".
48 36. Page 5, line 11, by striking the letter "f"
49 and inserting the following: "e".
50 37. Page 5, line 12, by striking the word

H-8997

-2-

H-8997

Page 3

1 "office" and inserting the following: "division".
2 38. Page 5, line 14, by striking the figure "7"
3 and inserting the following: "8".
4 39. Page 5, line 14, by striking the word
5 "office" and inserting the following: "division".
6 40. Page 5, line 17, by striking the word
7 "office" and inserting the following: "division".
8 41. Page 5, line 21, by striking the figure "8"
9 and inserting the following: "9".
10 42. Page 5, line 21, by striking the word
11 "office" and inserting the following: "division".
12 43. Page 5, line 24, by striking the figure "9"
13 and inserting the following: "10".
14 44. Page 5, line 25, by striking the word
15 "office" and inserting the following: "division".
16 45. Page 11, by striking lines 25 through 31 and
17 inserting the following:
18 "2. Any interested person, association, agency, or
19 political subdivision may submit a written request to
20 the administrative rules coordinator for an agency to
21 conduct a formal review of a specified rule of that
22 agency to determine whether the rule should be
23 repealed or amended or a new rule adopted instead.
24 The administrative rules coordinator shall determine
25 whether the request is reasonable and does not place
26 an unreasonable burden upon the agency."
27 46. Page 11, by striking line 34 and inserting
28 the following: "filing of the written request, and
29 upon a determination by the administrative rules
30 coordinator that the request is reasonable and does
31 not place an unreasonable burden upon the agency, the
32 agency".
33 47. Page 15, line 20, by striking the words
34 "head, either the agency head" and inserting the
35 following: ", either the agency".
36 48. Page 15, line 21, by striking the words "the
37 agency head" and inserting the following: "a
38 multimember agency".
39 49. Page 15, line 22, by striking the word
40 "office" and inserting the following: "division".
41 50. Page 15, line 23, by inserting after the
42 figure "10A.801." the following: "However, a party
43 may, within a time period specified by rule, request
44 that the presiding officer be an administrative law
45 judge assigned by the division of administrative
46 hearings. Except as otherwise provided by statute,
47 the agency shall grant a request by a party for an
48 administrative law judge unless the agency finds, and
49 states reasons for the finding, that any of the
50 following conditions exist:

H-8997

-3-

H-8997

Page 4

1 (1) There is a compelling need to expedite
2 issuance of a final decision in order to protect the
3 public health, safety, or welfare.
4 (2) A qualified administrative law judge is
5 unavailable to hear the case within a reasonable time.
6 (3) The case involves significant policy issues of
7 first impression that are inextricably intertwined
8 with the factual issues presented.
9 (4) The demeanor of the witnesses is likely to be
10 dispositive in resolving the disputed factual issues.
11 (5) Funds are unavailable to pay the costs of an
12 administrative law judge and an intra-agency appeal.
13 (6) The request was not timely filed.
14 (7) There is other identified good cause, as
15 specified by rule, for denying the request."
16 51. Page 15, line 28, by striking the words
17 "head, either the agency head" and inserting the
18 following: ", either the agency".
19 52. Page 15, line 29, by striking the words "the
20 agency head" and inserting the following: "a
21 multimember agency".
22 53. Page 15, line 30, by striking the word
23 "office" and inserting the following: "division".
24 54. Page 15, line 32, by striking the word
25 "head".
26 55. Page 15, line 34, by striking the word
27 "head".
28 56. Page 16, line 3, by striking the word
29 "office" and inserting the following: "division".
30 57. By striking page 16, line 33, through page
31 17, line 31, and inserting the following:
32 "3. If a party fails to appear or participate in a
33 contested case proceeding, the presiding officer may,
34 if no adjournment is granted, proceed with the hearing
35 and make a decision in the absence of the party. The
36 parties shall be duly notified of the decision,
37 together with the presiding officer's reasons for the
38 decision, which is the final decision of the agency,
39 unless within fifteen days after the date of
40 notification or mailing of the decision, further
41 appeal is initiated. If a decision is rendered
42 against a party who failed to appear for the hearing
43 and the presiding officer is requested by that party
44 to vacate the decision for good cause within fifteen
45 days after the date of notification or mailing of the
46 decision, the time for initiating a further appeal is
47 stayed pending a determination by the presiding
48 officer to grant or deny the request. If adequate
49 reasons are provided showing good cause for the
50 party's failure to appear, the presiding officer shall

H-8997

-4-

H-8997

Page 5

1 vacate the decision and, after proper service of
2 notice, conduct another evidentiary hearing. If
3 adequate reasons are not provided showing good cause
4 for the party's failure to appear, the presiding
5 officer shall not vacate the decision and the decision
6 shall then become the final decision of the agency,
7 unless within fifteen days after the date of
8 notification or mailing of the determination not to
9 vacate, further appeal is initiated."

10 58. Page 17, by inserting before line 32 the
11 following:

12 "Sec. ____ . Section 17A.15, subsection 3, Code
13 1997, is amended to read as follows:

14 3. When the presiding officer makes a proposed
15 decision, that decision then becomes the final
16 decision of the agency without further proceedings
17 unless there is an appeal to, or review on motion of,
18 the agency within the time provided by rule. On
19 appeal from or review of the proposed decision, the
20 agency has all the power which it would have in
21 initially making the final decision except as it may
22 limit the issues on notice to the parties or by rule.
23 The agency may reverse or modify any finding of fact
24 or conclusion of law if a preponderance of the
25 evidence will support a determination to reverse or
26 modify such a finding or conclusion. In cases where
27 there is an appeal from a proposed decision or where a
28 proposed decision is reviewed on motion of the agency,
29 an opportunity shall be afforded to each party to file
30 exceptions, present briefs and, with the consent of
31 the agency, present oral arguments to the agency
32 members who are to render the final decision."

33 59. Page 18, by striking lines 6 through 8 and
34 inserting the following: "why the relevant evidence
35 in the record supports each material finding of fact.
36 If, in accordance with agency".

37 60. Page 26, by striking lines 18 through 21 and
38 inserting the following: "and the agency's
39 explanation of why the relevant evidence in the record
40 supports its material findings of fact."

41 61. Page 28, by inserting after line 11 the
42 following:

43 "Sec. ____ . Section 17A.23, Code 1997, is amended
44 by adding the following new unnumbered paragraph:
45 NEW UNNUMBERED PARAGRAPH. An agency shall have
46 only that authority or discretion delegated to or
47 conferred upon the agency by law and shall not expand
48 or enlarge its authority or discretion beyond the
49 powers delegated to or conferred upon the agency."

50 62. Page 28, line 34, by striking the word

H-8997

H-8997

Page 6

- 1 "office" and inserting the following: "division".
- 2 63. Page 32, line 14, by striking the word
- 3 "office" and inserting the following: "division".
- 4 64. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8997 FILED APRIL 8, 1998

*House Concurred
4-14-98
(p. 1592)*

H-9136

- 1 Amend the Senate amendment, H-8997, to House File
2 667, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 4, line 33, by inserting after the word
5 "proceeding" the following: "after proper service of
6 notice".
7 2. Page 4, line 34, by inserting after the word
8 "granted," the following: "enter a default decision
9 or".
10 3. Page 4, line 39, by inserting after the word
11 "days" the following: ", or such period of time as
12 otherwise specified by statute or rule,".
13 4. Page 4, line 43, by inserting after the words
14 "officer is" the following: "timely".
15 5. Page 4, by striking lines 44 through 46 and
16 inserting the following: "to vacate the decision for
17 good cause, the time for initiating a further appeal
18 is".
19 6. Page 5, by striking lines 5 through 9 and
20 inserting the following: "officer shall deny the
21 motion to vacate."
22 7. Page 5, line 24, by striking the words "or
23 conclusion of law".
24 8. Page 5, line 26, by striking the words "or
25 conclusion" and inserting the following: ", or may
26 reverse or modify any conclusion of law that the
27 agency finds to be in error".

By MILLAGE of Scott
CHAPMAN of Linn

H-9136 FILED APRIL 13, 1998

Adopted
4-14-98
(P.1592)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 667

S-5658

- 1 Amend the Senate amendment, H-8997, to House File
2 667, as amended, passed, and reprinted by the House,
3 as follows:
- 4 1. Page 4, line 33, by inserting after the word
5 "proceeding" the following: "after proper service of
6 notice".
- 7 2. Page 4, line 34, by inserting after the word
8 "granted," the following: "enter a default decision
9 or".
- 10 3. Page 4, line 39, by inserting after the word
11 "days" the following: ", or such period of time as
12 otherwise specified by statute or rule,".
- 13 4. Page 4, line 43, by inserting after the words
14 "officer is" the following: "timely".
- 15 5. Page 4, by striking lines 44 through 46 and
16 inserting the following: "to vacate the decision for
17 good cause, the time for initiating a further appeal
18 is".
- 19 6. Page 5, by striking lines 5 through 9 and
20 inserting the following: "officer shall deny the
21 motion to vacate."
- 22 7. Page 5, line 24, by striking the words "or
23 conclusion of law".
- 24 8. Page 5, line 26, by striking the words "or
25 conclusion" and inserting the following: ", or may
26 reverse or modify any conclusion of law that the
27 agency finds to be in error".

RECEIVED FROM THE HOUSE

S-5658 FILED APRIL 14, 1998
CONCURRED

P. 1252

Dunkla, Chr.
Lamberti
Mullage
Doderer
Kreiman

HSB 230

JUDICIARY

Sponsored By

SENATE/HOUSE FILE # HC 667
BY (PROPOSED IOWA ADMINISTRATIVE
PROCEDURES INTERIM STUDY
COMMITTEE BILL)

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 and
2 providing an effective and applicability date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 10A.101, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. "Administrator" means the ~~chief-administrative-law~~
4 ~~judge~~, chief inspector, chief investigator, chief auditor, or
5 the person administering a division of the department.

6 Sec. 2. Section 10A.104, subsection 2, Code 1997, is
7 amended to read as follows:

8 2. Appoint the administrators of the divisions within the
9 department and all other personnel deemed necessary for the
10 administration of this chapter, except the state public
11 defender, assistant state public defenders, administrator of
12 the racing and gaming commission, members of the employment
13 appeal board, the chief administrative law judge,
14 administrative law judges, and administrator of the state
15 citizen foster care review board. All persons appointed and
16 employed in the department are covered by the provisions of
17 chapter 19A, but persons not appointed by the director are
18 exempt from the merit system provisions of chapter 19A, except
19 as provided in section 10A.801.

20 Sec. 3. Section 10A.104, subsection 5, Code 1997, is
21 amended to read as follows:

22 5. Adopt rules deemed necessary for the implementation and
23 administration of this chapter in accordance with chapter 17A,
24 ~~including-rules-governing-hearing-and-appeal-proceedings.~~

25 Sec. 4. Section 10A.106, Code 1997, is amended to read as
26 follows:

27 10A.106 DIVISIONS OF THE DEPARTMENT.

28 The department is comprised of the following divisions:

29 ~~1. Appeals and fair hearings division.~~

30 ~~2.~~ 1. Audits division.

31 ~~3.~~ 2. Investigations division.

32 ~~4.~~ 3. Inspections division.

33 The allocation of departmental duties to the divisions of
34 the department in sections ~~10A.202~~, 10A.302, 10A.402, and
35 10A.502 does not prohibit the director from reallocating

1 departmental duties within the department. The director shall
2 not reallocate any of the duties of the office of
3 administrative hearings, created by section 10A.801, to any
4 other unit of the department.

5 Sec. 5. NEW SECTION. 10A.801 OFFICE OF ADMINISTRATIVE
6 HEARINGS -- CREATION, POWERS, DUTIES.

7 1. An independent office of administrative hearings within
8 the department is created to be headed and administered by a
9 chief administrative law judge appointed by the governor for a
10 term of six years subject to confirmation by the senate. The
11 chief administrative law judge may be removed by the governor
12 at any time for good cause.

13 2. a. The chief administrative law judge shall employ a
14 sufficient number of administrative law judges to conduct
15 proceedings for which agencies are required, by section 17A.11
16 or any other provision of law, to use an administrative law
17 judge employed by the office. An administrative law judge
18 employed by the office shall not perform duties inconsistent
19 with the judge's duties and responsibilities as an
20 administrative law judge and shall be located in an office
21 that is entirely separated from the offices of the agencies
22 for which that person acts as a presiding officer.
23 Administrative law judges shall be covered by the merit system
24 provisions of chapter 19A.

25 b. Subject to the approval of the department of personnel,
26 the office shall, insofar as practicable, provide for
27 different classes of administrative law judges with different
28 salary scales. The office shall also facilitate, insofar as
29 practicable, specialization by its administrative law judges
30 so that particular judges may become expert in presiding over
31 cases in particular agencies. An agency may, by rule,
32 identify particular classes of its contested cases for which
33 the administrative law judge who acts as presiding officer
34 shall have specified technical expertness. After the adoption
35 of such a rule, the office may assign administrative law

1 judges to preside over those identified particular classes of
2 contested cases only if the agency responsible for those cases
3 has certified, either at the time of the initial hiring of the
4 administrative law judge by the office or at a subsequent
5 time, that the agency was satisfied that the particular
6 administrative law judge designated to preside possessed the
7 necessary technical expertness.

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

16 4. The office may furnish administrative law judges on a
17 contract basis to any governmental entity to conduct any
18 proceeding.

19 5. After the effective date of this Act, a person shall
20 not be newly employed by the office as an administrative law
21 judge to preside over contested case proceedings unless that
22 person has a license to practice law in this state.

23 6. The office shall adopt rules pursuant to this chapter
24 and chapter 17A to do all of the following:

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

32 b. To establish procedures for agencies to request and for
33 the chief administrative law judge to assign administrative
34 law judges employed by the office.

35 c. To establish procedures and adopt forms, consistent

1 with chapter 17A and other provisions of law, to govern
2 administrative law judges employed by the office, but any
3 rules adopted under this paragraph shall be applicable to a
4 particular contested case proceeding only to the extent that
5 they are not inconsistent with the rules of the agency under
6 whose authority that proceeding is conducted. Nothing in this
7 paragraph precludes an agency from establishing procedural
8 requirements otherwise within its authority to govern its
9 contested case proceedings, including requirements with
10 respect to the timeliness of decisions rendered for it by
11 administrative law judges.

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. Those
15 procedures shall include provisions for each agency for whom a
16 particular administrative law judge presides to submit to the
17 office on a periodic basis the agency's views with respect to
18 the performance of that administrative law judge or the need
19 for specified additional training for that administrative law
20 judge. However, the evaluation, training, promotion, and
21 discipline of all administrative law judges employed by the
22 office shall remain solely within the authority of the office.

23 e. To establish, consistent with the provisions of this
24 section and chapter 17A, a code of administrative judicial
25 conduct that is similar in function and substantially
26 equivalent to the Iowa code of judicial conduct, to govern the
27 actions of all persons who act as presiding officers under the
28 authority of section 17A.11, subsection 1.

29 f. To facilitate the performance of the responsibilities
30 conferred upon the office by this section, chapter 17A, and
31 any other provision of law.

32 7. The office may do all of the following:

33 a. Provide administrative law judges, upon request, to any
34 agency that is required to or wishes to utilize the services
35 of an administrative law judge employed by the office.

1 b. Maintain a staff of reporters and other personnel.

2 c. Administer the provisions of this section and rules
3 adopted under its authority.

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

7 9. Except to the extent specified otherwise by statute,
8 decisions of administrative law judges employed by the office
9 are subject to review by the agencies for which they act as
10 presiding officers as provided by section 17A.15 or any other
11 provision of law.

12 Sec. 6. Section 17A.2, Code 1997, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 9A. "Provision of law" means the whole or
15 part of the Constitution of the United States of America or
16 the Constitution of the State of Iowa, or of any federal or
17 state statute, court rule, executive order of the governor, or
18 agency rule.

19 Sec. 7. Section 17A.2, subsection 10, unnumbered paragraph
20 1, Code 1997, is amended to read as follows:

21 "Rule" means each agency statement of general applicability
22 that implements, interprets, or prescribes law or policy, or
23 that describes the organization, procedure, or practice
24 requirements of any agency. Notwithstanding any other
25 ~~provision-of-law~~ statute, the term includes an executive order
26 or directive of the governor which creates an agency or
27 establishes a program or which transfers a program between
28 agencies established by statute or rule. The term includes
29 the amendment or repeal of an existing rule, but does not
30 include:

31 Sec. 8. Section 17A.2, subsection 10, paragraph b, Code
32 1997, is amended to read as follows:

33 b. A declaratory ~~ruling~~ order issued pursuant to section
34 17A.9, or an interpretation issued by an agency with respect
35 to a specific set of facts and intended to apply only to that

1 specific set of facts.

2 Sec. 9. Section 17A.3, subsection 1, Code 1997, is amended
3 by adding the following new paragraph after paragraph b and
4 relettering the subsequent paragraphs:

5 NEW PARAGRAPH. c. As soon as feasible and to the extent
6 practicable, adopt rules, in addition to those otherwise
7 required by this chapter, embodying appropriate standards,
8 principles, and procedural safeguards that the agency will
9 apply to the law it administers.

10 Sec. 10. Section 17A.4, subsection 1, paragraph b, Code
11 1997, is amended to read as follows:

12 b. Afford all interested persons not less than twenty days
13 to submit data, views, or arguments in writing. If timely
14 requested in writing by twenty-five interested persons, by a
15 governmental subdivision, by the administrative rules review
16 committee, by an agency, or by an association having not less
17 than twenty-five members, the agency must give interested
18 persons an opportunity to make oral presentation. The
19 opportunity for oral presentation must be held at least twenty
20 days after publication of the notice of its time and place in
21 the Iowa administrative bulletin. The agency shall consider
22 fully all written and oral submissions respecting the proposed
23 rule. Within one hundred eighty days following either the
24 notice published according to the provisions of paragraph "a"
25 or within one hundred eighty days after the last date of the
26 oral presentations on the proposed rule, whichever is later,
27 the agency shall adopt a rule pursuant to the rulemaking
28 proceeding or shall terminate the proceeding by publishing
29 notice of termination in the Iowa administrative bulletin. ~~if~~

30 An agency shall include in a preamble to each rule it
31 adopts a brief explanation of the principal reasons for its
32 action and, if applicable, a brief explanation of the
33 principal reasons for its failure to provide in that rule for
34 the waiver of the rule in specified situations if no such
35 waiver provision is included in the rule. This explanatory

1 requirement does not apply when the agency adopts a rule that
2 only defines the meaning of a provision of law if the agency
3 does not possess delegated authority to bind the courts to any
4 extent with its definition. In addition, if requested to do
5 so by an interested person, either prior to adoption or within
6 thirty days thereafter, the agency shall issue a concise
7 statement of the principal reasons for and against the rule ~~it~~
8 adopted, incorporating therein the reasons for overruling
9 considerations urged against the rule. This concise statement
10 shall be issued either at the time of the adoption of the rule
11 or within thirty-five days after the agency receives the
12 request.

13 Sec. 11. Section 17A.4, subsection 1, paragraph c, Code
14 1997, is amended by striking the paragraph.

15 Sec. 12. NEW SECTION. 17A.4A REGULATORY ANALYSIS.

16 1. An agency shall issue a regulatory analysis of a
17 proposed rule that complies with subsection 2, paragraph "a",
18 if, within thirty-two days after the published notice of
19 proposed rule adoption, a written request for the analysis is
20 submitted to the agency by the administrative rules review
21 committee or the administrative rules coordinator. An agency
22 shall issue a regulatory analysis of a proposed rule that
23 complies with subsection 2, paragraph "b", if the rule would
24 have a substantial impact on small business and if, within
25 thirty-two days after the published notice of proposed rule
26 adoption, a written request for analysis is submitted to the
27 agency by the administrative rules review committee, the
28 administrative rules coordinator, at least twenty-five persons
29 signing that request who each qualify as a small business or
30 by an organization representing at least twenty-five such
31 persons. If a rule has been adopted without prior notice and
32 an opportunity for public participation in reliance upon
33 section 17A.4, subsection 2, the written request for an
34 analysis that complies with subsection 2, paragraph "a" or
35 "b", may be made within seventy days of publication of the

1 rule.

2 2. a. Except to the extent that a written request for a
3 regulatory analysis expressly waives one or more of the
4 following, the regulatory analysis must contain all of the
5 following:

6 (1) A description of the classes of persons who probably
7 will be affected by the proposed rule, including classes that
8 will bear the costs of the proposed rule and classes that will
9 benefit from the proposed rule.

10 (2) A description of the probable quantitative and
11 qualitative impact of the proposed rule, economic or
12 otherwise, upon affected classes of persons, including a
13 description of the nature and amount of all of the different
14 kinds of costs that would be incurred in complying with the
15 proposed rule.

16 (3) The probable costs to the agency and to any other
17 agency of the implementation and enforcement of the proposed
18 rule and any anticipated effect on state revenues.

19 (4) A comparison of the probable costs and benefits of the
20 proposed rule to the probable costs and benefits of inaction.

21 (5) A determination of whether less costly methods or less
22 intrusive methods exist for achieving the purpose of the
23 proposed rule.

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

28 b. In the case of a rule that would have a substantial
29 impact on small business, the regulatory analysis must contain
30 a discussion of whether it would be feasible and practicable
31 to do any of the following to reduce the impact of the rule on
32 small business:

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

35 (2) Establish less stringent schedules or deadlines in the

1 rule for compliance or reporting requirements for small
2 business.

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

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

7 (5) Exempt small business from any or all requirements of
8 the rule.

9 c. The agency shall reduce the impact of a proposed rule
10 that would have a substantial impact on small business by
11 using a method discussed in paragraph "b" if the agency finds
12 that the method is legal and feasible in meeting the statutory
13 objectives which are the basis of the proposed rule.

14 3. Each regulatory analysis must include quantifications
15 of the data to the extent practicable and must take account of
16 both short-term and long-term consequences.

17 4. Upon receipt by an agency of a timely request for a
18 regulatory analysis, the agency shall extend the period
19 specified in this chapter for each of the following until at
20 least twenty days after publication in the administrative
21 bulletin of a concise summary of the regulatory analysis:

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

24 b. The end of the period during which an oral proceeding
25 may be requested.

26 c. The date of any required oral proceeding on the
27 proposed rule.

28 In the case of a rule adopted without prior notice and an
29 opportunity for public participation in reliance upon section
30 17A.4, subsection 2, the summary must be published within
31 seventy days of the request.

32 5. The published summary of the regulatory analysis must
33 also indicate where persons may obtain copies of the full text
34 of the regulatory analysis and where, when, and how persons
35 may present their views on the proposed rule and demand an

1 oral proceeding thereon if one is not already provided.

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

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

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

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

15 For purposes of this definition, "dominant in its field of
16 operation" means having more than twenty full-time equivalent
17 positions and more than one million dollars in annual gross
18 revenues, and "affiliate or subsidiary of an entity dominant
19 in its field of operation" means an entity which is at least
20 twenty percent owned by an entity dominant in its field of
21 operation, or by partners, officers, directors, majority
22 stockholders, or their equivalent, of an entity dominant in
23 that field of operation.

24 Sec. 13. Section 17A.7, Code 1997, is amended to read as
25 follows:

26 17A.7 PETITION FOR ADOPTION OF RULES AND REQUEST FOR
27 REVIEW OF RULES.

28 1. An interested person may petition an agency requesting
29 the promulgation adoption, amendment, or repeal of a rule.
30 Each agency shall prescribe by rule the form for petitions and
31 the procedure for their submission, consideration, and
32 disposition. Within sixty days after submission of a
33 petition, the agency either shall deny the petition in writing
34 on the merits, stating its reasons for the denial, or initiate
35 rulemaking proceedings in accordance with section 17A.4, or

1 issue a rule if it is not required to be issued according to
2 the procedures of section 17A.4, subsection 1.

3 2. The administrative rules review committee, the
4 administrative rules coordinator, a political subdivision, an
5 agency, twenty-five persons signing one request, or an
6 association having not less than twenty-five members, may
7 request an agency to conduct a formal review of a specified
8 rule of that agency to determine whether the rule should be
9 repealed or amended or a new rule adopted instead.

10 If the agency has not conducted such a review of the
11 specified rule within a period of five years prior to the
12 filing with the agency of that written request, the agency
13 shall prepare within a reasonable time a written report with
14 respect to the rule summarizing the agency's findings, its
15 supporting reasons, and any proposed course of action. The
16 report must include, for the specified rule, a concise
17 statement of all of the following:

18 a. The rule's effectiveness in achieving its objectives,
19 including a summary of any available data supporting the
20 conclusions reached.

21 b. Written criticisms of the rule received during the
22 previous five years, including a summary of any petitions for
23 waiver of the rule tendered to the agency or granted by the
24 agency.

25 c. Alternative solutions regarding the subject matter of
26 the criticisms and the reasons they were rejected or the
27 changes made in the rule in response to those criticisms and
28 the reasons for the changes.

29 A copy of the report shall be sent to the administrative
30 rules review committee and the administrative rules
31 coordinator and shall be made available for public inspection.

32 Sec. 14. Section 17A.9, Code 1997, is amended by striking
33 the section and inserting in lieu thereof the following:

34 17A.9 DECLARATORY ORDERS.

35 1. Any person may petition an agency for a declaratory

1 order as to the applicability to specified circumstances of a
2 statute, rule, or order within the primary jurisdiction of the
3 agency. An agency shall issue a declaratory order in response
4 to a petition for that order unless the agency determines that
5 issuance of the order under the circumstances would be
6 contrary to a rule adopted in accordance with subsection 2.

7 However, an agency shall not issue a declaratory order that
8 would substantially prejudice the rights of a person who would
9 be a necessary party and who does not consent in writing to
10 the determination of the matter by a declaratory order
11 proceeding.

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

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

25 4. Persons who qualify under any applicable provision of
26 law as an intervenor and who file timely petitions for
27 intervention according to agency rules may intervene in
28 proceedings for declaratory orders. The provisions of
29 sections 17A.10 through 17A.18 apply to agency proceedings for
30 declaratory orders only to the extent an agency so provides by
31 rule or order.

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

35 a. Issue an order declaring the applicability of the

1 statute, rule, or order in question to the specified
2 circumstances.

3 b. Set the matter for specified proceedings.

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

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

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

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

16 8. If an agency has not issued a declaratory order within
17 sixty days after receipt of a petition therefor, or such later
18 time as agreed by the parties, the petition is deemed to have
19 been denied. Once a petition for a declaratory order is
20 deemed denied or if the agency declines to issue a declaratory
21 order pursuant to subsection 5, paragraph "d", a party to that
22 proceeding may either seek judicial review or await further
23 agency action with respect to its petition for a declaratory
24 order.

25 Sec. 15. NEW SECTION. 17A.10A CONTESTED CASES -- NO
26 FACTUAL DISPUTE.

27 Upon petition by a party in a matter that would be a
28 contested case if there was a dispute over the existence of
29 material facts, all of the provisions of this chapter
30 applicable to contested cases, except those relating to
31 presentation of evidence, shall be applicable even though
32 there is no factual dispute in the particular case.

33 Sec. 16. Section 17A.11, Code 1997, is amended by striking
34 the section and inserting in lieu thereof the following:

35 17A.11 PRESIDING OFFICER, DISQUALIFICATION, SUBSTITUTION.

1 1. a. If the agency or an officer of the agency under
2 whose authority the contested case is to take place is a named
3 party to that proceeding or a real party in interest to that
4 proceeding the presiding officer may be, in the discretion of
5 the agency head, either the agency head, one or more members
6 of the agency head, or one or more administrative law judges
7 assigned by the office of administrative hearings in
8 accordance with the provisions of section 10A.801.

9 b. If the agency or an officer of the agency under whose
10 authority the contested case is to take place is not a named
11 party to that proceeding or a real party in interest to that
12 proceeding the presiding officer may be, in the discretion of
13 the agency head, either the agency head, one or more members
14 of the agency head, an administrative law judge assigned by
15 the office of administrative hearings in accordance with the
16 provisions of section 10A.801, or any other qualified person
17 designated as a presiding officer by the agency head. Any
18 other person designated as a presiding officer by the agency
19 head may be employed by and officed in the agency for which
20 that person acts as a presiding officer, but such a person
21 shall not perform duties inconsistent with that person's
22 duties and responsibilities as a presiding officer.

23 c. For purposes of paragraph "a", the office of
24 administrative hearings established in section 10A.801 shall
25 be treated as a wholly separate agency from the department of
26 inspections and appeals.

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

31 3. Any party may timely request the disqualification of a
32 person as a presiding officer by filing a motion supported by
33 an affidavit asserting an appropriate ground for
34 disqualification, after receipt of notice indicating that the
35 person will preside or upon discovering facts establishing

1 grounds for disqualification, whichever is later.

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

5 5. If a substitute is required for a person who is
6 disqualified or becomes unavailable for any other reason, the
7 substitute shall be appointed by either of the following:

8 a. The governor, if the disqualified or unavailable person
9 is an elected official.

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

12 6. Any action taken by a duly-appointed substitute for a
13 disqualified or unavailable person is as effective as if taken
14 by the latter.

15 Sec. 17. Section 17A.12, subsection 3, Code 1997, is
16 amended by striking the subsection and inserting in lieu
17 thereof the following:

18 3. a. If a party fails to appear or participate in a
19 contested case proceeding, the presiding officer shall serve
20 all parties by certified mail written notice of a proposed
21 default order, including a statement of the grounds.

22 b. Within fifteen days or such longer period specified by
23 agency rule after the mailing by certified mail of a proposed
24 default order, the party against whom it was issued may file a
25 written motion requesting that the proposed default order be
26 vacated and stating the grounds relied upon. A proposed
27 default order may be vacated for any reason specified in the
28 rules of civil procedure or for any other reason specified by
29 agency rule. At the time a party fails to appear or
30 participate in a contested case proceeding, or during the time
31 within which a party may file a written motion under this
32 subsection, the presiding officer may adjourn the proceedings
33 or conduct them without the participation of the party against
34 whom a proposed default order was issued, having due regard
35 for the interests of justice and the orderly and prompt

1 conduct of the proceedings.

2 c. The presiding officer shall either issue or vacate the
3 default order promptly after expiration of the time within
4 which the party may file a written motion under paragraph "b".

5 d. After issuing a default order, the presiding officer
6 shall conduct any further proceedings necessary to complete
7 the contested case proceeding without the participation of the
8 party in default and shall determine all issues in the
9 contested case including those affecting the defaulting party.

10 e. If the presiding officer conducts further proceedings
11 after the issuance of a proposed default order, the time
12 period for seeking judicial review of a decision in that
13 contested case proceeding shall begin to run from the date of
14 the issuance of the final decision in that case, if any, or
15 the date of the issuance of a default order, whichever is
16 later.

17 Sec. 18. Section 17A.16, subsection 1, Code 1997, is
18 amended to read as follows:

19 1. A proposed or final decision or order in a contested
20 case shall be in writing or stated in the record. A proposed
21 or final decision shall include findings of fact and
22 conclusions of law, separately stated. Findings of fact, if
23 set forth in statutory language, shall be accompanied by a
24 concise and explicit statement of underlying facts supporting
25 the findings. The decision shall include an explanation of
26 why the evidence in the record supports each finding of fact
27 and why the evidence in the record that is contrary to a
28 finding does not preclude it. If, in accordance with agency
29 rules, a party submitted proposed findings of fact, the
30 decision shall include a ruling upon each proposed finding.
31 Each conclusion of law shall be supported by cited authority
32 or by a reasoned opinion. Parties shall be promptly notified
33 of each proposed or final decision or order by the delivery to
34 them of a copy of such decision or order in the manner
35 provided by section 17A.12, subsection 1.

1 Sec. 19. Section 17A.17, Code 1997, is amended to read as
2 follows:

3 17A.17 EX PARTE COMMUNICATIONS AND SEPARATION OF
4 FUNCTIONS.

5 1. Unless required for the disposition of ex parte matters
6 specifically authorized by statute, ~~individuals assigned to~~
7 ~~render a proposed or final decision or to make findings of~~
8 ~~fact and conclusions of law~~ a presiding officer in a contested
9 case, shall not communicate, directly or indirectly, in
10 connection with any issue of fact or law in that contested
11 case, with any person or party, except upon notice and
12 opportunity for all parties to participate as shall be
13 provided for by agency rules.

14 However, without such notice and opportunity for all
15 parties to participate, ~~individuals assigned to render a~~
16 ~~proposed or final decision or to make findings of fact and~~
17 ~~conclusions of law~~ a presiding officer in a contested case may
18 communicate with members of the agency, and may have the aid
19 and advice of persons other than those with a personal
20 interest in, or those engaged in personally investigating,
21 prosecuting or advocating in, either the case under
22 consideration or a pending factually related case involving
23 the same parties so long as those persons do not directly or
24 indirectly communicate to the presiding officer any ex parte
25 communications they have received of a type that the presiding
26 officer would be prohibited from receiving or that furnish,
27 augment, diminish, or modify the evidence in the record.

28 2. Unless required for the disposition of ex parte matters
29 specifically authorized by statute, parties or their
30 representatives in a contested case and persons with a direct
31 or indirect interest in such a case shall not communicate,
32 directly or indirectly, in connection with any issue of fact
33 or law in that contested case, with ~~individuals assigned to~~
34 ~~render a proposed or final decision or to make findings of~~
35 ~~fact and conclusions of law~~ a presiding officer in that

1 contested case, except upon notice and opportunity for all
2 parties to participate as shall be provided for by agency
3 rules. ~~The agency's rules may require the recipient of a~~
4 ~~prohibited communication to submit the communication if~~
5 ~~written or a summary of the communication if oral for~~
6 ~~inclusion in the record of the proceeding. As sanctions for~~
7 ~~violations, the rules may provide for a decision against a~~
8 ~~party who violates the rules, for censuring, suspending or~~
9 ~~revoking a privilege to practice before the agency, and for~~
10 ~~censuring, suspending or dismissing agency personnel.~~

11 3. If, before serving as the presiding officer in a
12 contested case, a person receives an ex parte communication
13 relating directly to the merits of the proceeding over which
14 that person subsequently presides, the person, promptly after
15 starting to serve, shall disclose to all parties any material
16 factual information so received and not otherwise disclosed to
17 those parties pursuant to section 17A.13, subsection 2, or
18 through discovery.

19 4. A presiding officer who receives an ex parte
20 communication in violation of this section shall place on the
21 record of the pending matter all such written communications
22 received, all written responses to the communications, and a
23 memorandum stating the substance of all such oral and other
24 communications received, all responses made, and the identity
25 of each person from whom the presiding officer received a
26 prohibited ex parte communication, and shall advise all
27 parties that these matters have been placed on the record.
28 Any party desiring to rebut the prohibited ex parte
29 communication must be allowed to do so, upon requesting the
30 opportunity for rebuttal within ten days after notice of the
31 communication.

32 5. If the effect of an ex parte communication received in
33 violation of this section is so prejudicial that it cannot be
34 cured by the procedure in subsection 4, a presiding officer
35 who receives the communication shall be disqualified and the

1 portions of the record pertaining to the communication shall
2 be sealed by protective order.

3 6. The agency and any party may report any violation of
4 this section to appropriate authorities for any disciplinary
5 proceedings provided by law. In addition, each agency by rule
6 shall provide for appropriate sanctions, including default,
7 suspending or revoking a privilege to practice before the
8 agency, and censuring, suspending, or dismissing agency
9 personnel, for any violations of this section.

10 7. A party to a contested case proceeding may file a
11 timely and sufficient affidavit alleging a violation of any
12 provision of this section. The agency shall determine the
13 matter as part of the record in the case. When an agency in
14 these circumstances makes such a determination with respect to
15 an agency member, that determination shall be subject to de
16 novo judicial review in any subsequent review proceeding of
17 the case.

18 ~~3-~~ 8. No An individual who participates in the making of
19 any proposed or final decision in a contested case shall not
20 have personally investigated, prosecuted, or advocated in
21 connection with that case, the specific controversy underlying
22 that case, or another pending factually related contested
23 case, or pending factually related controversy that may
24 culminate in a contested case, involving the same parties.
25 ~~Nor shall any~~ In addition, such an individual shall not be
26 subject to the authority, direction, or discretion of any
27 person who has personally investigated, prosecuted, or
28 advocated in connection with that contested case, the specific
29 controversy underlying that contested case, or a pending
30 factually related contested case or controversy, involving the
31 same parties. However, this section shall not be construed to
32 preclude a person from serving as a presiding officer solely
33 because that person determined there was probable cause to
34 initiate the proceeding.

35 ~~4---A-party-to-a-contested-case-proceeding-may-file-a~~

~~1 timely-and-sufficient-affidavit-asserting-disqualification
2 according-to-the-provisions-of-subsection-3,--or-asserting
3 personal-bias-of-an-individual-participating-in-the-making-of
4 any-proposed-or-final-decision-in-that-case.--The-agency-shall
5 determine-the-matter-as-part-of-the-record-in-the-case.--When
6 an-agency-in-these-circumstances-makes-such-a-determination
7 with-respect-to-an-agency-member,--that-determination-shall-be
8 subject-to-de-novo-judicial-review-in-any-subsequent-review
9 proceeding-of-the-case.~~

10 Sec. 20. Section 17A.18, subsection 3, Code 1997, is
11 amended to read as follows:

12 3. No revocation, suspension, annulment or withdrawal, in
13 whole or in part, of any license is lawful unless, prior to
14 the institution of agency proceedings, the agency gave
15 written, timely notice by personal service as in civil actions
16 or by restricted certified mail to the licensee of facts or
17 conduct and the provisiens provision of law which warrant
18 warrants the intended action, and the licensee was given an
19 opportunity to show, in an evidentiary hearing conducted
20 according to the provisions of this chapter for contested
21 cases, compliance with all lawful requirements for the
22 retention of the license. ~~If-the-agency-finds-that-public
23 health,--safety-or-welfare-imperatively-requires-emergency
24 action,--and-incorporates-a-finding-to-that-effect-in-its
25 order,--summary-suspension-of-a-license-may-be-ordered-pending
26 proceedings-for-revocation-or-other-action.--These-proceedings
27 shall-be-promptly-instituted-and-determined.~~

28 Sec. 21. NEW SECTION. 17A.18A EMERGENCY ADJUDICATIVE
29 PROCEEDINGS.

30 1. Notwithstanding any other provision of this chapter and
31 to the extent consistent with the Constitution, an agency may
32 use emergency adjudicative proceedings in a situation
33 involving an immediate danger to the public health, safety, or
34 welfare requiring immediate agency action.

35 2. The agency may take only such action as is necessary to

1 prevent or avoid the immediate danger to the public health,
2 safety, or welfare that justifies use of emergency
3 adjudication.

4 3. The agency shall issue an order, including a brief
5 statement of findings of fact, conclusions of law, and policy
6 reasons for the decision if it is an exercise of the agency's
7 discretion, to justify the determination of an immediate
8 danger and the agency's decision to take the specific action.

9 4. The agency shall give such notice as is practicable to
10 persons who are required to comply with the order. The order
11 is effective when issued.

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

16 6. The agency record consists of any documents regarding
17 the matter that were considered or prepared by the agency.
18 The agency shall maintain these documents as its official
19 record.

20 7. Unless otherwise required by a provision of law, the
21 agency record need not constitute the exclusive basis for
22 agency action in emergency adjudicative proceedings or for
23 judicial review thereof.

24 Sec. 22. Section 17A.19, subsection 1, Code 1997, is
25 amended to read as follows:

26 1. A person or party who has exhausted all adequate
27 administrative remedies and who is aggrieved or adversely
28 affected by any final agency action is entitled to judicial
29 review thereof under this chapter. When agency action is
30 pursuant to rate regulatory powers over public utilities or
31 common carriers and the aggrievement or adverse effect is to
32 the rates or charges of a public utility or common carrier,
33 the agency action shall not be final until all agency remedies
34 have been exhausted and a decision prescribing rates which
35 satisfy the requirements of those provisions of the Code has

1 been rendered. A preliminary, procedural or intermediate
2 agency action is immediately reviewable if all adequate
3 administrative remedies have been exhausted and review of the
4 final agency action would not provide an adequate remedy. If
5 a declaratory ruling order has not been rendered within thirty
6 sixty days after the filing of a petition therefor under
7 section 17A.9, or by such later time as agreed by the parties,
8 or if the agency declines to issue such a declaratory ruling
9 order after receipt of a petition therefor, any administrative
10 remedy available under section 17A.9 shall be deemed
11 inadequate or exhausted.

12 Sec. 23. Section 17A.19, subsection 5, Code 1997, is
13 amended to read as follows:

14 5. a. The filing of the petition for review does not
15 itself stay execution or enforcement of any agency action.
16 ~~Upon application the agency or the reviewing court may, in~~
17 ~~appropriate cases, order such a stay pending the outcome of~~
18 ~~the judicial review proceedings~~ Unless precluded by law, the
19 agency may grant a stay on appropriate terms or other
20 temporary remedies during the pendency of judicial review.

21 b. A party may file an interlocutory motion in the
22 reviewing court, during the pendency of judicial review,
23 seeking review of the agency's action on an application for
24 stay or other temporary remedies.

25 c. If the agency refuses to grant an application for stay
26 or other temporary remedies, or application to the agency for
27 a stay or other temporary remedies is an inadequate remedy,
28 the court may grant relief but only after a consideration and
29 balancing of all of the following factors:

30 (1) The extent to which the applicant is likely to prevail
31 when the court finally disposes of the matter.

32 (2) The extent to which the applicant will suffer
33 irreparable injury if relief is not granted.

34 (3) The extent to which the grant of relief to the
35 applicant will substantially harm other parties to the

1 proceedings.

2 (4) The extent to which the public interest relied on by
3 the agency is sufficient to justify the agency's action in the
4 circumstances.

5 d. If the court determines that relief should be granted
6 from the agency's action on an application for stay or other
7 temporary remedies, the court may remand the matter to the
8 agency with directions to deny a stay, to grant a stay on
9 appropriate terms, or to grant other temporary remedies, or
10 the court may issue an order denying a stay, granting a stay
11 on appropriate terms, or granting other temporary remedies.

12 Sec. 24. Section 17A.19, subsection 8, Code 1997, is
13 amended by striking the subsection and inserting in lieu
14 thereof the following:

15 8. Except to the extent that this chapter provides
16 otherwise, in suits for judicial review of agency action all
17 of the following apply:

18 a. The burden of demonstrating the required prejudice and
19 the invalidity of agency action is on the party asserting
20 invalidity.

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

25 9. The court shall make a separate and distinct ruling on
26 each material issue on which the court's decision is based.

27 10. The court may affirm the agency action or remand to
28 the agency for further proceedings. The court shall reverse,
29 modify, or grant other appropriate relief from agency action,
30 equitable or legal and including declaratory relief, if it
31 determines that substantial rights of the person seeking
32 judicial relief have been prejudiced because the agency action
33 is any of the following:

34 a. Unconstitutional on its face or as applied or is based
35 upon a provision of law that is unconstitutional on its face

1 or as applied.

2 b. Beyond the authority delegated to the agency by any
3 provision of law or in violation of any provision of law.

4 c. Based upon an erroneous interpretation of a provision
5 of law whose interpretation has not clearly been vested by a
6 provision of law in the discretion of the agency.

7 d. Based upon a procedure or decision-making process
8 prohibited by law or was taken without following the
9 prescribed procedure or decision-making process.

10 e. The product of decision making undertaken by persons
11 who were improperly constituted as a decision-making body,
12 were motivated by an improper purpose, or were subject to
13 disqualification.

14 f. Based upon a determination of fact clearly vested by a
15 provision of law in the discretion of the agency that is not
16 supported by substantial evidence in the record before the
17 court when that record is viewed as a whole. For purposes of
18 this paragraph, the following terms have the following
19 meanings:

20 (1) "Substantial evidence" means the quantity and quality
21 of evidence that would be deemed sufficient by a neutral,
22 detached, and reasonable person, to establish the fact at
23 issue when the consequences resulting from the establishment
24 of that fact are understood to be serious and of great
25 importance.

26 (2) "Record before the court" means the agency record for
27 judicial review, as defined by this chapter, supplemented by
28 any additional evidence received by the court under the
29 provisions of this chapter.

30 (3) "When that record is viewed as a whole" means that the
31 adequacy of the evidence in the record before the court to
32 support a particular finding of fact must be judged in light
33 of all the relevant evidence in the record cited by any party
34 that detracts from that finding as well as all of the relevant
35 evidence in the record cited by any party that supports it,

1 including any determinations of veracity by the presiding
2 officer who personally observed the demeanor of the witnesses
3 and the agency's explanation of why the evidence in the record
4 supports its finding of fact and why the evidence in the
5 record that is contrary to its finding does not preclude that
6 finding.

7 g. Action other than a rule that is inconsistent with a
8 rule of the agency.

9 h. Action other than a rule that is inconsistent with the
10 agency's prior practice or precedents, unless the agency has
11 justified that inconsistency by stating credible reasons
12 sufficient to indicate a fair and rational basis for the
13 inconsistency.

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

16 j. The product of a decision-making process in which the
17 agency did not consider a relevant and important matter
18 relating to the propriety or desirability of the action in
19 question that a rational decision maker in similar
20 circumstances would have considered prior to taking that
21 action.

22 k. Not required by law and its negative impact on the
23 private rights affected is so grossly disproportionate to the
24 benefits accruing to the public interest from that action that
25 it must necessarily be deemed to lack any foundation in
26 rational agency policy.

27 l. Based upon an irrational, illogical, or wholly
28 unjustifiable interpretation of a provision of law whose
29 interpretation has clearly been vested by a provision of law
30 in the discretion of the agency.

31 m. Based upon an irrational, illogical, or wholly
32 unjustifiable application of law to fact that has clearly been
33 vested by a provision of law in the discretion of the agency.

34 n. Otherwise unreasonable, arbitrary, capricious, or an
35 abuse of discretion.

1 11. In making the determinations required by subsection
2 10, paragraphs "a" through "n", the court shall do all of the
3 following:

4 a. Shall not give any deference to the view of the agency
5 with respect to whether particular matters have been vested by
6 a provision of law in the discretion of the agency.

7 b. Should not give any deference to the view of the agency
8 with respect to particular matters that have not been vested
9 by a provision of law in the discretion of the agency.

10 c. Shall give appropriate deference to the view of the
11 agency with respect to particular matters that have been
12 vested by a provision of law in the discretion of the agency.

13 12. A defendant in a suit for civil enforcement of agency
14 action may defend on any of the grounds specified in
15 subsection 10, paragraphs "a" through "n", if that defendant,
16 at the time the enforcement suit was filed, would have been
17 entitled to rely upon any of those grounds as a basis for
18 invalidating the agency action in a suit for judicial review
19 of that action brought at the time the enforcement suit was
20 filed. If a suit for civil enforcement of agency action in a
21 contested case is filed within the time period in which the
22 defendant could have filed a petition for judicial review of
23 that agency action, and the agency subsequently dismisses its
24 suit for civil enforcement of that agency action against the
25 defendant, the defendant may, within thirty days of that
26 dismissal, file a petition for judicial review of the original
27 agency action at issue if the defendant relied upon any of the
28 grounds for judicial review in subsection 10, paragraphs "a"
29 through "n", in a responsive pleading to the enforcement
30 action, or if the time to file a responsive pleading had not
31 yet expired at the time the enforcement action was dismissed.

32 Sec. 25. Section 17A.33, Code 1997, is amended to read as
33 follows:

34 17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW COMMITTEE.
35 The administrative rules review committee shall review

1 existing rules, as time permits, to determine if there are
2 adverse or beneficial effects from these rules. The committee
3 shall give a high priority to rules that are referred to it by
4 small business as defined in section ~~17A.31~~ 17A.4A. The
5 review of these rules shall be forwarded to the appropriate
6 standing committees of the house and senate.

7 Sec. 26. Section 19A.1A, Code 1997, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 4. Reduction in force appeals shall be
10 subject to review by the director.

11 Sec. 27. Section 20.6, subsection 4, Code 1997, is amended
12 to read as follows:

13 4. Hold hearings and administer oaths, examine witnesses
14 and documents, take testimony and receive evidence, issue
15 subpoenas to compel the attendance of witnesses and the
16 production of records, and delegate such power to a member of
17 the board, ~~or~~ persons appointed or employed by the board,
18 including or administrative law judges appointed according to
19 the requirements of section 17A.11, subsection 1, for the
20 performance of its functions. The board may petition the
21 district court at the seat of government or of the county
22 where a hearing is held to enforce a board order compelling
23 the attendance of witnesses and production of records.

24 Sec. 28. Section 86.17, subsection 1, Code 1997, is
25 amended to read as follows:

26 1. A Notwithstanding the provisions of section 17A.11, the
27 industrial commissioner or a deputy industrial commissioner
28 may shall preside over any contested case proceeding brought
29 under this chapter, chapter 85, or 85A, or 85B in the manner
30 provided by chapter 17A. The deputy commissioner or the
31 commissioner may make such inquiries ~~and investigation~~ in
32 contested case proceedings as shall be deemed necessary,
33 consistent with so long as such inquiries do not violate any
34 of the provisions of section 17A.17.

35 Sec. 29. Section 137E.12, Code 1997, is amended to read as

1 follows:

2 137E.12 REVOCATION OR ORDER FOR DISCONTINUANCE.

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

24 Sec. 30. Section 148.7, subsection 3, Code 1997, is
25 amended to read as follows:

26 3. The hearing shall be before a member or members
27 designated by the board or before an administrative law judge
28 appointed by the board according to the requirements of
29 section 17A.11, subsection 1. The presiding board member or
30 administrative law judge may issue subpoenas, administer
31 oaths, and take or cause depositions to be taken in connection
32 with the hearing. The presiding board member or
33 administrative law judge shall issue subpoenas at the request
34 and on behalf of the licensee. The hearing shall be open to
35 the public.

1 ~~The compensation of the administrative law judge shall be~~
2 ~~fixed by the medical examiners.~~ The administrative law judge
3 shall be an attorney vested with full authority of the board
4 to schedule and conduct hearings. The administrative law
5 judge shall prepare and file with the medical examiners the
6 administrative law judge's findings of fact and conclusions of
7 law, together with a complete written transcript of all
8 testimony and evidence introduced at the hearing and all
9 exhibits, pleas, motions, objections, and rulings of the
10 administrative law judge.

11 Sec. 31. Section 169.5, subsection 9, paragraph e, Code
12 1997, is amended to read as follows:

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

23 Sec. 32. Section 169.14, subsection 3, Code 1997, is
24 amended to read as follows:

25 3. The hearing shall be before a member or members
26 designated by the board or before an administrative law judge
27 appointed by the board according to the requirements of
28 section 17A.11, subsection 1. The presiding board member or
29 administrative law judge may issue subpoenas, administer
30 oaths, and take or cause depositions to be taken in connection
31 with the hearing. The member or officer shall issue subpoenas
32 at the request and on behalf of the licensee.

33 Sec. 33. Section 203C.10, unnumbered paragraph 2, Code
34 1997, is amended to read as follows:

35 If upon the filing of the information or complaint the

1 department finds that the licensee has failed to meet the
2 warehouse operator's obligation or otherwise has violated or
3 failed to comply with the provisions of this chapter or any
4 rule promulgated under this chapter, and if the department
5 finds that the public health, safety or welfare imperatively
6 requires emergency action, then the department without hearing
7 may order a summary suspension of the license in the manner
8 provided in section ~~17A.18~~ 17A.18A. When so ordered, a copy
9 of the order of suspension shall be served upon the licensee
10 at the time the information or complaint is served as provided
11 in this section.

12 Sec. 34. Section 207.14, subsection 2, unnumbered
13 paragraph 2, Code 1997, is amended to read as follows:

14 If upon expiration of the time as fixed the administrator
15 finds in writing that the violation has not been abated, the
16 administrator, notwithstanding ~~section~~ sections 17A.18 and
17 17A.18A, shall immediately order a cessation of coal mining
18 and reclamation operations relating to the violation until the
19 order is modified, vacated, or terminated by the administrator
20 pursuant to procedures outlined in this section. In the order
21 of cessation issued by the administrator under this
22 subsection, the administrator shall include the steps
23 necessary to abate the violation in the most expeditious
24 manner possible.

25 Sec. 35. Section 216.15, subsection 3, paragraph a, Code
26 1997, is amended to read as follows:

27 a. After the filing of a verified complaint, a true copy
28 shall be served within twenty days by certified mail on the
29 person against whom the complaint is filed. An authorized
30 member of the commission staff shall make a prompt
31 investigation and shall issue a recommendation to an
32 administrative law judge ~~under the jurisdiction of~~ employed
33 either by the commission or by the office of administrative
34 hearings created by section 10A.801, who shall then issue a
35 determination of probable cause or no probable cause.

1 Sec. 36. Section 216.17, subsection 6, Code 1997, is
2 amended to read as follows:

3 6. In the enforcement proceeding the court shall determine
4 its order on the same basis as it would in a proceeding
5 reviewing commission action under section 17A.19~~7~~-subsection
6 8.

7 Sec. 37. Section 252.27, unnumbered paragraph 2, Code
8 1997, is amended to read as follows:

9 The board shall record its proceedings relating to the
10 provision of assistance to specific persons under this
11 chapter. A person who is aggrieved by a decision of the board
12 may appeal the decision as if it were a contested case before
13 an agency and as if the person had exhausted administrative
14 remedies in accordance with the procedures and standards in
15 section 17A.19, subsections 2 to 8 12 except subsection 10,
16 paragraphs "b" and "~~e~~-of-subsection-8 "g", and section
17 17A.20.

18 Sec. 38. Section 256.7, subsection 6, Code 1997, is
19 amended to read as follows:

20 6. Hear appeals of persons aggrieved by decisions of
21 boards of directors of school corporations under chapter 290
22 and other appeals prescribed by law. The state board may
23 review the record and shall review the decision of the
24 director of the department of education or the administrative
25 law judge ~~designated by the director in~~ for any appeals heard
26 and decided by the director under chapter 290, and may affirm,
27 modify, or vacate the decision, or may direct a rehearing
28 before the director.

29 Sec. 39. Section 368.22, Code 1997, is amended by adding
30 the following new subsections:

- 31 NEW SUBSECTION. 4. Subsection 9.
32 NEW SUBSECTION. 5. Subsection 10.
33 NEW SUBSECTION. 6. Subsection 11.

34 Sec. 40. Section 421.17, subsection 20, unnumbered
35 paragraph 2, Code 1997, is amended to read as follows:

1 The provisions of sections 17A.10 to ~~17A.18~~ 17A.18A
2 relating to contested cases shall not apply to any matters
3 involving the equalization of valuations of classes of
4 property as authorized by this chapter and chapter 441. This
5 exemption shall not apply to a hearing before the state board
6 of tax review.

7 Sec. 41. Section 535B.7, subsection 2, unnumbered
8 paragraph 1, Code 1997, is amended to read as follows:

9 The administrator may order an emergency suspension of a
10 licensee's license pursuant to section ~~17A.18~~-~~subsection-3~~
11 17A.18A. A written order containing the facts or conduct
12 which warrants the emergency action shall be timely sent to
13 the licensee by restricted certified mail. Upon issuance of
14 the suspension order, the licensee must also be notified of
15 the right to an evidentiary hearing. A suspension proceeding
16 shall be promptly instituted and determined.

17 Sec. 42. Section 602.9206, unnumbered paragraph 2, Code
18 1997, is amended to read as follows:

19 A senior judge also shall be available to serve in the
20 capacity of administrative law judge under chapter 17A upon
21 ~~the request of an agency~~, and the supreme court may assign a
22 senior judge for temporary duties as an administrative law
23 judge. A senior judge shall not be required to serve a period
24 of time as an administrative law judge which, when added to
25 the period of time being served by the person as a judge, if
26 any, would exceed the maximum period of time the person agreed
27 to serve pursuant to section 602.9203, subsection 2.

28 Sec. 43. Section 903A.1, Code 1997, is amended to read as
29 follows:

30 903A.1 CONDUCT REVIEW.

31 The director of the Iowa department of corrections shall
32 appoint independent administrative law judges whose duties
33 shall include but are not limited to review, as provided in
34 section 903A.3, of the conduct of inmates in institutions
35 under the department. Sections 10A.801 and 17A.11 do not

1 apply to administrative law judges appointed pursuant to this
2 section.

3 Sec. 44. Sections 10A.201, 10A.202, 17A.31, and 17A.32,
4 Code 1997, are repealed.

5 Sec. 45. EFFECTIVE DATE. This Act takes effect July 1,
6 1998, and applies to agency proceedings commenced on or after
7 that date, except that this Act shall apply to any agency
8 proceedings conducted on a remand from a court or another
9 agency on or after that date.

10 EXPLANATION

11 This bill makes changes to the Iowa administrative
12 procedures Act and establishes an independent office of
13 administrative hearings within the department of inspections
14 and appeals to provide administrative law judges for the
15 conduct of administrative hearings. The bill takes effect
16 July 1, 1998, and applies to initial or remanded proceedings
17 commenced on or after that date.

18 The bill establishes an independent office of
19 administrative hearings within the department of inspections
20 and appeals headed by a chief administrative law judge subject
21 to appointment by the governor and confirmation by the senate.
22 The new office, through the chief administrative law judge,
23 would have the authority to employ and assign most
24 administrative law judges (ALJs) that would preside over
25 hearings held by state agencies in which the agency head did
26 not preside. New Code section 10A.801 requires the office to
27 establish rules governing ALJs, including rules imposing on
28 all persons who act as presiding officers a code of
29 administrative judicial conduct that is similar to the Iowa
30 code of judicial conduct. The new section also makes
31 provisions for the specialization of ALJs and the ability of
32 agencies to require a certain level of expertness in ALJs used
33 by that agency. The new section also requires all newly hired
34 ALJs to be admitted to the bar of this state.

35 Code section 17A.3 is amended to provide that agencies

1 shall, to the extent practicable, adopt rules that embody the
2 standards, principles, and procedural safeguards that the
3 agency will apply to the law it administers.

4 Code section 17A.4 is amended to provide that when agencies
5 adopt most rules, the agency shall include in a preamble to
6 the rule a brief explanation of the principal reasons for its
7 adoption, and, if applicable, any reasons for not including a
8 provision providing for the waiver of that rule.

9 The bill creates new Code section 17A.4A requiring agencies
10 to issue a regulatory analysis of proposed rules under certain
11 circumstances. The new Code section replaces current law
12 which provides for requests for an economic impact of a rule
13 (Code section 17A.4(1)(c)) and for a small business regulatory
14 analysis (Code section 17A.31) which are stricken.

15 Code section 17A.7 is amended to provide a mechanism for
16 requiring an agency to conduct a formal review of an adopted
17 rule of the agency. The amendment provides that the
18 administrative rules review committee, the administrative
19 rules coordinator, a political subdivision, an agency, or a
20 petition of 25 people or of an association with at least 25
21 members may request a review of a specified rule. The
22 amendment provides that the agency need only review a
23 particular rule once every 5 years.

24 Code section 17A.9 is rewritten by this bill. Current law
25 makes provision for agencies to establish rules governing the
26 disposition of requests for declaratory rulings as to the
27 applicability of any law of the agency. The new Code section
28 provides specific guidelines, including specific time
29 standards, concerning the disposition of a petition requesting
30 a declaratory order by an agency. A declaratory order is
31 defined similarly to the current declaratory ruling.

32 New Code section 17A.10A is created to provide that a party
33 can request a contested case proceeding even if the facts of
34 the particular case are not in dispute.

35 Code section 17A.11 governing presiding officers and

1 administrative law judges is rewritten. The new Code section
2 provides that if an ALJ is used, the ALJ must be from the
3 office of administrative hearings unless the agency or an
4 agency officer is not a party or the real party in interest in
5 the hearing. The new Code section also provides for the
6 disqualification and substitution of presiding officers.

7 Code section 17A.12, subsection 3, governing defaults in
8 contested case proceedings is rewritten, providing the
9 mechanism, including applicable time standards, governing the
10 imposition of a default order.

11 Code section 17A.16 is amended to require that a proposed
12 or final agency decision include reasons why evidence contrary
13 to the finding does not preclude that finding.

14 Code section 17A.17 governing ex parte communications and
15 separation of functions is amended by the bill. The bill bars
16 a person from both personally investigating a matter and then
17 serving as a presiding officer or assisting the presiding
18 officer when the matter is considered. The bill also provides
19 that if a presiding officer has received an ex parte
20 communication prior to the commencement of a contested case,
21 the officer must disclose any material factual information
22 received that has not already been provided through discovery.

23 New Code section 17A.18A governing emergency adjudicative
24 proceeding is created by the bill. Current law, reflected in
25 Code section 17A.18, subsection 3 and replaced by this new
26 Code section, makes provision only for emergency proceedings
27 concerning licenses.

28 Code section 17A.19 governing judicial review is amended to
29 provide specific guidelines concerning the granting of stays
30 and for the review of a grant or denial of a stay. The bill
31 also specifies, in greater detail than the current Code, the
32 standards to be applied by a court when it reviews agency
33 action. The bill requires a court reviewing a finding of fact
34 in a contested case under the substantial evidence test to
35 consider both the evidence that supports and the evidence that

1 detracts from the finding.

2 Code section 17A.19 is also amended to provide that a
3 defendant in a suit for civil enforcement of agency action may
4 defend on any of the grounds specified for judicial review of
5 agency action if that defendant could have relied on any of
6 those grounds in a suit for judicial review of that action
7 brought at the time the enforcement suit was filed.

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HOUSE FILE 667

AN ACT

RELATING TO THE IOWA ADMINISTRATIVE PROCEDURE ACT AND
PROVIDING AN EFFECTIVE AND APPLICABILITY DATE.

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

Section 1. Section 10A.104, subsection 5, Code 1997, is amended to read as follows:

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A, ~~including rules governing hearing and appeal proceedings.~~

Sec. 2. Section 10A.106, Code 1997, is amended to read as follows:

10A.106 DIVISIONS OF THE DEPARTMENT.

The department is comprised of the following divisions:

1. ~~Appeals and fair~~ Administrative hearings division.
2. Audits division.
3. Investigations division.
4. Inspections division.

The allocation of departmental duties to the divisions of the department in sections ~~10A.202~~, 10A.302, 10A.402, and 10A.502 does not prohibit the director from reallocating departmental duties within the department. The director shall not reallocate any of the duties of the division of administrative hearings, created by section 10A.801, to any other unit of the department.

Sec. 3. NEW SECTION. 10A.801 DIVISION OF ADMINISTRATIVE HEARINGS -- CREATION, POWERS, DUTIES.

1. DEFINITIONS. For purposes of this section, unless the context otherwise requires:

a. "Administrator" means the chief administrative law judge who shall coordinate the administration of the division.

b. "Division" means the administrative hearings division of the department of inspections and appeals.

2. The administrator shall coordinate the division's conduct of appeals and administrative hearings as otherwise provided by law.

3. a. The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required, by section 17A.11 or any other provision of law, to use an administrative law judge employed by the division. An administrative law judge employed by the division shall not perform duties inconsistent with the judge's duties and responsibilities as an administrative law judge and shall be located in an office that is separated from the offices of the agencies for which that person acts as a presiding officer. Administrative law judges shall be covered by the merit system provisions of chapter 19A.

b. The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies. An agency may, by rule, identify particular classes of its contested cases for which the administrative law judge who acts as presiding officer shall have specified technical expertise. After the adoption of such a rule, the division may assign administrative law judges to preside over those identified particular classes of contested cases only if the administrative law judge possesses the technical expertise specified by agency rule. The division may charge the applicable agency for the costs of any training required by the division's administrative law judges to acquire or maintain the technical expertise specified by agency rule.

4. If the division cannot furnish one of its administrative law judges in response to an agency request, the administrator shall designate in writing a full-time employee of an agency other than the requesting agency to

serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the division.

5. The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding.

6. After the effective date of this Act, a person shall not be newly employed by the division as an administrative law judge to preside over contested case proceedings unless that person has a license to practice law in this state.

7. The division shall adopt rules pursuant to this chapter and chapter 17A to do all of the following:

a. To establish procedures for agencies to request and for the administrator to assign administrative law judges employed by the division.

b. To establish procedures and adopt forms, consistent with chapter 17A and other provisions of law, to govern administrative law judges employed by the division, but any rules adopted under this paragraph shall be applicable to a particular contested case proceeding only to the extent that they are not inconsistent with the rules of the agency under whose authority that proceeding is conducted. Nothing in this paragraph precludes an agency from establishing procedural requirements otherwise within its authority to govern its contested case proceedings, including requirements with respect to the timeliness of decisions rendered for it by administrative law judges.

c. To establish standards and procedures for the evaluation, training, promotion, and discipline for the administrative law judges employed by the division. Those procedures shall include provisions for each agency for whom a particular administrative law judge presides to submit to the division on a periodic basis the agency's views with respect to the performance of that administrative law judge or the

need for specified additional training for that administrative law judge. However, the evaluation, training, promotion, and discipline of all administrative law judges employed by the division shall remain solely within the authority of the division.

d. To establish, consistent with the provisions of this section and chapter 17A, a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa code of judicial conduct, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of section 17A.11, subsection 1. The code of administrative judicial conduct shall separately specify which provisions are applicable to agency heads or members of multimembered agency heads when they act as presiding officers, taking into account the objectives of the code and the fact that agency heads, unlike administrative law judges, have other duties imposed upon them by law. The code of administrative judicial conduct may also contain separate provisions, that are appropriate and consistent with the objectives of such a code, to govern the conduct of agency heads or the members of multimember agency heads when they act as presiding officers. However, a provision of the code of administrative judicial conduct shall not be made applicable to agency heads or members of multimember agency heads unless the application of that provision to agency heads and members of multimember agency heads has previously been approved by the administrative rules coordinator.

e. To facilitate the performance of the responsibilities conferred upon the division by this section, chapter 17A, and any other provision of law.

8. The division may do all of the following:

a. Provide administrative law judges, upon request, to any agency that is required to or wishes to utilize the services of an administrative law judge employed by the division.

b. Maintain a staff of reporters and other personnel.

c. Administer the provisions of this section and rules adopted under its authority.

9. The division may charge agencies for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

10. Except to the extent specified otherwise by statute, decisions of administrative law judges employed by the division are subject to review by the agencies for which they act as presiding officers as provided by section 17A.15 or any other provision of law.

Sec. 4. Section 17A.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9A. "Provision of law" means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or agency rule.

Sec. 5. Section 17A.2, subsection 10, unnumbered paragraph 1, Code 1997, is amended to read as follows:

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. Notwithstanding any other ~~provision-of-law~~ statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include:

Sec. 6. Section 17A.2, subsection 10, paragraph b, Code 1997, is amended to read as follows:

b. A declaratory ruling order issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

Sec. 7. Section 17A.3, subsection 1, Code 1997, is amended by adding the following new paragraph after paragraph b and relettering the subsequent paragraphs:

NEW PARAGRAPH. c. As soon as feasible and to the extent practicable, adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers.

Sec. 8. Section 17A.4, subsection 1, paragraph b, Code 1997, is amended to read as follows:

b. Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph "a" or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin. If

An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that

only defines the meaning of a provision of law if the agency does not possess delegated authority to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

Sec. 9. Section 17A.4, subsection 1, paragraph c, Code 1997, is amended by striking the paragraph.

Sec. 10. NEW SECTION. 17A.4A REGULATORY ANALYSIS.

1. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "a", if, within thirty-two days after the published notice of proposed rule adoption, a written request for the analysis is submitted to the agency by the administrative rules review committee or the administrative rules coordinator. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "b", if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of proposed rule adoption, a written request for analysis is submitted to the agency by the administrative rules review committee, the administrative rules coordinator, at least twenty-five persons signing that request who each qualify as a small business or by an organization representing at least twenty-five such persons. If a rule has been adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the written request for an analysis that complies with subsection 2, paragraph "a" or "b", may be made within seventy days of publication of the rule.

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

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

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

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

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

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

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

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

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

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

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

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

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

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

4. Upon receipt by an agency of a timely request for a regulatory analysis, the agency shall extend the period specified in this chapter for each of the following until at least twenty days after publication in the administrative bulletin of a concise summary of the regulatory analysis:

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

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

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

In the case of a rule adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the summary must be published within seventy days of the request.

5. The published summary of the regulatory analysis must also indicate where persons may obtain copies of the full text of the regulatory analysis and where, when, and how persons may present their views on the proposed rule and demand an oral proceeding thereon if one is not already provided. Agencies shall make available to the public, to the maximum

extent feasible, the published summary and the full text of the regulatory analysis described in this subsection in an electronic format, including, but not limited to, access to the documents through the internet.

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

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

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

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

For purposes of this definition, "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than one million dollars in annual gross revenues, and "affiliate or subsidiary of an entity dominant in its field of operation" means an entity which is at least twenty percent owned by an entity dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of an entity dominant in that field of operation.

Sec. 11. Section 17A.7, Code 1997, is amended to read as follows:

17A.7 PETITION FOR ADOPTION OF RULES AND REQUEST FOR REVIEW OF RULES.

1. An interested person may petition an agency requesting the promulgation adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a

petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1.

2. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for an agency to conduct a formal review of a specified rule of that agency to determine whether the rule should be repealed or amended or a new rule adopted instead. The administrative rules coordinator shall determine whether the request is reasonable and does not place an unreasonable burden upon the agency.

If the agency has not conducted such a review of the specified rule within a period of five years prior to the filing of the written request, and upon a determination by the administrative rules coordinator that the request is reasonable and does not place an unreasonable burden upon the agency, the agency shall prepare within a reasonable time a written report with respect to the rule summarizing the agency's findings, its supporting reasons, and any proposed course of action. The report must include, for the specified rule, a concise statement of all of the following:

- a. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
- b. Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency.
- c. Alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes.

A copy of the report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be made available for public inspection.

Sec. 12. Section 17A.8, subsection 9, Code 1997, is amended to read as follows:

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. A standing committee shall review a rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to disapprove the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b".

Sec. 13. Section 17A.9, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

17A.9 DECLARATORY ORDERS.

1. Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.

However, an agency shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

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

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

4. Persons who qualify under any applicable provision of law as an intervenor and who file timely petitions for intervention according to agency rules may intervene in proceedings for declaratory orders. The provisions of sections 17A.10 through 17A.18 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

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

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

b. Set the matter for specified proceedings.

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

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

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

7. A declaratory order has the same status and binding effect as any final order issued in a contested case proceeding. A declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

8. If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, or such later time as agreed by the parties, the petition is deemed to have been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order pursuant to subsection 5, paragraph "d", a party to that proceeding may either seek judicial review or await further agency action with respect to its petition for a declaratory order.

Sec. 14. NEW SECTION. 17A.10A CONTESTED CASES -- NO FACTUAL DISPUTE.

Upon petition by a party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter applicable to contested cases, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

Sec. 15. Section 17A.11, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

17A.11 PRESIDING OFFICER, DISQUALIFICATION, SUBSTITUTION.

1. a. If the agency or an officer of the agency under whose authority the contested case is to take place is a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, or one or more administrative law judges assigned by the division of administrative hearings in accordance with the provisions of section 10A.801. However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the division of administrative hearings. Except as otherwise provided by statute, the agency shall grant a request by a party for an administrative law judge unless the agency finds, and states reasons for the finding, that any of the following conditions exist:

- (1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- (2) A qualified administrative law judge is unavailable to hear the case within a reasonable time.
- (3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- (4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- (5) Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.
- (6) The request was not timely filed.
- (7) There is other identified good cause, as specified by rule, for denying the request.

b. If the agency or an officer of the agency under whose authority the contested case is to take place is not a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a

multimember agency, an administrative law judge assigned by the division of administrative hearings in accordance with the provisions of section 10A.801, or any other qualified person designated as a presiding officer by the agency. Any other person designated as a presiding officer by the agency may be employed by and officed in the agency for which that person acts as a presiding officer, but such a person shall not perform duties inconsistent with that person's duties and responsibilities as a presiding officer.

c. For purposes of paragraph "a", the division of administrative hearings established in section 10A.801 shall be treated as a wholly separate agency from the department of inspections and appeals.

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

3. Any party may timely request the disqualification of a person as a presiding officer by filing a motion supported by an affidavit asserting an appropriate ground for disqualification, after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

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

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

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

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

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

Sec. 16. Section 17A.12, subsection 3, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

3. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

Sec. 17. Section 17A.15, subsection 3, Code 1997, is amended to read as follows:

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or

modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

Sec. 18. Section 17A.16, subsection 1, Code 1997, is amended to read as follows:

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

Sec. 19. Section 17A.17, Code 1997, is amended to read as follows:

17A.17 EX PARTE COMMUNICATIONS AND SEPARATION OF FUNCTIONS.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, ~~individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law~~ a presiding officer in a contested

case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, ~~individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law~~ a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with ~~individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law~~ a presiding officer in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules. ~~The agency's rules may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations, the rules may provide for a decision against a party who violates the rules, for censuring, suspending or~~

~~revoking a privilege to practice before the agency, and for censuring, suspending or dismissing agency personnel.~~

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

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

5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

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

7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

~~3~~ 8. No An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. Nor shall any In addition, such an individual shall not be subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

~~4. A party to a contested case proceeding may file a timely and sufficient affidavit asserting disqualification according to the provisions of subsection 37 or asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.~~

Sec. 20. Section 17A.18, subsection 3, Code 1997, is amended to read as follows:

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provisions provision of law which warrant warrants the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license. ~~if the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.~~

Sec. 21. NEW SECTION. 17A.18A EMERGENCY ADJUDICATIVE PROCEEDINGS.

1. Notwithstanding any other provision of this chapter and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

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

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

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

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

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

7. Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

Sec. 22. Section 17A.19, subsection 1, Code 1997, is amended to read as follows:

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory ruling order has not been rendered within thirty sixty days after the filing of a petition therefor under section 17A.9, or by such later time as agreed by the parties, or if the agency declines to issue such a declaratory ruling

order after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

Sec. 23. Section 17A.19, subsection 5, Code 1997, is amended to read as follows:

5. a. The filing of the petition for review does not itself stay execution or enforcement of any agency action. ~~Upon application the agency or the reviewing court may, in appropriate cases, order such a stay pending the outcome of the judicial review proceedings~~ Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

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

c. If the agency refuses to grant an application for stay or other temporary remedies, or application to the agency for a stay or other temporary remedies is an inadequate remedy, the court may grant relief but only after a consideration and balancing of all of the following factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

(2) The extent to which the applicant will suffer irreparable injury if relief is not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

d. If the court determines that relief should be granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on

appropriate terms, or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms, or granting other temporary remedies.

Sec. 24. Section 17A.19, subsection 8, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

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

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

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

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

10. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

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

b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.

c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.

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

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

f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:

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

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

(3) "When that record is viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

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

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons

sufficient to indicate a fair and rational basis for the inconsistency.

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

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

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

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

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

11. In making the determinations required by subsection 10, paragraphs "a" through "n", the court shall do all of the following:

a. Shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency.

b. Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.

c. Shall give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.

12. A defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified in subsection 10, paragraphs "a" through "n", if that defendant, at the time the enforcement suit was filed, would have been entitled to rely upon any of those grounds as a basis for invalidating the agency action in a suit for judicial review of that action brought at the time the enforcement suit was filed. If a suit for civil enforcement of agency action in a contested case is filed within the time period in which the defendant could have filed a petition for judicial review of that agency action, and the agency subsequently dismisses its suit for civil enforcement of that agency action against the defendant, the defendant may, within thirty days of that dismissal, file a petition for judicial review of the original agency action at issue if the defendant relied upon any of the grounds for judicial review in subsection 10, paragraphs "a" through "n", in a responsive pleading to the enforcement action, or if the time to file a responsive pleading had not yet expired at the time the enforcement action was dismissed.

Sec. 25. Section 17A.23, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.

Sec. 26. Section 17A.33, Code 1997, is amended to read as follows:

17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW COMMITTEE.

The administrative rules review committee shall review existing rules, as time permits, to determine if there are adverse or beneficial effects from these rules. The committee shall give a high priority to rules that are referred to it by small business as defined in section ~~17A.31~~ 17A.4A. The review of these rules shall be forwarded to the appropriate standing committees of the house and senate.

Sec. 27. Section 19A.1A, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Reduction in force appeals shall be subject to review by the director.

Sec. 28. Section 20.6, subsection 4, Code 1997, is amended to read as follows:

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including administrative law judges, or administrative law judges employed by the division of administrative hearings created by section 10A.801, for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

Sec. 29. Section 86.17, subsection 1, Code 1997, is amended to read as follows:

1. A Notwithstanding the provisions of section 17A.11, the industrial commissioner or a deputy industrial commissioner may shall preside over any contested case proceeding brought under this chapter, chapter 85, or 85A, or 85B in the manner provided by chapter 17A. The deputy commissioner or the commissioner may make such inquiries and investigation in contested case proceedings as shall be deemed necessary, consistent with so long as such inquiries do not violate any of the provisions of section 17A.17.

Sec. 30. Section 137E.12, Code 1997, is amended to read as follows:

137E.12 REVOCATION OR ORDER FOR DISCONTINUANCE.

A license issued under this chapter may be revoked by the regulatory authority for violation by the licensee of a provision of this chapter or an applicable rule of the

department. In lieu of license revocation, the regulatory authority may require the immediate discontinuance of operation of a vending machine or commissary if it finds unsanitary conditions or other conditions which constitute a substantial hazard to the public health. The order shall apply only to the vending machines, commissary, or product involved. A person whose license is revoked, or who is ordered to discontinue the operation of a vending machine or commissary, may appeal that decision to the director. The director or ~~the chief an~~ administrative law judge ~~of the department~~ appointed according to the requirements of section 17A.11, subsection 1, shall schedule and hold a hearing upon the appeal not later than thirty days from the time of revocation or the order of discontinuance. The director or the chief administrative law judge shall issue a decision immediately following the hearing. Judicial review may be sought in accordance with ~~the Iowa administrative procedure Act~~ chapter 17A.

Sec. 31. Section 148.7, subsection 3, Code 1997, is amended to read as follows:

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

~~The compensation of the administrative law judge shall be fixed by the medical examiners.~~ The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the medical examiners the

administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

Sec. 32. Section 169.5, subsection 9, paragraph e, Code 1997, is amended to read as follows:

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

Sec. 33. Section 169.14, subsection 3, Code 1997, is amended to read as follows:

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

Sec. 34. Section 203C.10, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If upon the filing of the information or complaint the department finds that the licensee has failed to meet the warehouse operator's obligation or otherwise has violated or failed to comply with the provisions of this chapter or any rule promulgated under this chapter, and if the department finds that the public health, safety or welfare imperatively

requires emergency action, then the department without hearing may order a summary suspension of the license in the manner provided in section ~~17A.18~~ 17A.18A. When so ordered, a copy of the order of suspension shall be served upon the licensee at the time the information or complaint is served as provided in this section.

Sec. 35. Section 207.14, subsection 2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If upon expiration of the time as fixed the administrator finds in writing that the violation has not been abated, the administrator, notwithstanding ~~section~~ sections 17A.18 and 17A.18A, shall immediately order a cessation of coal mining and reclamation operations relating to the violation until the order is modified, vacated, or terminated by the administrator pursuant to procedures outlined in this section. In the order of cessation issued by the administrator under this subsection, the administrator shall include the steps necessary to abate the violation in the most expeditious manner possible.

Sec. 36. Section 216.15, subsection 3, paragraph a, Code 1997, is amended to read as follows:

a. After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge ~~under the jurisdiction of~~ employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

Sec. 37. Section 216.17, subsection 6, Code 1997, is amended to read as follows:

6. In the enforcement proceeding the court shall determine its order on the same basis as it would in a proceeding reviewing commission action under section ~~17A.19-subsection 8~~.

Sec. 38. Section 252.27, unnumbered paragraph 2, Code 1997, is amended to read as follows:

The board shall record its proceedings relating to the provision of assistance to specific persons under this chapter. A person who is aggrieved by a decision of the board may appeal the decision as if it were a contested case before an agency and as if the person had exhausted administrative remedies in accordance with the procedures and standards in section 17A.19, subsections 2 to 8 12 except subsection 10, paragraphs "b" and "~~c~~"-~~of-subsection-8~~ "g", and section 17A.20.

Sec. 39. Section 256.7, subsection 6, Code 1997, is amended to read as follows:

6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated ~~by the director in~~ for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.

Sec. 40. Section 368.22, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Subsection 9.

NEW SUBSECTION. 5. Subsection 10.

NEW SUBSECTION. 6. Subsection 11.

Sec. 41. Section 421.17, subsection 20, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The provisions of sections 17A.10 to ~~17A.18~~ 17A.18A relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

Sec. 42. Section 535B.7, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The administrator may order an emergency suspension of a licensee's license pursuant to section ~~17A.18, subsection 3~~ 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

Sec. 43. Section 602.9206, unnumbered paragraph 2, Code 1997, is amended to read as follows:

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

Sec. 44. Section 903A.1, Code 1997, is amended to read as follows:

903A.1 CONDUCT REVIEW.

The director of the Iowa department of corrections shall appoint independent administrative law judges whose duties shall include but are not limited to review, as provided in section 903A.3, of the conduct of inmates in institutions under the department. Sections 10A.801 and 17A.11 do not apply to administrative law judges appointed pursuant to this section.

Sec. 45. Sections 10A.201, 10A.202, 17A.31, and 17A.32, Code 1997, are repealed.

Sec. 46. EFFECTIVE DATE. This Act takes effect July 1, 1999, and applies to agency proceedings commenced on or after

that date, except that this Act shall apply to any agency proceedings conducted on a remand from a court or another agency on or after that date.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 667, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 19, 1998

TERRY E. BRANSTAD
Governor