

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to local assessors

The Revenue Department hereby amends Chapter 7, “Practice and Procedure Before the Department of Revenue,” Chapter 71, “Assessment Practices and Equalization,” and Chapter 72, “Examination and Certification of Assessors and Deputy Assessors,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14; 441.6(3) as enacted by 2020 Iowa Acts, House File 2641, section 106; and 441.17(2) as amended by 2020 Iowa Acts, House File 2641, section 107.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 441.6, 441.8, 441.17 and 441.41 and 2020 Iowa Acts, House File 2641, division XIII.

Purpose and Summary

This rule making is intended to implement statutory changes to the regulation of local assessors. In particular, this rule making addresses changes to Iowa Code section 441.6 prohibiting an appointee selected by the conference board from assuming the office of city or county assessor until the appointment or reappointment is confirmed by the Director of Revenue. This rule making addresses the process by which the Director may confirm or reject an appointment or reappointment to the position of city or county assessor. Additionally, this rule making provides for an appeal process for an aggrieved assessor or conference board upon the rejection of an appointment of an assessor by the Director.

This rule making also addresses a new statutory requirement under Iowa Code section 441.17(2) prohibiting assessors and deputy assessors from assessing a property if the assessor or deputy assessor or a member of the assessor’s or deputy assessor’s immediate family owns the property, has a financial interest in the property, or has a financial interest in the entity that owns the property. This rule making sets forth a reporting process for the Department to ensure that this statutory prohibition is followed and defines certain terms within the rule.

Finally, this rule making addresses a new statutory requirement that a conference board obtain city attorney or county attorney approval prior to employing special counsel to assist the city legal department or county attorney under Iowa Code section 441.41.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 23, 2020, as **ARC 5182C**. A virtual public hearing was held on October 13, 2020, at 1:30 p.m.

Description of comments at public hearing: The Department received multiple comments at its public hearing. Below is a description of the comments received.

Special counsel (Item 3): It was suggested that this rule exceeds the authority granted by the statute and would be overly burdensome.

Confirmation by Director/assessor reappointment (Items 4 to 7): It was suggested that the Department has exceeded its rule-making authority in promulgating a limitation on when assessors may be reappointed by the conference board (150 days before the end of an assessor’s term) and that the Department does not have authority to promulgate rules regarding the reappointment of an assessor.

The mayor of Clinton called to express that he does not approve of the confirmation powers granted to the Director under the rule.

Assessors may not assess own property (Item 2): It was asked who will be assessing the assessor's property, if not the assessor.

Description of comments received during comment period: The Department received a number of comments during the comment period. Below is a description of the comments received.

Appeals (Item 1): Clarification as to the applicability of Iowa Code section 421.60(4) was requested, as the proposed rule states that Iowa Code section is cross-referenced in rule. This assessor pointed out an inadvertent cross-reference.

Assessor shall not assess own property (Item 2): One assessor suggested that reporting not be required or be minimized in even-numbered years if property values do not change from odd- to even-numbered years.

Special counsel (Item 3): It was suggested that this rule exceeds the authority of the statute, that the rule is unnecessary and burdensome, and that county attorney offices are not always equipped to defend assessment appeals. Additionally, an assessor suggested that conference boards might be concerned about spending too much money on outside counsel and settle challenged assessments for amounts below market value, which would shift the tax burden to residential homeowners. Multiple assessors suggested it would be challenging to obtain requisite approval by conference boards because it is already challenging to obtain a quorum for conference board action only a handful of times per year. One county attorney commented, suggesting that the conference board should continue to have the authority to decide whether to employ special counsel.

Confirmation by Director/assessor reappointment (Items 4 to 7): It was suggested that the Department has exceeded its rule-making authority by promulgating a 150-day limitation on when an assessor may be reappointed and that the Department does not have authority to promulgate rules regarding the reappointment of an assessor. It was asserted that these powers rest solely with the conference board. The current litigation between the Department and Guthrie County was listed as a potential problem with respect to reappointment powers. Additionally, it was suggested that reappointment power could lead to influential taxpayers exerting political pressure on the Director to influence an assessor's decisions on their property, politicizing the assessor's office. It was also suggested that it could be difficult to obtain a conference board quorum to reappoint an assessor in the new time frame and that the assessor, as clerk of the conference board, should not prepare the statement of misconduct, etc. Assessors also suggested that charges of misconduct, etc., be substantiated first, and be considered by the Department at the time of the charges, and that it is unfair to assessors to hold reappointments around the same time that taxpayers are notified of assessment increases.

Assessors expressed that the assessor position is local, and not a state position with respect to the background check. Some concern as to whether the background check information would be confidential was expressed. Some assessors questioned the purpose of the background check. Finally, the Iowa State Association of Assessors (ISAA) commented that the rules should specify that only proven charges or evidence of misconduct, etc., should be considered in the confirmation process.

Changes from the Notice:

After considering the above comments, the Department has made two changes to its rule making. First, in Item 1, the appeal process was clarified to exclude Iowa Code section 421.60(4) as referenced in the Iowa Administrative Code. Previously, Item 1 was written as if Iowa Code section 421.60(4) was explicitly referenced in subrule 7.17(8). The revision clarifies that this Iowa Code section is not cross-referenced within subrule 7.17(8).

Additionally, in Item 6, the 150-day restriction for assessor reappointments was extended to a 180-day window to allow conference boards an additional month to meet to decide whether to reappoint an assessor. This meeting would occur once every six years.

The Department has determined that it has the authority to promulgate the rules set forth in this rule making. The Director has broad supervision authority over the administration of the assessment and tax laws of the state and over officers or boards in the performance of their official duties in all matters

relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.

Specifically, related to the authority to promulgate rules regarding the reappointment of assessors, the Department notes that Iowa Code section 441.8(1) states “[a]ppointments for each succeeding term shall be made in the same manner as the original appointment...” Iowa Code section 441.6 sets forth the process for the original appointment. As of July 1, 2020, Iowa Code section 441.6 includes new Iowa Code subsection 441.6(3) providing that the Director of Revenue must confirm an appointment before said appointee assumes office. Therefore, the Director’s confirmation is part of the original appointment process and applies to the reappointment process as well.

Adoption of Rule Making

This rule making was adopted by the Department on October 28, 2020.

Fiscal Impact

This rule making has nominal fiscal impact to the State of Iowa. It is possible that local governments and the Department will incur nominal costs related to the new reporting requirements.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on December 23, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** rule 701—7.37(441):

701—7.37(441) Appeals of director’s confirmation decision regarding conference board appointment or reappointment of assessor.

7.37(1) Appeal process. Any assessor or conference board wishing to contest the director’s rejection of the conference board’s appointment or reappointment of an assessor under 701—subrule 72.15(4) or 72.16(3) shall file an appeal, in writing, within 30 days of the director’s notice of decision. Any person who does not seek an appeal within 30 days of the director’s notice shall be precluded from challenging the director’s decision. Appeals will be governed by the procedures set forth in this rule together with the process set forth in the following rules: rule 701—7.8(17A), excluding the first sentence of the introductory paragraph of 701—7.8(17A) and excluding subrules 7.8(1) to 7.8(7); subrules 7.8(8) and 7.8(9); subrule 7.8(10), except the clerk of the hearings section will file the protest file to the division of administrative hearings within ten days; subrules 7.9(1) and 7.9(2); rule 701—7.10(17A); paragraphs 7.11(2)“d” and “e”; subrules 7.12(2) to 7.12(4); subrules 7.12(7)

and 7.12(8); rule 701—7.13(17A); rule 701—7.14(17A); rule 701—7.15(17A); rule 701—7.16(17A); subrules 7.17(1) to 7.17(7); subrule 7.17(8), except paragraph 7.17(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60(4) shall not apply; subrules 7.17(9) and 7.19(10); subrules 7.17(13) and 7.17(14); rule 701—7.18(17A); rule 701—7.19(17A); rule 701—7.20(17A); rule 701—7.21(17A); and rule 701—7.22(17A).

7.37(2) Contents. The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to the particular statutes, rules, or agreement terms, if known.
- e. References to and copies of any documents or other evidence relevant to the appeal.
- f. Any other matters deemed relevant to the appeal.
- g. A statement setting forth the relief sought.
- h. The signature, mailing address, and telephone number of the person or that person’s representative.

7.37(3) Burden of proof. The burden of proof is on the party challenging the director’s decision under 701—subrule 72.15(4) or 72.16(3).

This rule is intended to implement Iowa Code chapter 17A.

ITEM 2. Adopt the following new rule 701—71.27(441):

701—71.27(441) Assessor shall not assess own property.

71.27(1) Assessor prohibited from assessing own property. An assessor or deputy assessor shall not personally assess a property if the assessor or deputy assessor or a member of the assessor’s or deputy assessor’s immediate family owns the property, has a financial interest in the property, or has a financial interest in the entity that owns the property. The assessing jurisdiction shall pay all costs and expenses associated with the assessment of the above property.

71.27(2) Report to the department.

a. Not later than January 1 of each year, assessors, and in the case that an assessing jurisdiction has a deputy assessor, deputy assessors, shall report to the director, using forms and procedures prescribed by the director, an inventory of all of the following real property in the assessor and deputy assessor’s assessing jurisdiction:

- (1) Properties owned by the assessor;
- (2) Properties owned by a member of the assessor’s immediate family;
- (3) Properties in which the assessor or a member of the assessor’s immediate family has a financial interest;
- (4) Properties owned by an entity in which the assessor or a member of the assessor’s immediate family has a financial interest;
- (5) Properties owned by a deputy assessor;
- (6) Properties owned by a member of the deputy assessor’s immediate family;
- (7) Properties in which a deputy assessor or a member of a deputy assessor’s immediate family has a financial interest;
- (8) Properties owned by an entity in which a deputy assessor or a member of a deputy assessor’s immediate family has a financial interest.

b. Not later than March 1 of each year, assessors, and in the case that an assessing jurisdiction has a deputy assessor, deputy assessors, shall report to the director, using forms and procedures prescribed by the director, the property record card of each of the properties described in paragraph 71.27(2)“a” and additional information as required by the director. In the event a property described in paragraph 71.27(2)“a” was reported on January 1 but is no longer owned by one of the parties described in paragraph 71.27(2)“a” and none of the parties described in paragraph 71.27(2)“a” has a financial interest in the property or has a financial interest in the entity that owns the property, the assessor is not required to make the March 1 report described in this subrule for that property but shall report to the

department the sale or other circumstances under which the property no longer requires reporting under this subrule.

c. In the event of an appeal to the board of review regarding the assessment of any of the properties described in paragraph 71.27(2)“a,” the board of review shall report the results of the appeal to the director within 15 days following the adjournment of any regular or special session of the board of review.

71.27(3) Powers and duties of director. The director shall have and assume all of the powers and duties under Iowa Code section 421.17 in administering this rule.

71.27(4) Definitions. For purposes of this rule, the following definitions shall govern.

“*Financial interest*” includes but is not limited to the holding of legal title to real property or any ownership interest in an entity that holds legal title to real property. Notwithstanding the preceding sentence, ownership interest in an entity shall not be deemed a “financial interest” when a person’s ownership interest equals less than 10 percent of the entity’s total ownership interest.

“*Immediate family*” includes the spouse, children, or parents of the assessor or deputy assessor, including adoptive relationships. There is a rebuttable presumption that relatives of the assessor or deputy assessor beyond the relation of the spouse, children, or parents of the taxpayer are not within the taxpayer’s immediate family.

“*Personally assess*” means engaging in the listing, valuation, and classification of real property.

This rule is intended to implement Iowa Code section 441.17 as amended by 2020 Iowa Acts, House File 2641.

ITEM 3. Adopt the following new rule 701—71.28(441):

701—71.28(441) Special counsel.

71.28(1) Before the conference board may employ special counsel to assist the city legal department or county attorney under Iowa Code section 441.41, the city legal department in the case of cities having an assessor, or county attorney in the case of counties, shall first provide written approval of the employment of special counsel for each matter in which the special counsel will be employed on a case-by-case basis.

71.28(2) In the event special counsel is employed, the assessor shall provide the department with written notice of said employment, including the matter being litigated, justification for the hiring of special counsel, and the special counsel’s name and hourly rate, within ten days of the hiring. In the event that special counsel has been employed by the conference board as of December 23, 2020, the assessor shall provide the department with written notification of said employment, including the matter being litigated, justification for the hiring of special counsel, and the special counsel’s name and hourly rate, within ten days of December 23, 2020, for each case. On or before January 1 of each year, the assessor shall submit to the director, on forms prescribed by the director, a report of all matters litigated by special counsel in the previous 12-month period and the cost of said litigation for each case.

This rule is intended to implement Iowa Code section 441.41 as amended by 2020 Iowa Acts, House File 2641.

ITEM 4. Amend subrule 72.15(1) as follows:

72.15(1) Meeting of the conference board. At the time specified in Iowa Code section 441.6, the conference board shall hold a meeting and take action to appoint an assessor or request permission to hold a special examination. Within ten days of this meeting, the conference board shall notify the director of the appointment or request a special examination. The notice shall include a statement by the conference board stating whether there have been any charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee. If there have been charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee, the notice shall include a summary of the misconduct, nonfeasance, malfeasance, or misfeasance and any action taken regarding the misconduct, nonfeasance, malfeasance, or misfeasance. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9.

ITEM 5. Adopt the following **new** subrule 72.15(4):

72.15(4) Confirmation by the director of revenue.

a. The appointee selected by the conference board shall not assume the office of city or county assessor until such appointment is confirmed by the director of revenue. In considering whether to confirm the appointment, the director shall consider any charges or evidence of misconduct, nonfeasance, malfeasance, or misfeasance by the appointee. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9. Within 30 days of receiving the notice contemplated in subrule 72.15(1), the director shall notify the conference board and assessor of the acceptance or rejection of the appointment. An appeal of the director’s decision under this subrule may be made under rule 701—7.37(441).

b. Immediately following selection by the conference board, the appointee assessor shall submit information to the director as required for the director or designee to conduct a background check. The director or designee may review the department’s records and other records in considering whether to confirm the appointment of an assessor.

ITEM 6. Amend subrule 72.16(1) as follows:

72.16(1) Time for reappointment. A conference board must decide whether to reappoint an incumbent assessor at least 90 days before the expiration of the incumbent’s term. If the incumbent is not to be reappointed, the conference board shall so notify the incumbent in writing at least 90 days before the expiration of the incumbent’s term. Failure of the conference board to provide timely notification of the decision not to reappoint the assessor shall result in the assessor being reappointed. In no case may an incumbent assessor be reappointed earlier than 180 days before the expiration of the incumbent’s term. Within ten days of reappointment or notification of expiration of the incumbent’s term, the conference board shall notify the director of the reappointment or notification of expiration of the incumbent’s term. If the conference board reappoints an incumbent assessor, the notice shall include a statement by the conference board stating whether there have been any charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee. If there have been charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee, the notice shall include a summary of the misconduct, nonfeasance, malfeasance, or misfeasance and any action taken regarding the misconduct, nonfeasance, malfeasance, or misfeasance. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9.

ITEM 7. Adopt the following **new** subrule 72.16(3):

72.16(3) Confirmation by the director of revenue.

a. An assessor reappointed by the conference board shall not assume the office of city or county assessor in the subsequent term until such reappointment is confirmed by the director of revenue. In considering whether to confirm the reappointment, the director shall consider any charges or evidence of misconduct, nonfeasance, malfeasance, or misfeasance by the appointee. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9. Within 30 days of receiving notice of reappointment by the conference board, the director shall notify the conference board and assessor of the acceptance or rejection of the reappointment. An appeal of the director’s decision under this subrule may be made under rule 701—7.37(441).

b. Immediately following selection by the conference board, the appointee assessor shall submit information to the director as required for the director or designee to conduct a background check. The

director or designee may review the department's records and other records in considering whether to confirm the reappointment of an assessor.

ITEM 8. Amend rule **701—72.16(441)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 441.6 as amended by 2020 Iowa Acts, House File 2641, section 106, and Iowa Code section 441.8.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/20.