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Tuesday, September 9, 2003
Administrative Rules Review Committee
Tentative 9:00 a.m., Room 116, Statehouse

Wednesday, September 10, 2003
Administrative Rules Review Committee
Tentative 8:00 a.m., Room 116, Statehouse

Tuesday, September 16, 2003
Government Oversight Committee
10:00 a.m., Legislative Dining Room, Statehouse

Monday, September 15, 2003
Regulatory Reform Subcommittee of the Government Oversight Committee
4:00 p.m., Legislative Dining Room, Statehouse

Tuesday, September 16, 2003
Lottery Subcommittee of the Government Oversight Committee
9:00 a.m., Legislative Dining Room, Statehouse

Tuesday, September 16, 2003
Fly Ash Subcommittee of the Government Oversight Committee
12:00 Noon, Room 19, Statehouse

Tuesday, September 16, 2003
Fleet Management Subcommittee of the Government Oversight Committee
12:00 Noon, Legislative Dining Room, Statehouse

Tuesday, September 16, 2003
Advocacy Reform Subcommittee of the Government Oversight Committee
Time and location to be announced

Tuesday, September 23, 2003
Fiscal Committee of the Legislative Council
10:00 a.m., Room 116, Statehouse

Wednesday, September 24, 2003
Child Welfare Service System Redesign Monitoring Committee
11:30 a.m., Room 116, Statehouse

Distribution of 2003 Interim Calendar
The Interim Calendar and Briefing is regularly distributed each legislative interim. In order to achieve savings in mailing and printing costs, the 2003 Interim Calendar and Briefing will primarily be distributed by electronic mail and Internet posting. The Internet site to access PDF versions of the publication is: http://www.legis.state.ia.us/GA/80GA/Interim/2003
The cost for a subscription to receive a printed copy of the publication by regular mail is $15. There is no charge for an e-mail subscription.

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AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Iowa Administrative Rules Review Committee
Chairperson: Representative George Eichhorn
Vice Chairperson: Senator Jeff Angelo
Location: Room 116, Statehouse
Dates & Times: Tuesday, September 9, 2003, Tentative 9:00 a.m., and Wednesday, September 10, 2003, Tentative 8:00 a.m.
Legislative Services Agency Contact: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084
Agenda: Published in the Iowa Administrative Bulletin (http://www.legis.state.ia.us/Rules/2003/Bulletin/).

Government Oversight Committee
Cochairperson: Senator Mary Lundby
Cochairperson: Representative Dwayne Alons
Location: Legislative Dining Room, Statehouse
Date & Time: Tuesday, September 16, 2003, 10:00 a.m.
Legislative Services Agency Contacts: Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764; Rick Nelson, Legal Services, (515) 242-5822
Tentative Agenda: Consider testimony regarding performance contracting in school districts, handling of harassment charge by the Office of the Attorney General, and status of the government reinvention initiative. The full committee will adjourn at noon on September 16 and break into subcommittees. The subcommittees will meet in the afternoon of September 15 or on September 16; see below for membership and tentative agendas for the subcommittees.

Regulatory Reform Subcommittee of the Government Oversight Committee
Subcommittee Members: Senators Wieck and Courtney; Representatives Baudler and Thomas
Tentative Agenda: Discussion includes checking with Governor’s Office regarding Department of Natural Resources permitting and other problems or issues.

Lottery Subcommittee of the Government Oversight Committee
Subcommittee Members: Senators Brunkhorst and Courtney; Representatives Raecker, Wendt, and Kramer
Tentative Agenda: Discussion includes questions, issues, and follow-ups for the Lottery to respond to in October.

Fly Ash Subcommittee of the Government Oversight Committee
Subcommittee Members: Representatives Alons, Jenkins, and Thomas
Tentative Agenda: Continue discussion on HSB 300 and include state government and industry representatives.

Fleet Management Subcommittee of the Government Oversight Committee
Subcommittee Members: Senator Brunkhorst; Representatives Raecker and Lensing
Tentative Agenda: Discussion with State Fleet Management, Director of Department of Agriculture and Land Stewardship, and the three Regents Institutions.

Advocacy Reform Subcommittee of the Government Oversight Committee
Subcommittee Members: Senators Lundby and Dvorsky, Representatives Alons, Jenkins, and Oldson
Tentative Agenda: Continue discussion from 2003 session.

Fiscal Committee of the Legislative Council
Cochairperson: Senator Jeff Lamberti
Cochairperson: Representative Bill Dix
Location: Room 116, Statehouse
Date & Time: Tuesday, September 23, 2003, 10:00 a.m.
Legislative Services Agency Contacts: Sue Lerdal, Fiscal Services, (515) 281-7794; Dave Reynolds, Fiscal Services, (515) 281-6934; Mike Goedert, Legal Services, (515) 281-3922
Agenda: To be announced.

Child Welfare Service System Redesign Monitoring Committee
Cochairperson: Senator Maggie Tinsman
Cochairperson: Representative Dave Heaton
Location: Room 116, Statehouse
Date & Time: Wednesday, September 24, 2003, 11:30 a.m.
Legislative Services Agency Contacts: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Lisa Burk, Fiscal Services, (515) 281-7942
Agenda: To be announced.
BACKGROUND. 2003 Iowa Acts, SF 386, requires the Insurance Division of the Department of Commerce to establish a School Health Insurance Reform Team of specified representatives of organizations as well as others chosen by the Commissioner of Insurance to make findings and recommendations to the General Assembly concerning school health insurance reform. The legislation specifies several areas of study for the team, including reviewing the availability of affordable health insurance, insurance rating practices, continuity of coverage, and improvement of efficiency and fairness in the health insurance marketplace; comparing health insurance coverage offered to school district employees, other public employees, and employees in the private sector; and examining the feasibility of establishing a premium rating system, basic or standard health benefit plans, uniform coverage plans and benefit levels, restrictions on premium rates and rate increases, and school district health reinsurance programs.

OVERVIEW. This was the second meeting of the 17-member team led by Chairperson Glenn Pelecky of AEA-Mississippi Bend, Bettendorf, Iowa. A subcommittee chaired by Ms. Stacy Wanderscheid (Frank Berlin and Associates) was formed to collect data to be used by the team in conducting its studies, determining feasibility, assessing impact, and making recommendations to the General Assembly. Ms. Mollie Anderson, Director, Department of Administrative Services, offered to provide data on state employees to the team.

FUTURE MEETINGS. The team will meet monthly, through December, usually on the first Tuesday of the month, in the lobby conference room of the Insurance Division. The next meeting will be held on September 9, 2003, at 9:00 a.m., due to the Labor Day holiday the previous week.

CONTACT. Information about the School Health Insurance Reform Team can be obtained from Ms. Susan E. Voss, First Deputy Commissioner of the Iowa Insurance Division, at (515) 281-6836 or susan.voss@iid.state.ia.us.

LSA MONITOR: Ann Ver Heul, Legal Services (515) 281-3837

ADMINISTRATIVE RULES REVIEW COMMITTEE
August 12 and 13, 2003

Chairperson: Representative George Eichhorn
Vice Chairperson: Senator Jeff Angelo

CORRECTIONS DEPARTMENT, Risk Assessment, 7-23-03 IAB, ARC 2623B, EMERGENCY.

BACKGROUND. A “risk assessment” is performed by the Department of Corrections to determine a registered offender’s potential risk of committing another sex offense; based on that assessment, a differing amount of information about the offender may be made public.

COMMENTARY. The Iowa Supreme Court has recently ruled that an offender has a constitutional right to a contested case hearing in order to contest the validity of an assessment. The department now emergency implements a hearing procedure. At the hearing the department has the burden of proof “by a preponderance of the evidence” to support the result of the risk assessment. Following the hearing the administrative law judge or presiding officer will issue within 14 calendar days a written order affirming, reversing, or modifying the result of the risk assessment.

ACTION. No action taken.

ELDER AFFAIRS DEPARTMENT, New Legislation: Assisted Living and Adult Day Care, SELECTIVE REVIEW.

BACKGROUND. In 2003 the General Assembly enacted House Files 672 and 675 to provide greater detail to this regulatory process and to create a new regulatory scheme for adult day care. The Committee scheduled this meeting to informally discuss the development of rules to implement this provision.

COMMENTARY. Department representatives set out a timeline for the development of rules for these two enactments. Rules relating to adult day care would be placed under notice in October—to be followed by “emergency” implementation. Amendments to the assisted living rules would be placed under notice early in December and would follow the normal process. Committee members protested the “emergency” implementation of day care rules. It was agreed that an “emergency” implementation after notice is feasible if the Committee is given an opportunity to review the final rule before it becomes effective. Members emphasized the need to actively work with a broad spectrum of stakeholders in drafting these provisions. Department representatives pledged to use work groups as part of the drafting process.

It was noted that both enactments call for interpretive guidelines as well as administrative rules. It was noted that under Iowa law, all statements of law or policy must go through the rulemaking process. It was agreed that any such guidelines developed by the department would follow the rulemaking process, unless otherwise specifically exempted by law. Public testimony, relating to dementia-related care, stated that rules should be flexible to encourage the development
of new models for service delivery. Committee members supported the idea that waivers from the rules should be
available to encourage innovation. Department representatives acknowledged the need for innovation, but stated that
attempts to include such flexibility in the legislation failed. It was noted that certain segments of the industry are
uncomfortable with the idea that waivers might be used by competitors to escape costly regulations where other
service providers had made significant capital investments to meet those requirements.

Action. No action taken, additional review in October.

GROW IOWA VALUES BOARD, Financial Assistance, SPECIAL REVIEW.

Background. 2003 Iowa Acts, HF 692, Section 84, created a Grow Iowa Values Fund. In order to provide a timely aid
package for Wells Fargo, the board has “emergency” adopted and implemented a temporary set of rules outlining the
fund procedures.

Commentary. Board representatives emphasized that the emergency rules remain effective only through October,
when they will be replaced by rules that have completed a notice of intended action; it was noted, however, that with
this short time frame the rules would have to be implemented on an emergency basis following the notice. Committee
members acquiesced in the need for prompt action in light of the Wells Fargo project, but expressed concern that the
“due diligence” requirements of the Act were given scant attention. Board representatives responded that Department
of Economic Development staff had performed the required due diligence reviews long before the due diligence
committee itself met.

Members offered a variety of comments on the current rules. It was agreed that under some circumstances nonprofit
organizations should participate in the program; board representatives agreed to address this in the final version of the
rules. Committee members also stated that the legislation does not limit assistance to particular types of development;
they contended that assistance should not be specifically targeted. The temporary rules identify three “clusters”:  life
sciences, advanced manufacturing, and information solutions for priority in funding. The term “high wage” was also
discussed. Members felt this term could unfairly limit projects in rural Iowa, where the term “high wage” would have a
very different meaning from the definition in urban areas. Committee members emphasized this program needs to be
available to rural Iowa and that there should not be an absolute wage floor.

Action. No action taken, additional review in September.

HUMAN SERVICES DEPARTMENT, Medipass Patient Managers, 07-09-03 IAB, ARC 2583B, EMERGENCY.

Background. 2003 Iowa Acts, HF 479, states that advanced registered nurse practitioners (ARNPs) licensed pursuant to
Iowa Code Chapter 152 shall be regarded as approved providers of health care services, including primary care, for
purposes of managed care or prepaid services contracts under the Medical Assistance (Medicaid) Program.

Commentary. Rules implementing this provision state that only “independently practicing” ARNPs certified in desig-
nated specialties are allowed to be patient managers. Committee members noted this rule appears to be more limiting
than the legislation. Opponents of the rule contend that the department is confusing the term “independent practice”
with the term “self-employed”; they noted that any ARNP is an independent practitioner because an ARNP is not
supervised by a physician. There are almost 700 ARNPs in Iowa, but only 73 are self-employed. The department re-
sponded that the Medipass rules do not directly relate to this issue; they contend that opponents are actually speaking
to the eligibility for Medicaid billing numbers.

Action. No action taken, additional review in September.

INSURANCE DIVISION, Unfair Trade Practices, 07-23-03 IAB, ARC 2616B, ADOPTED.

Background. Pursuant to Iowa Code Section 507B.6, the Commissioner of Insurance may determine whether particular
insurance activities are unfair or deceptive. The Insurance Division completes rulemaking on a variety of changes relat-
ing to unfair trade practices in the insurance industry. These revisions relate to such things as advertising, the provision
of financial services, claims settlement, and a variety of other subjects.

Commentary. Two areas of this rulemaking were controversial, both relating to automobile repair. The first issue
relates to the concept of “diminished value.” This concept emerged from a 1995 Iowa Supreme Court case which held that
the diminished value of a repaired vehicle was part of the compensable damage, even though the repair itself
restored the vehicle to pre-accident condition. This issue is tied to Iowa’s damage disclosure requirements, which
require that damages greater than $6,000 be disclosed on a vehicle’s title. Such a disclosure invariably affects the
market value of the vehicle. Committee members were unsure whether it is necessary or even desirable to establish a
general policy based on a single judicial holding. Members also noted that many issues relating to damage were decided
as common law and never codified into rule. For this reason the Committee imposed a session delay on that portion of the filing relating to diminished value.

The second issue related to the use of “aftermarket” parts in automobile repair. For three years, division rules have allowed insurers to pay for “aftermarket” parts, as long as that limitation is clear in the policy. Aftermarket parts are copies of original equipment manufacturer products which have been reverse engineered by measuring the original equipment. Under the new rule an aftermarket crash part cannot be used unless it is certified by a “nationally recognized organization” as being at least equal in kind and quality to the original equipment manufacturer part in terms of fit, quality, and performance (it should be noted the rules do not specify any such organization or set out criteria such an organization must meet). An insurer specifying the use of aftermarket crash parts must also consider the cost of any modifications which may become necessary when making the repair. Opponents of aftermarket parts contend these parts remain inferior to original equipment. The Committee took no action.

Action. Session Delay: 191 IAC subrule 15.43(10), relating to diminished value.

IOWA LAW ENFORCEMENT ACADEMY, Certification of Officers, 07-09-03 IAB, ARC 2561B, EMERGENCY.

Background. Two recently enacted measures allow individuals to pursue training as law enforcement officers at their own expense. Pursuant to 2003 Iowa Acts, SF 352, an individual who is sponsored by a law enforcement agency and has completed a two-year or four-year police science or criminal justice program at an accredited Iowa educational institution may apply for a short course of study at an approved law enforcement training program. The sponsoring agency must agree to hire or have already hired the individual. That individual must also meet all the minimum hiring standards established by the academy. 2003 Iowa Acts, SF 453, creates a similar policy for individuals wishing to attend the academy itself.

Commentary. Representatives of a particular community college opposed portions of the rules adopted by the academy. These opponents contend that various filing and testing requirements place unnecessary roadblocks and expenses that discourage applicants from seeking training at community colleges. Those requirements include:

- A 60-day application requirement. Opponents contend this makes it very difficult for applicants to attend the fall 2003 class.
- The $50 administration fee. Opponents contend this fee places an additional financial burden on applicants who already have committed to paying the cost of instruction.
- The "MMPI" psychological test. Opponents contend this expensive test is unnecessary, noting that the applicant may have to retake the test again unless hired within eight months of graduation.

Opponents noted that applicants at the community colleges are already required to complete a two-year or four-year police science or criminal justice program. Academy representatives responded that the testing and background requirements must be met before an applicant may be certified; they feel that any problems should be discovered before the applicant has paid for the training.

Committee members focused on the emergency filing itself. Committee members felt this filing presents a number of unresolved issues that could have been best handled by the publication of a notice of intended action prior to implementation and a full opportunity for public input and discussion. For this reason the Committee placed a procedural objection of this filing, contending that the emergency implementation of these rules is inappropriate.

Action. Procedural objection. The effect of this objection is to terminate the emergency filing 180 days after the date the objection is filed. Additional review likely later in the Fall.

NATURAL RESOURCES DEPARTMENT, Permanent Hunting Blinds on the Mississippi River, 05-28-03 IAB, ARC 2493B, NOTICE.

Background. This proposal does not create new policy; it codifies practice existing for decades. Hunters may register a site by paying the prescribed fee and marking a site on a DNR map. Hunters keep the same spot for years, sometimes for generations. Under the rules blinds cannot be locked and, if unoccupied at sunrise, may be occupied by any passerby.

Commentary. Opponents protest that this system allows the same individuals to stake out the best spots year after year; they contend this amounts to converting public lands to a private purpose. Opponents stated that as a practical matter it is impossible to site a new blind in proximity to one of the existing structures. Opponents state that a periodic lottery with specified distances between blinds would be a fairer system. Department representatives respond that the current system has been in place for decades and that a change would generate many hard feelings. The representatives also state that the current system maximizes the use of the blinds, since many of the registrants are local residents who frequently use their blinds or loan them out. They also stated this system encourages the development of well-constructed and well-maintained blinds.
Action. No action taken.

UTILITIES DIVISION, Iowa Broadband Initiative, 7-23-03 IAB, ARC 2620B, NOTICE.

Background. 2003 Iowa Acts, SF 368, created a “broadband initiative” to provide access, where feasible, to advanced telecommunications services to all areas of the state where these services are not already available at affordable rates. The cost of extending this service is to be met by a $2 surcharge imposed on the customers in that service area.

Commentary. Committee members expressed concern that the application and review process imposes an excessive burden on broadband providers. It was noted that the approval process is in the form of a tribunal and requires extensive preparation by the applicants. The significant issue in this proposal is the cost to the applicant in meeting these plan requirements. Specifically, questions involve the cost to the applicant in preparing a plan for board approval and moving that plan through the process and how those costs could be recovered by the applicant. A related issue involves the cost to the board itself in analyzing and approving that plan.

Action. Regulatory analysis has been requested. This proposal cannot be adopted in final form until that analysis is complete.

UTILITIES DIVISION, Railroad Crossing by Utilities, 05-28-03 IAB, ARC 2506B, ADOPTED.

Background. Iowa Code Section 476.27 empowers the division to promulgate rules setting the terms and conditions for these crossing easements. These rules were initially reviewed by the Committee in June. At that time, a 70-day delay was placed on one portion of the rules, relating to insurance requirements.

Commentary. The only controversy in this extensive rulemaking involves the insurance that the utility must provide as part of the crossing agreement. In addition to other insurance requirements, “excess liability coverage” must be provided with limits of not less than $5 million, and “railroad protective liability” insurance must be provided with a combined single limit of $4 million per occurrence and $6 million aggregate. Committee members felt that the utility and railroad interests could best resolve this issue through negotiation. For that reason the Committee imposed a 70-day delay on two specific subrules, relating to the insurance requirements. Subsequent negotiations have made great progress in resolving this remaining issue, but that resolution is not complete. For that reason, the Committee imposed a session delay on those two subrules, with the provision that the Committee will revisit that issue at the September meeting and withdraw the delay if compromises have been reached.

Action. Session delay, additional review in September.


Background. 2003 Iowa Acts, HF 636, Section 27, now requires a fiscal note for all new rules having an annual impact of $100,000 or a five-year impact of $500,000; the Legislative Services Agency (LSA) fiscal staff will review and summarize these statements for the Committee. Detailed instructions and a template have now been prepared by LSA fiscal staff and distributed to agency personnel. A meeting was held on Wednesday, August 13, to provide a final overview and to answer questions. It was generally agreed that a follow-up meeting will occur in December to discuss any problems that may arise with the full implementation of this review process.

September Meeting. The next meeting of the Administrative Rules Review Committee will be on Tuesday, September 9, and Wednesday, September 10, 2003, in Statehouse Room 116. Special reviews now include:

• PUBLIC HEALTH: Drug Testing. The Department of Public Health can determine the appropriate samples to be used for employment drug tests. In implementing this provision the department adopted 641 IAC, Chapter 12, specifying breath, urine, and blood as the substances appropriate for testing the presence of alcohol or other drugs. At issue is whether this list should be expanded to include saliva testing

• HUMAN SERVICES: Advanced Registered Nurse Practitioners. HF 479 states that advanced registered nurse practitioners (ARNPs) licensed pursuant to Chapter 152 are to be regarded as approved providers of health care services. At issue is whether ARNPs who are not self-employed can serve as case managers.

• VETERANS AFFAIRS: Treatment of Assets and Income. The level of allowable assets and the personal needs allowance will be reviewed. At issue is whether these allowances are within those specified in federal law and whether they can be established without rulemaking.

LSA Staff: Kathie Bates, Administrative Code Office (515) 281-3355
Contact Person: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084
BACKGROUND. 2003 Iowa Acts, SF 453 (often referred to as the “Reinvention Bill”), requires the Department of Human Services (DHS) to implement a redesign of child welfare and juvenile justice services to an outcomes-based system. Implementation of the redesign plan is to begin on January 1, 2004. The FY 2003-2004 appropriations made to DHS for services, staffing, and support relating to these services were generally reduced by $10 million with the Governor required to identify and apply specific reductions no later than the redesign implementation date.

OVERVIEW. The Committee organized and conducted initial business, electing Senator Tinsman and Representative Heaton as cochairpersons. An overview of the current child welfare and juvenile justice system was provided through a panel presentation, the DHS director provided an update of the redesign effort, information was provided concerning a required federal review of the system, and fiscal information was distributed and discussed.

CURRENT SYSTEM OVERVIEW. This five-person panel covered what currently happens with a typical child in need of assistance (CINA) case and a typical juvenile delinquency case, the role played by particular aspects of the system, and major strengths and weaknesses of the current system.

- **DHS.** Mr. Evan Klenk, DHS Service Area Manager from Waterloo, provided a flow chart and demographic information concerning the CINA process. In 2000, 28,210 children were served; many also were served in other major DHS programs such as the Family Investment Program and child support. He listed as strengths the quality of the workers, contribution of partners, and history of successful collaboration among those who deal with children. Identified weaknesses include very high caseloads, lack of advanced professional training, and fragmented quality assurance.

- **Juvenile Court Services.** Ms. Marilyn Lantz, Chief Juvenile Court Officer, Fifth Judicial District, described the process for children who commit a juvenile delinquent act or other crime. The major components of the system are dealing with the decisions of judges, and interest in a court process that is not adversarial to meet the needs of families with a child. She identified many specific programs and other supports that address child welfare and juvenile justice needs, including the special education and alternative high school system, extended family and friends, and child welfare funding decategorization projects. He encouraged members to consider all of these programs and supports in any restructuring of child welfare services.

- **Community Role in Child Welfare.** Mr. Dick Moore, Administrator of the Division of Criminal and Juvenile Justice Planning of the Department of Human Rights, discussed the importance of engaging community resources in addressing the needs of families. He identified many specific programs and other supports that address child welfare and juvenile justice needs, including the special education and alternative high school system, extended family and friends, and child welfare funding decategorization projects. He encouraged members to consider all of these programs and supports in any restructuring of child welfare services.

REDESIGN PROCESS. DHS Director Kevin Concannon described the recently concluded process used to collect public input regarding the redesign of child welfare services. A group is now meeting to develop a design proposal for which broad public input will be invited. Director Concannon believes that new efforts to claim federal funding available for certain child welfare funding and the enhanced federal match for Medicaid under state fiscal relief provisions will be sufficient to offset the required reduction in child welfare funding. He noted that the federal trend has been to sunset or cap flexible funding streams and related recently received letters regarding the federal government moving to disallow $10
BRIEFINGS
INFORMATION REGARDING RECENT ACTIVITIES

(Child Welfare Service System Redesign Monitoring Committee continued from Page 7)

million in Medicaid funding for child welfare services. He plans to initiate additional efforts to increase Iowa’s claiming of other federal funding streams.

**Child and Family Services Review.** Iowa is completing a multiyear process of reviewing child and family services, in compliance with federal requirements. Ms. Mary Nelson, DHS administrator, described the status of the review. The review has involved collection of data on outcomes and performance indicators as well as review of case files and interviews. Once Iowa receives the federal government analysis of the state’s performance, DHS must submit a program improvement plan to address weaknesses. It appears that Iowa has good performance in placing siblings that have been removed from their home, judicial review of cases, and responsiveness and collaboration within communities. Likely areas for the improvement plan are worker visits with foster care children and their families, worker caseloads, and quality assurance efforts.

**Fiscal Information.** Ms. Lisa Burk, Fiscal Services, Legislative Services Agency, distributed an analysis of the state and federal funding for child welfare. The information included both historical data and budget projections. The information will be updated on a monthly basis and regularly distributed.

**Discussion.** Senator Hatch urged committee members to approve a letter to legislative leaders and the Governor, expressing legislative intent to delay implementation of the service system redesign. His proposals were not acted upon by the Committee. There was extensive discussion of the impacts of recent budget actions, including expenditure of child welfare funding decategorization carryover balances.

**Next Meeting.** Chairperson Heaton discussed assistance available from the National Conference of State Legislatures to assist legislators in visiting a child welfare wrap-around services approach used in Wisconsin and to bring legislators from other states before the Committee. The Committee plans to meet again on Wednesday, September 24, 2003, from 11:30-5:00 p.m.

**Committee Internet Page.** Handouts distributed at the meeting and other information are posted on the committee Internet Page: [http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/childwel.htm](http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/childwel.htm). The Department of Human Services also has an Internet page for updates on redesign activities: [http://www.dhs.state.ia.us/BetterResultsforKids/default.asp](http://www.dhs.state.ia.us/BetterResultsforKids/default.asp).

**LSA Staff:** John Pollak, Legal Services (515) 281-3818; Patty Funaro, Legal Services (515) 281-3040; Lisa Burk, Fiscal Services (515) 281-7942

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**LEGAL UPDATES**

**Purpose.** A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs, in an objective, nonpartisan manner, of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly’s consideration of a topic. As with other written work of the Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

**LEGAL UPDATE: THE CONSTITUTIONALITY OF THE FEDERAL BEEF CHECKOFF**

Filed by the United States Court of Appeals
July 8, 2003

**Livestock Marketing Association et al v. United States Department of Agriculture (USDA), Nos. 02-2769/2832**


**Background.** The United States Court of Appeals for the 8th Circuit considered a case involving a federal statute referred to as the Beef Promotion and Research Act (“the Beef Act”) (see 7 U.S.C. sec. 2903 et seq.) authorizing the United States Secretary of Agriculture to promulgate a Beef Promotion and Research Order requiring beef producers and beef importers to pay an assessment commonly called a “checkoff” for purposes of supporting programs to promote beef and beef products, and to sponsor-related research and education projects (such as the “Beef. It’s What’s for Dinner” advertising campaign).

**District Court Proceedings.** The Livestock Marketing Association (LMA), the Western Organization of Resource Councils (WORC), and several individual cattle producers filed suit on December 29, 2000, in federal district court in South Dakota. The district court found the Beef Act to be an unconstitutional violation of the plaintiffs’ First Amendment free speech right because it coerced American beef farmers and cattle ranchers to pay in part for certain advertising to
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which they objected. LMA based its suit on a U.S. Supreme Court decision in 2001 (United States v. United Foods Inc., 533 U.S. 405 (2001)) that a mushroom checkoff violates the First Amendment rights of mushroom growers.

Appellate Decision. On appeal the USDA argued that the beef checkoff should be construed as an extension of the government’s own right of free speech under the “government speech doctrine” and equated the Beef Board with a governmental agency. However, the Court of Appeals rejected USDA’s position and concluded that the mandated assessment triggers a First Amendment analysis. The Court went on to determine that the government’s interest could not justify an infringement upon LMA’s constitutional right of free speech. The Court stated:

[W]e conclude that the government’s interest in protecting the beef industry by compelling all beef producers and importers to pay for generic beef advertising is not sufficiently substantial to justify the infringement on appellees’ First Amendment free speech right.

The Court of Appeals affirmed the decision of the district court. The district court’s order finding the Beef Act to be unconstitutional is stayed until the USDA decides whether to request a rehearing by the full panel of circuit court judges, and could remain stayed until the U.S. Supreme Court decides whether to hear the case.

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LEGAL UPDATE: SCHOOL LOCKER SEARCH
Filed by the Iowa Supreme Court
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State of Iowa v. Marzel Jones, No. 31/02-0505
http://www.judicial.state.ia.us/supreme/opinions/20030716/02-0505.doc

Background – Facts. Muscatine High School administrators scheduled an annual pre-winter break school locker cleanout for December 20, 2001, and requested students three or four days prior to that date to open their lockers at a designated time to allow a faculty member to observe the contents of the lockers. Of the school’s 1,700 students, 1,400 complied, with Marzel Jones among those who did not report for cleanout at the time. The next day, December 21, building aides opened Jones’s locker; manipulated the only item in the locker, a nylon coat; and found a small bag containing what police later determined to be marijuana. Police charged Jones with possession of a controlled substance. Jones subsequently filed a motion to suppress the evidence, claiming that the search violated his right to be free from unreasonable search and seizure pursuant to the Fourth Amendment of the U.S. Constitution and Article I, Section 8 of the Iowa Constitution. The district court granted the motion to suppress, finding that school officials did not have reasonable grounds for searching Jones’s coat pocket.

Issues. Did school personnel violate constitutional search and seizure provisions? Does a student have a legitimate expectation of privacy in a school setting? Was the search intrusive in light of the underlying governmental interest (maintaining order in the classroom) and broader purpose of the search (to ensure the health and safety of the students and staff and to help maintain the school’s supplies)?

Analysis and Conclusion. The Court recognized the broad societal recognition of a legitimate expectation of privacy in a school locker, but noted that the search occurred on school grounds, “where the State is responsible for maintaining discipline, health, and safety.” (Bd. of Ed. of Indep. Sch. Dist. 92 v. Earls, 536 U.S. 822, 830, 122 S. Ct. 2559, 2565, 153 L. Ed. 2d 735, 745) Because of his absence on the day of the general search, Jones could not be questioned by school officials about the contents of the coat in order to determine whether the coat contained matter that could affect discipline, health, and safety at the school, and though there may have been other ways “to check the coat’s contents, constitutional search and seizure provisions do not require the least intrusive action possible.” Therefore, the Court concluded “the search of the contents of Jones’ locker was not overly intrusive.” The Court observed that the school provided reasonable notice of the general locker search, and noted that constitutional search and seizure provisions do not require that the school have an individualized suspicion of rule or law violations before performing a locker search.

The Iowa Supreme Court reversed the decision of the district court and remanded the case for further proceedings consistent with the Iowa Supreme Court’s opinion.

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