



# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

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Iowa Legislative Interim Calendar and Briefing is published by the Legislative Service Bureau (LSB). For additional information, contact: LSB at (515) 281-3569. Pre-recorded Interim Schedule (515) 281-5869.

### August

S	M	T	W	T	F	S
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### September

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29	30					

Thursday, August 22, 2002-CANCELED

Fiscal Committee of the Legislative Council

Monday, August 26 & Tuesday, August 27, 2002

Oversight Committee of the Legislative Council

10:00 a.m., August 26, 2002, & 9:00 a.m., August 27, 2002, Room 19 - Reagan Committee Room, State Capitol

Thursday, September 5, 2002

Program Elimination Commission

9:30 a.m., Room 19 - Reagan Committee Room, State Capitol

Tuesday, September 10 & Wednesday, September 11, 2002

Administrative Rules Review Committee

9:00 a.m. both days, Room 116, State Capitol

Monday, September 16, 2002

Program Elimination Commission

9:30 a.m., Room 19 - Reagan Committee Room, State Capitol

Wednesday, September 25, 2002

Fiscal Committee of the Legislative Council

10:00 a.m., Room 116, State Capitol

### Distribution of 2002 Interim Calendar

Approximately 24 issues of the Interim Calendar and Briefing are distributed each legislative interim. In order to achieve savings in mailing and printing costs, effective in July, the 2002 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/79GA/Interim/2002>

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To receive a copy of the calendar by e-mail, to revise or add e-mail addresses, or to receive information regarding a print subscription, send a message to: [LSBCalendar@legis.state.ia.us](mailto:LSBCalendar@legis.state.ia.us) or call the Legislative Service Bureau at 515/281-3566.



# AGENDAS

## INFORMATION REGARDING SCHEDULED MEETINGS

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### Fiscal Committee of the Legislative Council-CANCELED

Cochairperson: Senator Jeff Lamberti

Cochairperson: Representative Dave Millage

Date & Time: Thursday, August 22, 2002, 10:00 a.m.

LFB Staff: Holly Lyons (515) 281-7845; Tim Faller (515) 281-4615

LSB Monitor: Mike Goedert (515) 281-3922

### Oversight Committee of the Legislative Council

Cochairperson: Senator Mary Lundby

Cochairperson: Representative Willard Jenkins

Location: Room 19 - Reagan Committee Room, State Capitol

Dates & Times: Monday, August 26, 2002, at 10:00 a.m., & Tuesday, August 27, 2002, at 9:00 a.m.

LFB Staff: Doug Wulf (515) 281-3250; Glen Dickinson (515) 281-4616

LSB Staff: Rick Nelson (515) 242-5822

Agenda: Overview of the Governor's proposed Department of Administrative Services and discussion of additional information needed for Committee consideration, discussion of review process for community colleges and AEAs during the 2003 Legislative Session, review requirements relating to use of state equipment and time for nonstate purposes, review of options available to government employees and citizens seeking to relate complaints, and review of residential services available to the elderly and adult day services.

### Program Elimination Commission

Chairperson: Bob Rafferty

Location: Room 19 - Reagan Committee Room, State Capitol

Date & Time: Thursday, September 5, 2002, 9:30 a.m.

Central Staff Contacts: Doug Wulf, LFB, (515) 281-3250, John Pollak, LSB, (515) 281-3818

Tentative Agenda: Review of those programs assigned to the commission by statute: State Nursery, prison farms, Department of General Services vehicle fleet, State Medical Library, and alcoholic beverages warehouse. In addition, consider the Executive Branch proposal for consolidating various functions into a new Department of Administrative Services.

### Iowa Administrative Rules Review Committee

Chairperson: Senator Sheldon Rittmer

Vice Chairperson: Representative Clyde Bradley

Location: Room 116, State Capitol

Date & Time: Tuesday, September 10 & Wednesday, September 11, 2002, 9:00 a.m. both days

Contact Person: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084

Agenda: Published in the Iowa Administrative Bulletin (<http://www.legis.state.ia.us/Rules/2001/Bulletin/>).

### Program Elimination Commission

Chairperson: Bob Rafferty

Location: Room 19 - Reagan Committee Room, State Capitol

Date & Time: Monday, September 16, 2002, 9:30 a.m.

Central Staff Contacts: Doug Wulf, LFB, (515) 281-3250, John Pollak, LSB, (515) 281-3818

Tentative Agenda: To be announced.

### Fiscal Committee of the Legislative Council

Cochairperson: Senator Jeff Lamberti

Cochairperson: Representative Dave Millage

Location: To be announced

Date & Time: Wednesday, September 25, 2002, 10:00 a.m.

LFB Staff: Holly Lyons (515) 281-7845; Tim Faller (515) 281-4615

LSB Monitor: Mike Goedert (515) 281-3922

Agenda: Revenue update, trust fund balances, update fund balance sheets, appropriations transfers, lease-purchases for ISU College of Design, hawk-i update, Medicaid update, Racing and Gaming case update, IPERS update, capitol restoration update, Department of Revenue and Finance analysis, capitol security update, update on Priority Iowa, sales tax forecast, restructuring of state government, and Program Elimination Commission update.



# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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### MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES (MH/DD) COMMISSION

August 6, 2002

**Overview.** The MH/DD Commission acted on regulatory matters and implemented a work group plan for developing a redesign of Iowa's mental health and developmental disabilities services system. In 2002 Iowa Acts, House File 2430, among other provisions, the duties of the State-County Management Committee were merged with those of the MH/DD Commission, and makeup of the commission's membership was revised (this change will be initiated in November 2002). The legislation specifically included system redesign functions among the duties of the commission.

**Key Components.** The commission decided to break into work groups to look at key components of the MH/DD services system. These work groups will begin meeting this fall. The four key components of the system redesign are as follows:

- **Roles and Responsibilities.** This work group will look at the administrative framework of the adult and children MH/DD services system.
- **Access.** This work group will address eligibility for and access to a uniform MH/DD services system to meet the needs of adults and children.
- **Fiscal.** This work group will consider how a new MH/DD services system for adults and children can be funded.
- **Support Design.** This work group will develop a philosophical foundation for redesigning Iowa's adult and children MH/DD services system.

**Work Group Member Recruiting.** Individuals are encouraged to participate in the system redesign by submitting a completed application to serve on a work group. Legislators and others may encourage individuals to apply. Each of the four key component areas will have two work groups: one for adult services and one for children's services. Work group membership slots are available for the following constituencies: state, county, individuals with disabilities, family members, service providers, advocates, and others. The staffing for the redesign is provided through a joint effort between the Department of Human Services and the Iowa State Association of Counties (ISAC). Application materials are available from the ISAC Internet site at: <http://www.iowacounties.org/MHDevelopDisabilitiesCommission.htm>. The application deadline is September 10, 2002.

**Legal Settlement.** In addition to the work groups for the services system redesign, the commission authorized creation of a work group to address legal settlement issues. To augment the interests represented on the other work groups, representation will also include various legal experts, along with the Judicial Branch and a member of the Iowa Senate and a member of the Iowa House of Representatives.

MH/DD Commission staff contacts: Robyn Wilson [rwilson2@dhs.state.ia.us](mailto:rwilson2@dhs.state.ia.us) (515) 669-8002 and Anastasia Baker Hurn [abaker@iowacounties.org](mailto:abaker@iowacounties.org) (515) 244-7181

LSB Monitor: John Pollak, (515) 281-3818

### ADMINISTRATIVE RULES REVIEW COMMITTEE

August 13, 2002

Chairperson: Senator Sheldon Rittmer

Vice Chairperson: Representative Clyde Bradley

**CORRECTIONS DEPARTMENT, Visits, 7/10/01 IAB, ARC 1771B, ADOPTED.**

**Background.** In response to the latest round of budget cuts the department is revising its visitor policy. As part of an effort to achieve mandatory furlough savings of \$1.7 million, the department implements a reduction in visiting hours designed to save roughly \$500,000. Generally speaking, weekend visits remain the same, while in some institutions one visiting day is cut from the workweek.

**Commentary.** These rules were published on an emergency basis May 1. This is the third review of this change. Department representatives noted this revision will allow the shift of \$500,000 in guard time to other critical areas, noting that budget cuts had already required significant reductions in personnel. Iowa now ranks 48<sup>th</sup> in per capita prison spending out of 51 jurisdictions. They pointed out these limitations mean that visiting facilities could accommodate only a fraction of the inmates. Even so, department representatives stated that any visitor who arrives at the designated time is provided a visiting opportunity.

**Opponents of the new restrictions** contended that visiting lists as well as hours are being restricted. They noted that only two nonfamily members could visit, and that even family visits will be restricted to immediate family members.

**Action.** No action taken.



# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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(Administrative Rules Review Committee continued from Page 3)

ELDER AFFAIRS DEPARTMENT, Assisted Living Facilities, 7/10/02 IAB, ARC 1814B, ADOPTED.

Background. The issues surrounding this rulemaking were initially reviews at the committee's July meeting. The Department of Inspections and Appeals now provides the "recertification monitoring" required by Iowa Code §231C.3, acting on behalf of the Department of Elder Affairs.

Commentary. Originally proposed in December 2001, these rules have been greatly revised following public comment. They provide dementia-specific rules for assisted living facilities housing residents with this type of disorder. The rules themselves are not particularly at issue; however, industry representatives complained that assisted living facilities now would have more specific dementia-specific requirements than would care facilities. The industry representatives also protested that the filing was significantly altered from the initial proposal without additional opportunities for comment.

The main issue is not the rules themselves, it is instead the procedure used by the Department of Inspections and Appeals to determine whether residents in an assisted living facility need a higher level of care than the facility is licensed to provide. The department monitors assisted living facilities; in reviewing these facilities and the residents, department inspectors sometimes determine that a particular resident requires a higher level of care than the facility can legally provide. Department representatives contend that in these situations the facility is actually operating as an unlicensed residential or intermediate care facility, and has threatened action unless the residents are moved. The department also contends that some facilities improperly tell residents that they may "age in place" at the assisted living facility until death.

Level of Care. To some extent, the adopted rules have helped this situation by establishing a series of general criteria used to determine whether assisted living provides an appropriate level of care. Addition detail is also provided for each resident's service plan, which notes changes in a resident's health and required level of care. Committee members feel these standards are appropriate to determine whether assisted living provides the appropriate level of care; however, members did not feel that the Department of Inspections and Appeals should have the sole authority to make that decision.

Discussion then centered on a proposal to form an ad hoc committee to determine, in specific cases, whether assisted living provides the appropriate level of care. This is based on the concept of a "staffing," used in the educational system to form a multidisciplinary team to resolve particular student problems. Under this concept, if the Department of Inspections and Appeals feels that a specific resident requires a higher level of care, a staffing would be held to make that determination. The staffing would be made up of a representative of the resident's family (or the resident), a medical professional familiar with the resident's condition, a representative of the facility, and perhaps even a social worker skilled in gerontology. The group would review the resident's records and any other relevant information; based on this information it would determine whether assisted living provided the appropriate level of care. In theory this process appeared generally acceptable, but a number of details remain, including:

- Determining who will pay any costs associated with the staffing.
- Determining who selects the membership.
- Determining whether the decision of the staffing is final or whether it is a recommendation to the department.

Action. Committee members felt this process should be developed further and requested that the Governors' Office, the two agencies, and representatives from the ARRC develop a more detailed proposal for review at the September meeting. Further review in September.

ENVIRONMENTAL PROTECTION COMMISSION, Beverage Container Deposits, ARC 1538B, 04/17/02 IAB, SESSION DELAY.

Background. These rules have now been reviewed three times by the ARRC and have been subject to two delays while the committee sought clarification from the Attorney General on a number of issues.

Commentary. The opinion issued by the Attorney General centered mostly on the approval of redemption centers. In essence the opinion states that the EPC does not have the authority to force distributors to collect containers from redemption centers which do not have agreements with dealers served by those distributors. The opinion sparked discussions between the department and the various stakeholders in this rulemaking. Committee members were informed that general agreements had been reached and delay is no longer needed on most of these rules.

Action. The session delay has been rescinded on most of this filing.



# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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(Administrative Rules Review Committee continued from Page 4)

HUMAN SERVICES DEPARTMENT, Child Support Recovery, 441 IAC Chapter 97, SELECTIVE REVIEW.

Background. The department collects child support for clients and remits those sums monthly by mailing state warrants. The department proposes a paperless system where money is directly deposited into individual accounts at the client's financial institution.

Commentary. This system, when fully implemented, could save over \$35,000 per month. For those persons who do not have a financial institution, the department, in partnership with a financial institution, would issue an ATM card with which the client could then retrieve the funds from any ATM. An RFP is currently being developed for this program, hopefully, the value of the deposited funds would allow the institution to handle these cards without cost. The department plans an "emergency" implementation of this program. Committee members voiced strong support for this innovative procedure.

Action. No action taken.

NATURAL RESOURCE COMMISSION, Chronic Wasting Disease in Deer, 7/10/02 IAB, ARC 1777B, NOTICE.

Background. For the second time in six months the commission revised its regulatory program to contain the spread of chronic wasting disease (CWD) in Iowa's deer population.

Commentary. CWD is caused by a protein that turns normal proteins into abnormal ones, eventually affecting the animal's brain. The ailment is similar to mad cow disease. The disease, confirmed in Wisconsin in February, has not yet entered Iowa. There has never been a documented case of a person contracting this disease from eating the meat of an infected animal. However, officials are reviewing the deaths of three Wisconsin hunters involving a human variant of this disease. Department representatives noted the impact the disease could have on Iowa. Annually about 180,000 deer hunters hunt for game and produce some \$100 million in the state's economy.

Action. No action taken.

PERSONNEL DEPARTMENT, Definition of Income for IPERS Benefits, 7/24/02 IAB, ARC 1826B, EMERGENCY.

Background. Iowa Public Employees' Retirement System (IPERS) benefits are calculated based on the highest three-year average reportable wage. The department implements rules defining what can be included as wages.

Commentary. Some IPERS-covered entities have discovered a lawful way to increase IPERS benefits for their employees. Under some circumstances fringe benefits can be declared as income. This is particularly true with those employers offering "cafeteria" benefits where a set amount of money is set aside, allowing the employee to buy whatever benefit is desired. As long as the required contributions are paid on the value of these benefits, the IPERS-covered wage of the employee increases and ultimately the IPERS benefit increases. This can create inequities systemwide; some employers utilize this lawful loophole, others do not. Thus IPERS members receiving similar salaries may receive differing levels of benefits, depending on how fringe benefits are treated by the employer.

Action. No action taken.

VISION IOWA BOARD, Vision Iowa Grants, Chapter 212 IAC, SELECTIVE REVIEW.

Background. In response to a legislator request, the committee reviewed the grant procedures for disbursing Vision Iowa funds.

Commentary. As part of the award process, following board approval of a project, the board appoints a negotiating team, made up of board and staff members, to negotiate project terms with the applicant. If the negotiations are not finalized, the award will not be made. Once the negotiations have been completed, the project and its terms are reviewed by the entire board and final approval is given. This negotiation process is not detailed in the rules; however, board representatives cited various existing rules that provide the foundation for these negotiations. Opponents of this negotiation process contend that the process should be fully detailed in rule, in part to limit the board's discretion in negotiating these agreements. They contend that the negotiation process is one-sided and that the applicant has little leverage in the process. The opponents cited the example of Polk County, contending that the negotiation process required the commitment of certain funds that will in the future imperil county contributions to numerous civic projects. Board representatives denied this allegation and responded that the negotiations ensure that the Polk County Event Center could be built without a tax increase. More generally, board representatives contended that the negotiations resulted in increased local contributions and resulted in an increased number of grants.

Committee members applauded the Vision Iowa process, especially the number of projects funded by the program.



# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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(Administrative Rules Review Committee continued from Page 5)

Members did request that the negotiation process be at least generally outlined in the rules if any future grants are possible.

Action. No action taken.

Next Meeting. The Administrative Rules Review Committee will meet Tuesday, September 10, and Wednesday, September 11, 2002. The committee will conduct a final review of EPC rules relating to beverage container deposits, Department of Elder Affairs rules regarding assisted living facilities, and a Department of Transportation proposal relating to the issuance of driver's licenses to noncitizens.

LSB Staff: Kathie Bates, Administrative Code Office (515) 281-3355

Contact Person: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084

### PROGRAM ELIMINATION COMMISSION

August 16, 2002

Overview. The Program Elimination Commission utilized this initial meeting to organize, elect Bob Rafferty as chairperson, discuss initial views, identify areas of interest, adopt an initial work plan, review background information, and set meeting dates.

Background. The Program Elimination Commission was created in 2002 Iowa Acts, House File 2627, and formally established as a legislative interim committee by the Legislative Council. The commission was charged to review all programs and other functions funded in whole or part with state or local revenues. A goal of identifying a 2 percent savings for the State General Fund was provided, along with considering selling or shifting to performance by nongovernmental entities various specific functions. The commission's recommendations are to be prepared in the form of a bill with the intent that the bill will be considered by procedures that limit consideration of amendments. The commission will be dissolved effective December 31, 2002, unless action is taken to continue it.

Membership. The following persons were appointed by the indicated appointment authority:

Voting Members: Bob Rafferty of West Des Moines, Chairperson, appointed by the Speaker of the House; Senator Mike Connolly of Dubuque, appointed by the Senate Minority Leader; Diane Crookham-Johnson of Oskaloosa, appointed by the Senate Majority Leader; and Mark Ketchum of Lake City, appointed by the Legislative Council.

Nonvoting Members: Senator Neal Schuerer of Amana, appointed by the Legislative Council; Arthur A. Small, Jr. of Iowa City, appointed by the Governor; and Honorable Ralph F. McCartney of Charles City, appointed by the Chief Justice of the Supreme Court.

Core Functions. An initial work plan was adopted to organize the commission's review on the basis of the following core functions of state government: strong families, public safety, workforce and economic development, agriculture and natural resources, transportation, education, and internal functions. In addition, it was suggested that consideration be given to the effects of various tax credits and incentives enacted during the 1990s as they fit under a core function. The plan provides for the commission to make a first review of programs in order to identify programs to be placed on a list for further study. Decisions about recommending elimination of programs would be made during November and December.

Future Meetings. The commission will meet on September 5 to review the specific programs identified in statute, the Executive Branch proposal for consolidating various functions into a Department of Administrative Services, and the commission's work plan. A subsequent meeting will be held on September 16 and members agreed to reserve Mondays for other future meetings.

Central Legislative Staff Contacts: Doug Wulf, Legislative Fiscal Bureau (515) 281-3250

John Pollak, Legislative Service Bureau (515) 281-3818

### 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 Service Bureau, 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.



# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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LEGAL UPDATE: OWI IMPLIED CONSENT AND LICENSE REVOCATION INFORMATION

Filed by the Iowa Court of Appeals

August 14, 2002

State v. Bartlett, No.1-800/01-0158

<http://www.judicial.state.ia.us/appeals/opinions/20020814/01-0158.asp>

**Facts and Procedure.** This is an appeal by the State of Iowa from a district court's granting of defendant's motion to suppress the results of a blood alcohol test for operating a motor vehicle while intoxicated (OWI) and from the same court's supplemental suppression order. The Supreme Court consolidated both appeals upon the State's application for discretionary review.

The defendant was interviewed by a deputy sheriff on August 29, 2000, at a local hospital in Dubuque County after a single car accident in which the defendant was involved. Defendant consented to a preliminary breath test which indicated he had a blood alcohol level of .10 or more. The deputy sheriff then requested a specimen for chemical testing and told the defendant that if he refused to submit to chemical testing, his driver's license would be revoked for two years. The defendant signed a consent form and allowed his blood to be withdrawn. The defendant was subsequently charged with operating while intoxicated, second offense, in violation of Iowa Code section 321J.2(1) and (2) and failure to maintain control in violation of section 321.288. The defendant filed a motion to suppress the blood test results claiming, in part, that the blood sample was obtained in violation of the provisions of Iowa Code section 321J.6(2). The district court granted his motion to suppress the results of the blood alcohol test and the state applied for discretionary review.

**Issue.** One of the issues raised by the State in this appeal was whether Iowa's implied consent law required the deputy sheriff to inform the defendant he had a right to refuse a blood test and still retain his license, provided he submit a urine sample for testing.

**Analysis and Decision.** Under Iowa's implied consent law, a person who drives a motor vehicle in the state impliedly gives consent to have a blood, breath, or urine test performed to determine an alcohol level or the presence of drugs whenever a peace officer has reasonable grounds to believe the driver is operating under the influence. If the person refuses to consent to chemical testing, that person may face an administrative driver's license revocation for up to two years.

In analyzing the merits of Bartlett's claim, the court looked to the statutory language of Iowa Code sections 321J.6(2) and 321J.8, the relevant sections of Iowa's OWI law, to determine legislative intent. The court opined that the meaning of section 321J.8 is ambiguous and applied principles of statutory construction in its analysis. The court further noted that section 321J.8 is meant to provide a person who has been required to submit to a chemical test a basis for deciding whether to submit or not to submit to the test, and that an officer must advise the driver of the consequences of refusing to take the test as well as any potential periods of license revocation. The court concluded that a peace officer has a duty to offer either a urine or breath test following a driver's refusal to provide a blood sample for chemical testing in a suspected OWI situation, but that an officer does not have the duty to go any further in informing the driver that refusal to submit to a blood test would not result in the revocation of the driver's license.

**Conclusion.** The Court of Appeals reversed the district court's ruling excluding the defendant's blood alcohol test results and remanded the case for further proceedings.

LSB Staff Contact: Rachele Hjelmaas (515) 281-8127