

THE ADMINISTRATIVE RULES REVIEW COMMITTEE 1994

I. Introduction. This report covers the period beginning with the Committee's February 1994 meeting through the January 1995 meeting. This curious time period is chosen because those meetings cover the rules published in final form during the 1994 calendar year.

In 1994, 66 administrative agencies promulgated 419 filings representing over 1600 individual rule additions, amendments or rescissions. This figure is essentially unchanged from 1993 as set out below:

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|---|---|
| In 1994 66 agencies promulgated 419 filings | In 1989 60 agencies promulgated 463 filings |
| In 1993 62 agencies promulgated 411 filings | In 1988 86 agencies promulgated 621 filings |
| In 1992 61 agencies promulgated 493 filings | In 1987 60 agencies promulgated 503 filings |
| In 1991 66 agencies promulgated 511 filings | In 1986 57 agencies promulgated 476 filings |
| In 1990 56 agencies promulgated 498 filings | In 1985 63 agencies promulgated 505 filings |

91 of these filings were placed into effect using the "emergency" provisions of Iowa Code chapter 17A . Most of these were also placed under Notice. This figure represents 21 percent of the total volume of rule making and is good improvement over the level of emergency rule making in 1993; in nine years only once has the level of emergency rule making been lower, as set out below:

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| In 1994 91 "emergency" rules represented 21% of the total. |
| In 1993 116 "emergency" rules represented 28% of the total. |
| In 1992 92 "emergency" rules represented 20% of the total. |
| In 1991 135 "emergency" rules represented 26% of the total. |
| In 1990 94 "emergency" rules represented 19% of the total. |
| In 1989 92 "emergency" rules represented 20% of the total. |
| In 1988 111 "emergency" rules represented 18% of the total. |
| In 1987 133 "emergency" rules represented 26% of the total. |
| In 1986 142 "emergency" rules represented 30% of the total. |

To calculate the volume of rule making for 1994, filings are counted instead of single rules. Each filing put into effect contained one or more individual rule changes; on the average each filing contains roughly four changes. The agencies which adopted rules are listed below together with the number of filings put into effect. For purposes of this analysis the term "agency" ignores the statutory groupings of divisions, boards, commissions, etc. Instead the chart below independently lists every rule-making unit without regard to its location within a larger "umbrella" agency. The first column of numbers represents the number of emergency filings adopted in 1994. The second column of numbers represent the total number of rules promulgated by the agency.

| | | |
|----------------------------------|----|----|
| HUMAN SERVICES DEPARTMENT | 17 | 67 |
| NATURAL RESOURCES COMMISSION | 3 | 26 |
| EDUCATION DEPARTMENT | 2 | 26 |
| TRANSPORTATION DEPARTMENT | 4 | 20 |
| PHARMACY EXAMINERS BOARD | 1 | 18 |
| INSURANCE DIVISION | 5 | 16 |
| LABOR SERVICES DIVISION | 1 | 16 |
| ECONOMIC DEVELOPMENT DEPT | 5 | 15 |
| AGRICULTURE DEPARTMENT | 3 | 15 |
| ENVIRONMENTAL PROTECTION COMM | 2 | 14 |
| UST BOARD | 4 | 12 |
| REVENUE AND FINANCE DEPT | 2 | 12 |
| PUBLIC HEALTH DEPARTMENT | 1 | 12 |
| PROFESSIONAL LICENSURE DIVISION | 0 | 12 |
| ETHICS AND CAMPAIGN FINANCE | 1 | 8 |
| GENERAL SERVICES DEPARTMENT | 3 | 7 |
| UTILITIES DIVISION | 2 | 7 |
| RACING AND GAMING COMMISSION | 2 | 7 |
| PUBLIC SAFETY DEPARTMENT | 2 | 7 |
| INSPECTIONS & APPEALS DEPARTMENT | 4 | 6 |
| LOTTERY DIVISION | 3 | 6 |
| NURSING EXAMINERS BOARD | 1 | 6 |
| MEDICAL EXAMINERS BOARD | 0 | 6 |
| SOIL CONSERVATION COMMISSION | 2 | 5 |
| SECRETARY OF STATE | 2 | 5 |
| JUSTICE DEPARTMENT | 1 | 4 |
| DENTAL EXAMINERS BOARD | 0 | 4 |
| INDUSTRIAL SERVICES DIVISION | 2 | 3 |
| COMMUNITY ACTION AGENCIES | 2 | 3 |
| LAW ENFORCEMENT ACADEMY | 1 | 3 |
| BANKING DIVISION | 0 | 3 |
| PERSONNEL DEPARTMENT | 2 | 2 |
| WALLACE TECHNOLOGY FOUNDATION | 1 | 2 |
| SUBSTANCE ABUSE COMMISSION | 1 | 2 |

| | | |
|---------------------------------|---|---|
| PUBLIC BROADCASTING DIVISION | 1 | 2 |
| PERB | 1 | 2 |
| LIBRARY DIVISION | 1 | 2 |
| ACCOUNTANCY EXAMINING BOARD | 1 | 2 |
| REAL ESTATE COMMISSION | 0 | 2 |
| ENGINEERING EXAMINERS BOARD | 0 | 2 |
| ELDER AFFAIRS DEPARTMENT | 0 | 2 |
| EDUCATIONAL EXAMINERS BOARD | 0 | 2 |
| CREDIT UNION DIVISION | 0 | 2 |
| CORRECTION DEPARTMENT | 0 | 2 |
| TREASURER | 1 | 1 |
| STATUS OF BLACKS DIVISION | 1 | 1 |
| REGENTS BOARD | 1 | 1 |
| HEALTH DATA COMMISSION | 1 | 1 |
| CRIMINAL & JUVENILE JUSTICE DIV | 1 | 1 |
| VOTER REGISTRATION COMMISSION | 0 | 1 |
| VETERINARY MEDICINE BOARD | 0 | 1 |
| SHEEP & WOOL PROMOTION BOARD | 0 | 1 |
| NATIONAL & COMMUNITY SERVICE | 0 | 1 |
| LIVESTOCK HEALTH ADVISORY COUN | 0 | 1 |
| LATINO AFFAIRS COMMISSION | 0 | 1 |
| LANDSCAPE AR EXAMINING BOARD | 0 | 1 |
| JOB SERVICE DIVISION | 0 | 1 |
| HISTORICAL DIVISION | 0 | 1 |
| ENERGY AND GEOLOGICAL RESOURCES | 0 | 1 |
| EMPLOYMENT APPEALS BOARD | 0 | 1 |
| COMMERCE DEPARTMENT | 0 | 1 |
| CIVIL RIGHTS COMMISSION | 0 | 1 |
| CITY DEVELOPMENT BOARD | 0 | 1 |
| ARTS DIVISION | 0 | 1 |
| ARCHITECTURAL EXAMINERS BOARD | 0 | 1 |
| ALCOHOLIC BEVERAGES DIVISION | 0 | 1 |

In 1994 nine agencies promulgated over half of the entire number while over half of the agencies promulgated two or fewer rules. This annual number of 419 filings breaks down by month in the following chart. The numbers are taken from the agenda for the Administrative Rules Review Committee; meaning that for the most part the rules were published in the previous month. Note that during the legislative session rule making decreases only marginally. Two "spikes" occur during the year-one occurs in April when the legislature has just adjourned, the second in August when rules implementing newly enacted legislation finally make it through the rules pipeline.

| FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC | JAN |
|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|-----|
| 30 | 25 | 48 | 25 | 27 | 32 | 58 | 34 | 32 | 33 | 44 | 31 |

II. Formal Committee Actions

While the number of filings has decreased over the last five years, the volume of formal objections filed by the committee has remained relatively constant for three years. In 1994 the committee imposed three objections, down from a decade high of eight objections imposed in 1989. A total of 141 objections have been imposed since 1977, but the trend has clearly been toward a decline in their frequency, as indicated below:

| | | |
|-------------|-------------|-------------|
| 1977.....36 | 1984.....04 | 1991.....07 |
| 1978.....24 | 1985.....03 | 1992.....04 |
| 1979.....13 | 1986.....05 | 1993.....04 |
| 1980.....06 | 1987.....03 | 1994.....03 |
| 1981.....08 | 1988.....02 | |
| 1982.....02 | 1989.....08 | |
| 1983.....03 | 1990.....06 | |

The volume of session delays for 1994 declined sharply from five in 1992 down to four in 1993 and down to one in 1994. Even that action was rescinded when the agency withdrew the rule rather than face the possibility of a legislative veto. A total of 48 delays have been imposed since the power was created in 1978.

III. Summary of Major Committee Actions. In 1994 the committee voted three new objections, one session delay, seven general referrals {13 in 1993}, four 70 day delays {13 in 1993} and two requests for an economic impact statement {up by one}; making for a total of 17 committee actions. In 1992 the committee took a total of 39 formal actions and in 1993 it took 35. Note that a single rule can be subjected to several committee actions. "Housekeeping" matters, such as rescinding or affirming earlier actions, are not included in the listing. The 1994 formal actions are summarized as follows:

OBJECTION: DEPARTMENT OF ECONOMIC DEVELOPMENT, ARC 5029A, 261 IAC subrule 62.2 relating to the definition of average county wage and eligible project for the New Jobs and Income Program. {rule withdrawn}

OBJECTION: DEPARTMENT OF HUMAN SERVICES, ARC 4289A, 441 IAC 24.1, relating to the level of IQ scores in determining eligibility for services definition of mental retardation. {Objection withdrawn on technicality}

OBJECTION: DEPARTMENT OF NATURAL RESOURCES, ARC 4854A, 571 IAC 106.11, relating to the restrictions on obtaining deer depredation permits. {no action taken}

SEVENTY DAY DELAY: ENVIRONMENTAL PROTECTION COMMISSION, ARC 4559A, relating to the designation of certain protected stream segments. {no additional action}

SEVENTY DAY DELAY: SUBSTANCE ABUSE DIVISION, ARC 4674A, relating to standards for methadone treatment centers. {followed by session delay}

SEVENTY DAY DELAY: INSURANCE DIVISION, ARC 4769A, relating to standards for the long term care asset preservation program. {delay withdrawn}

SEVENTY DAY DELAY: PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, ARC 5076A and 5077A, relating to prioritization of claims. {no additional action}

SESSION DELAY: SUBSTANCE ABUSE DIVISION, ARC 4674A, relating to standards for methadone treatment centers. {rule withdrawn}

GENERAL REFERRAL: ETHICS AND CAMPAIGN FINANCE BOARD, ARC 4542A, Iowa Code section 56.15, relating to campaign finance disclosure. {statute amended}

GENERAL REFERRAL: ENVIRONMENTAL PROTECTION DIVISION, Iowa Code section 455B.134(3) relating to waste storage basins for animal waste. {pending legislative action}

GENERAL REFERRAL: DEPARTMENT OF TRANSPORTATION, ARC 5105A, relating to insurance requirements for publicly funded passenger transportation services.

GENERAL REFERRAL: DEPARTMENT OF NATURAL RESOURCES, 571 IAC 91.4(2)"a", relating to closed areas for goose hunting.

GENERAL REFERRAL: PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, ARC 5077A, relating to the prioritization of claims for underground storage tank remediation. {legislative action pending}

GENERAL REFERRAL: INSURANCE DIVISION, ARC 5320A, relating to employee access to health care. {compromise reached}

GENERAL REFERRAL: PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, ARC 5224A, relating to the certification of laboratories for evaluating contamination levels.

ECONOMIC IMPACT STATEMENT: DEPARTMENT OF EDUCATION, ARC 4626A, relating to special education.

ECONOMIC IMPACT STATEMENT: ENVIRONMENTAL PROTECTION COMMISSION, ARC 5167A, Item three, relating to operation fees for public water supplies.

IV. Major Issues of 1994

CORRECTIONS DEPARTMENT

INMATE RESTITUTION, IAB Vol. XVII, No. 10, ARC 5230A, ADOPTED. This issue began in 1993 when the committee conducted a special review concerning a new corrections department policy that claimed restitution payments from all funds available to an inmate, including money gifts from family and friends. The policy was not promulgated through the rule-making process; at that time the department contended that the policy was exempt from rule-making, as it applied only to inmates of a penal institution {Section 17A.2(10)}. The Administrative Rules Review Committee acquiesced to that opinion and did not insist on additional rule making. However, in 1994 the federal court struck down this policy noting that the exemption did not apply. The department then adopted rules to meet the federal courts' demand. This filing allowed the department to take up to 50% of the inmate's credit for restitution. This was bitterly opposed by inmate advocates who contended that the statute relating to restitution did not allow for mandatory deductions from gifts. The committee members felt that Iowa Code section 910.5 implied such authority by stating: "*An offender committed to a penal or correctional facility of the state shall make restitution while placed in that facility. Upon commitment to the custody of the director of the Iowa department of corrections, the director or the director's designee shall prepare a restitution plan of payment or modify any existing plan of payment.*" The members of the committee felt the authority is implied from the duty imposed on inmates to make restitution and the duty imposed on the department to implement a plan. Moreover, statistics indicate that sizable sums of money are given to inmates. For example, In one week in January 1991, the Iowa State Men's Reformatory took in \$32,900 from outside sources which averaged \$25.80 per inmate, based on 1,275 inmates, that one week. Allowances paid to inmates range from \$20 to \$40 per month. In February of 1991 another week averaged \$14.71 per inmate.

The committee members concluded that section 910.7A was the legislature's clear statement that a restitution judgment was a lien against all property of an inmate, including gifts from outside the institution. For that reason the committee took no action against this rule. This rule will undoubtedly spark another round of litigation which hopefully will resolve this issue entirely.

ECONOMIC DEVELOPMENT DEPARTMENT

ELIGIBLE PROJECTS UNDER NEW JOBS AND INCOME PROGRAM, IAB Vol. XVII, No. 4, ARC 5029, FILED EMERGENCY AFTER NOTICE. House File 2180 created a high-end CEBA grant program which required wages significantly larger than most projects. The Act required that the average wage be set at \$11.00 per hour or 130% of the average county wage, whichever is higher. When published as a notice in June, the proposed amendment would have allowed the value of health and dental insurance payments to be included in the wage determination, thus allowing a somewhat lower actual salary to be paid. At its July meeting the committee formally moved to recommend that the wage level be calculated without regard to the benefit package. At that time it was the committee's opinion that the Act required both a high wage and good benefit package, each to be calculated separately. While there was public comment both for and against this proposal, the department ultimately felt

that the legislative intent of H.F. 2180 indicated that the value of fringe benefits should not be included.

A second point was that the proposed rule defined the statutory term "average county wage" to mean the average *starting* wage, a figure significantly lower than the average. This language was added to allow Iowa's poorer counties to compete with the more urban areas for these projects. The committee objected to this language arguing that the plain terms of the legislation should not be amended by administrative rules. In spite of the good intentions the members felt that the proposed amendment may have the effect of reducing the level of required wages beneath the level mandated in the Act and for that reason is not within the authority of the department.

A third point related to the definition of "eligible project." The amendment in effect stated that a project may be eligible for funding even if it has begun production or service operation as long as the facility has not achieved 1/3 of its design capacity. The committee filed an objection to this provision as well. The members believed that the legislative intent of House File 2180 was to foster the location of new projects in Iowa, not to provide additional funding for projects already committed to this state. The department subsequently withdrew all items objected to by the committee.

ENVIRONMENTAL PROTECTION COMMISSION

SLURRY STORAGE BASINS, Iowa Code section 455B.134(3), *SELECTIVE REVIEW.*

At the September meeting the members discussed the possibility of animal feedlot owners modifying certain existing animal confinement "lagoons" or "earthen waste storage basins" by installing a synthetic liner in order to avoid the separation distances required of a lagoon or earthen waste storage basin. Pursuant to Iowa Code section 455B.134(3), anaerobic lagoons and earthen storage basins are subject to separation requirements to distance these facilities from residences. Several enterprising individuals have lined these basins with a plastic liner and since they are no longer *earthen* storage basins, they are not legally required to meet the separation distances. In one case such a facility was located only 400 feet from a residence.

The committee noted that under current law the Department of Natural Resources could not enforce any separation distance. Indeed, for those facilities large enough to require a permit, the department could not even deny a permit application on this basis. Based on this discussion the committee voted a general referral to the legislature with the recommendation that legislation be enacted to regulate lined storage basins.

PROHIBITIONS ON STREAM STRAIGHTENING, IAB Vol. XVI, No. 15, ARC 4559A, *ADOPTED.* For many years approximately 100 streams have been designated as protected with no channel changes permissible. Late in 1993 the commission completed action on a rule which would add some 130 streams to the list. The effect of this designation was set out in paragraph 567 IAC 72.2(1)"d" which provided:

d. Protected streams. For protected streams no channel changes will be allowed, because of actual or potential significant adverse effects on fisheries, water quality, flood control, flood plain management, wildlife habitat, soil erosion, public recreation, the public health welfare and safety, compatibility with the state water plan, rights of other landowners, and other factors relevant to the control, development, protection, allocation, and utilization of the stream.

The only allowable work on protected streams was routine maintenance such as snag removal, sandbar removal and bank stabilization. This addition was vociferously protested by landowners and this protest sparked a delay by the committee.

In response, the department proposed a compromise in April. The compromise offered to add more liberal criteria to allow a protected stream to be straightened specifically when the applicant "*can clearly show that there would be no adverse effects on the public interest.*" Additionally, the proposal clarified that the denial of a permit could be appealed to the commission itself and ultimately into district court. The proposal lastly clarified that "hydrologically connected" streams were not on the protected list. These three amendments effectively ended any controversy with this filing and the rule-making process was completed with no further problem.

HUMAN SERVICES DEPARTMENT

IQ LEVEL SPECIFIED FOR CERTAIN LOCAL SERVICES, IAB Vol. XVII, No. 14, ARC 5329A. In 1993 the department initially raised the IQ level for eligibility for certain local services. The prior rule simply set the IQ level at approximately 70. Some, if not most, counties used the 70 figure as an absolute cutoff. The department then raised the level to a maximum of 75 {a 70 level with a five point margin of error}. The action was controversial because local officials alleged that it would dramatically increase the number of county residents eligible for service. The department responded by noting 1) that the initial 70 IQ level was never intended to be an absolute cutoff, 2) that the increased IQ level was only one factor in considering eligibility, and 3) that level of functioning was more significant than IQ in determining eligibility. In 1994 the committee reviewed that action questioning whether it was appropriate to raise the eligibility level in light of the potential increased burden on county property taxes.

The department subsequently amended the provision to emphasize that other factors, such as adaptive behavior are also used to determine eligibility. The amendment still retained a 75 point IQ maximum and for that reason still remained controversial to the committee members. The committee imposed a session delay and referred this issue to the 1995 session of the General Assembly. The legislature is currently considering language to codify the IQ standard into statute.

REIMBURSEMENT RATES FOR ICF-MRs, IAB Vol. XVI, No. 20, ARC 4693A, ADOPTED. The department established a cap on reimbursement to ICF-MRs at 80% of the maximum current rate. Rates varied between \$114 per day and \$335. The cap established a maximum reimbursement rate of \$245 per day effecting approximately 14 facilities which were currently over that level. The cap reduced expenditures by some \$1,700,000 per year with a \$600,000 reduction for county government. The rule also limited administrative costs to 18% of total costs saving some \$260,000 per year and \$95,000 for the counties.

Representatives of various ICF-MRs did not contend that the cap was unfair, instead they argued that it needed to be gradually implemented over several years. They contended that such a delay would provide an opportunity to renegotiate contracts and take other actions to minimize the impact of the reductions. The counties responded in favor of immediate implementation noting that they were subject to a continuing property tax freeze while mental health costs continue to rise. They saw this cap as the only means of getting some control over

the costs. The committee members noted that total mental health costs for counties were in excess of \$220,000,000 and that counties had very little control over this expense. Because of the high costs of mental health care at the county level, the committee decided to support the change.

INSURANCE DIVISION

HEALTH CARE ACCESS, IAB Vol. XVII, No. 13, ARC 5320A, ADOPTED. Senate File 2282, in part states: "...an employer doing business within this state shall offer each employee, at a minimum, access to health insurance." The Act went on to state that the employer is not required to make any financial contribution to the insurance coverage. This legislation presented a textbook example of how a vaguely worded statute can result in a rule-making crisis.

The Insurance Division required two attempts to establish a workable definition for the statutory phrase "provide access to health care." The first proposal would have required the employer to find an insurer willing to make a presentation to the employees and willing to provide coverage. The rules committee felt that the Act required an employer to carry only a very limited administrative burden in offering the program such as obtaining brochures for employees or arranging a payroll deduction program. It appeared that the first proposal imposed a greater duty, implying that the employer must actually offer a specific program.

The division withdrew those rules and then adopted a significantly scaled back version. This second definition of eligible employee excluded temporary employees and minors--two groups who are the least likely to want insurance coverage. Probationary employees were also excluded if coverage is offered following probationary status. The access requirement itself was also modified. The employer must provide each eligible employee with a written referral as to where the employee can obtain information but, that obligation simply required the employer to contact an insurance agent willing to provide information on insurance. While the employer must still go to some effort, it was now clear that the employer has no responsibility to assure or provide coverage. These amendments significantly reduced the burden imposed on employers thus satisfying the concerns of the committee members.

PHARMACY BOARD

PATIENT CONSULTATIONS, IAB Vol. XVII, No. 13, ARC 5316A, ADOPTED. These provisions, adopted in 1994, represented a compromise that took two years to achieve. The issue was the extent to which a pharmacist must provide verbal {in-person or telephone} counseling to patients receiving a new prescription. The 1993 rule placed a much higher burden on Iowa pharmacists serving Iowa patients than it did on mail-order pharmacists. Mail-order pharmacists were not required to provide oral counseling and were allowed to simply include written instructions along with the medication but local pharmacists were required to provide counseling either in person or by telephone. To correct this imbalance the board adopted a provision which allowed both the local and mail-order pharmacist to determine on a case-by-case basis whether to have an actual dialogue with the patient on new prescriptions; thus treating both types of pharmacists equally. However, this equality was achieved by reducing the amount of oral counseling that will take place, which was made, in

effect, discretionary not mandatory. The committee found this compromise acceptable and no further action was taken on this filing.

SUBSTANCE ABUSE DIVISION

STANDARDS FOR METHADONE TREATMENT PROGRAMS, IAB Vol. XVI, No. 19, ARC 4674A, 70 DAY DELAY. The division adopted significant additions to its licensing regulations for methadone treatment programs. Methadone is a schedule II narcotic similar in effect to heroin. The rules contained numerous administrative and record keeping requirements in order to minimize the chance that the drug could be diverted to street use. The most critical issue was the dispensing of the medication which is a narcotic with a high street value albeit considerably lower than of more potent drugs. Under these rules take-home doses could be provided only if the client had been drug and alcohol free for ninety days and otherwise had a normal home situation. The physician must document the fact that the client meets all the criteria for take-home medication and must also document his or her medical judgment that the benefits of take home medication outweighed the risk of abuse.

There are three outpatient methadone clinics operating in Iowa. Two are under contract with the division and one is completely independent, operated by a private physician. The two programs funded by the state must meet state requirements anyway {as part of their contract for payment} so in essence these rules actually impact only the independent clinic. The issue for the committee was whether these regulations imposed an undue burden on the operation of a small, private clinic. The committee members felt that it was not appropriate to impose restriction rules on a provider who neither sought nor accepted state funds. For that reason the committee imposed a session delay on these rules and forwarded them to the General Assembly for further action. The Substance Abuse Division rescinded the rules.

DEPARTMENT OF TRANSPORTATION

HOLIDAY REST STOPS, 761 IAC Chapter 105, SELECTIVE REVIEW. For years civic groups have pressed the department to allow these groups to give away coffee and light snacks at rest stops. These groups, such as the Lions, Kiwanis and other groups wanted to sponsor these events and would not solicit funds but would accept donations. The result was chapter 105 allowing a limited number of these events per year strictly limiting to coffee and cookies. Now the discussion focused on expanding this to promotion of Iowa products by a group such as the Iowa Beef Association who would give samples and promotional literature. The Iowa Department for the Blind had some reservations about the concept noting these promotions could be in direct competition with the blind vendor trying to sell snack foods at the rest stop. The Department of Transportation also expressed reservations about this expansion contending that Iowa's welcome centers were a more appropriate place to hold product promotions.

The committee took no action on this issue but did voice general support for the need to promote Iowa. Legislation is now pending in the legislature to allow these promotions.

UNDERGROUND STORAGE TANK BOARD

LIMITATIONS ON REMEDIAL BENEFITS, IAB Vol. XVII, No. 06, ARC 5077A, ADOPTED. In October the committee reviewed the UST board's adopted rule relating to the

shortfall in funds for cleanup. The problem facing the board was clear. Based on reserves and estimated costs, the board had determined there was about half the money needed to pay all claims. The underground storage tank fund had a bond capacity of roughly \$188,000,000 with claims and related expenses perhaps totaling far in excess of \$400,000,000. At a minimum there will ultimately be a shortfall of some \$155,000,000. Board figures estimated a cost of \$182,000 per high-risk site and possibly more. At this cost level approximately 550 high-risk sites could be funded. Out of 3500 clean-up sites some 1400 are high-risk, 40% of the total. In response to this shortfall the board adopted a second prioritization which gives priority to small businesses as defined in Chapter 455G. This meant that, in essence funding was to be limited to businesses with assets of \$400,000 or less and owning less than 12 tanks at one or two sites; sites would be prioritized with small businesses as first priority. Those with more ability to pay such as governmental entities {note this would include school districts} and larger businesses would be second in line for the same dollars. Opponents of this plan noted that most of the money collected under this program came from businesses that would not be eligible for funding under this program. Opponents noted there was no immediate threat to the fund since most sites still had to complete their site cleanup reports and have those reports approved by the board prior to making any claim for remediation. They contended that the problem was not immediate since funds are available to cover existing claims and suggested that a session delay of these rules was appropriate, in order to allow the legislature an opportunity to consider raising the current fee imposed on gasoline to cover the additional expense.

The committee instead imposed a limited delay to allow further review at the January, 1995 meeting. At that meeting the committee chose NOT to extend the delay any longer thus allowing the restriction to go into effect. The committee did refer this filing to the General Assembly for further study.