



*Serving the Iowa Legislature*

# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

October 8, 2014

2014 Interim No. 8

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Thursday, October 9, 2014

**Revenue Estimating Conference**  
11:00 a.m., Room 116, Statehouse

Tuesday, October 14, 2014

**Administrative Rules Review Committee**  
9:00 a.m., Room 116, Statehouse

Monday, October 20, 2014

**Fiscal Committee of the Legislative Council**  
10:00 a.m., State Hygienic Laboratory, University of Iowa, Iowa City

Thursday, November 6, 2014

**Local Government Public Records Study Committee**  
10:00 a.m., Room 116, Statehouse

Friday, November 7, 2014

**Local Government Mandates Study Committee**  
9:00 a.m., Room 103, Supreme Court Chamber, Statehouse

*Iowa Legislative Interim Calendar and Briefing* is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

### **Revenue Estimating Conference**

Location: Room 116, Statehouse

Date & Time: Thursday, October 9, 2014, 11:00 a.m.

Contact Persons: Jeff Robinson, LSA Fiscal Services, (515) 281-4614; Joel Lunde, Department of Management, (515) 281-7072.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=627>

### **Administrative Rules Review Committee**

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, October 14, 2014, 9:00 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<https://www.legis.iowa.gov/iowaLaw/AdminCode/bulletinSupplementListing.aspx>

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

### **Fiscal Committee of the Legislative Council**

Co-Chairperson: Senator Robert Dvorsky

Co-Chairperson: Representative Chuck Soderberg

Location: State Hygienic Laboratory, University of Iowa, Iowa City

Date & Time: Monday, October 20, 2014, 10:00 a.m.

Contact Persons: Dave Reynolds, Fiscal Services, (515) 281-6934; Mary Shipman, Fiscal Services, (515) 281-4617; Tim McDermott, Legal Services, (515) 281-8090.

Tentative Agenda: Review State Audit Report on Reporting of Cash and Cash Equivalents by Regents' Universities and the initial finding of the Board of Regents TIER Report; receive updates on the Revenue Estimating Conference, General Fund balance sheet, Medicaid, Poison Control Center funding, and a proposed funding formula for Regents institutions; tour of University of Iowa Research Park in Oakdale.

Internet Page: <https://www.legis.iowa.gov/committees/committee?ga=85&groupID=704>

### **Local Government Public Records Study Committee**

Co-Chairperson: Senator Mary Jo Wilhelm

Co-Chairperson: Representative Bobby Kaufmann

Location: Room 116, Statehouse

Date & Time: Thursday, November 6, 2014, 10:00 a.m.

Contact Persons: Rachele Hjelmaas, Legal Services, (515) 281-8127; Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251.

Agenda : To be announced.

Internet Page: <https://www.legis.iowa.gov/committees/committee?ga=85&session=2&groupID=21382>

### **Local Government Mandates Study Committee**

Co-Chairperson: Senator Mary Jo Wilhelm

Co-Chairperson: Representative Bobby Kaufmann

Location: Room 103, Supreme Court Chamber, Statehouse

Date & Time: Friday, November 7, 2014, 9:00 a.m.

Contact Persons: Andrew Ward, Legal Services, (515) 725-2251, Ann Ver Heul, Legal Services, (515) 281-3837; Rick Nelson, Legal Services, (515) 242-5822.

Agenda : To be announced.

Internet Page: <https://www.legis.iowa.gov/committees/committee?ga=85&session=2&groupID=21381>

### SENATE GOVERNMENT OVERSIGHT COMMITTEE

September 30, 2014

**Chairperson:** Senator Janet Petersen

**Vice Chairperson:** Senator Brian Schoenjahn

**Overview.** The primary focus of the meeting concerned consideration of recommendations developed based upon testimony received by the committee on a variety of issues during the period spanning March through September of 2014. The issues included settlement agreement confidentiality provisions and related compensation, whistleblower protection provisions, state employee hiring practices, the existence of a “do-not-hire” database, competitive bidding practices for state construction projects, state infrastructure project accountability, the independence of administrative law judges, unemployment trust fund administration practices and fraud investigation staffing levels within the Iowa Department of Workforce Development, and the efficiency and transparency of state agency operations.

**Opening Remarks.** Chairperson Petersen referred to a document containing proposed committee findings and recommendations that had been distributed to committee members prior to the meeting. She characterized the recommendations as a comprehensive set of reforms intended to address and remedy issues and practices which have been identified as damaging the effective operation of state government and indicated that she anticipated the recommendations will result in legislation designed to prevent similar issues and practices from arising in the future.

Senator Garrett stated that state agencies should be challenged on an ongoing basis to improve their service to Iowans, that they should continuously strive to increase transparency and accountability, and that there has probably been room for such improvement under previous administrations as well. He stated his intent to reintroduce legislation from the 2014 Legislative Session intended to prohibit confidentiality provisions in settlement agreements. He concluded by summarizing areas of disagreement with the proposed findings and recommendations distributed by Chairperson Petersen.

**Recommendations.** The following recommendations were passed by the committee, with Chairperson Petersen, Senator McCoy, and Senator Schoenjahn voting in favor of the recommendations and Senator Garrett and Senator Schneider voting against the recommendations:

- Ban the use of secret settlements and hush money in all branches of government.
- Eliminate slush funds and the ability of departments and agencies to have a blank checkbook for settlement payments.
- Create appropriate transparency mechanisms and oversight on state employee settlements.
- Expand protections for those who blow the whistle on wrongful activities in state government.
- Require all job openings in state government to be openly advertised.
- Create appropriate transparency mechanisms and oversight on newly created state positions.
- Reform the state’s “do-not-hire” or “blacklist” database to ensure due process.
- Require all state entities to follow formal competitive bidding procedures for construction projects above \$100,000, including [the cost of] preliminary architectural and engineering services.
- Require that architectural and engineering services adhere to the same level of bidding and procurement requirements as any other construction service.
- Require all major infrastructure changes to be approved by the legislative committee that originally appropriated the money.
- Reinstate the Vertical Infrastructure Advisory Committee.
- Review the state construction cost benefit analysis by the Legislative Services Agency and act on its recommendations.
- Review existing Iowa law regarding the adjudicative process to ensure Iowans receive a fair and impartial hearing.
- Prohibit all political appointees and at-will employees from supervising or evaluating administrative law judges to preserve their [judges’] integrity and independence in decision making.
- Iowa [Department of] Workforce Development and the Unemployment Trust Fund must have honest, transparent leadership.

*(Senate Government Oversight Committee continued from Page 3)*

- Iowa [Department of] Workforce Development needs to work with the Legislature to develop a plan to update or replace their call-in system for unemployment.
- The Legislature should be notified when the Governor receives reports of founded workplace violence reports in state agencies.
- The Legislature should reexamine the duties of the Department of Administrative Services to reign in its [the Department's] ability to control and hide unacceptable government practices from the Legislature and Iowa taxpayers.

**Additional Discussion.** Senator Petersen indicated that copies of a state construction project cost benefit analysis prepared by the Legislative Services Agency and referenced in one of the recommendations will be distributed to committee members. Senator McCoy expressed concern regarding delays in the opening of a new facility at the Iowa State Penitentiary at Fort Madison and suggested a possible visit to the facility and further investigation by committee members.

*LSA Contacts:* Deb Kozel, Fiscal Services, (515) 281-6767; Richard Nelson, Legal Services, (515) 242-5822.

*Internet Page:* <https://www.legis.iowa.gov/committees/committee?ga=85&groupID=588>

## LEGAL UPDATES

**Purpose.** A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs 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 nonpartisan 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—AGGREGATE POLITICAL CONTRIBUTION LIMITATIONS

Filed by the United States Supreme Court

April 2, 2014

#### **McCutcheon v. Federal Elections Commission**

No. 12-536, 134 S.Ct. 1434 (2014)

[http://www.supremecourt.gov/opinions/13pdf/12-536\\_e1pf.pdf](http://www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf)

**Factual Background.** During the 2011-2012 federal election cycle, Shaun McCutcheon made campaign contributions totaling \$33,088 to 16 individual candidates for federal office. McCutcheon also contributed \$27,328 to noncandidate political action committees during this period. McCutcheon sought to contribute additional moneys to 12 other individual candidates for federal office and to three political party committees but was barred from making contributions at the levels that he desired because of aggregate limits on federal campaign contributions. During the 2011-2012 election cycle the aggregate contribution limits were \$46,200 for individual federal candidates and a combined \$70,800 for federal political action committees and political party committees. McCutcheon further claimed that he would like to make contributions in excess of aggregate campaign finance limits in the 2013-2014 election cycle.

**Procedural Background.** Shaun McCutcheon and the Republican National Committee (RNC) jointly filed a complaint with a three-judge panel of the United States District Court for the District of Columbia (District Court) in June 2012. McCutcheon and the RNC motioned for a preliminary injunction to prohibit government enforcement of the aggregate limit provisions. The Federal Elections Commission (Government) filed a motion to dismiss the case. The District Court panel granted the Government's motion to dismiss and denied the motion for a preliminary injunction. The plaintiffs subsequently filed a direct appeal to the United States Supreme Court (Court).

**Issue.** Whether aggregate limits on contributions to individual candidates and noncandidate political committees violate First Amendment protections of free speech and association.

**Holding.** The Court held that aggregate limits on contributions to individual candidates and noncandidate political committees violate First Amendment protections of free speech and association because such limits are impermissibly overbroad as a means of furthering the government's interest in preventing quid pro quo corruption or its appearance.

(Legal Update—Aggregate Political Contribution Limitations continued from Page 4)

**Plurality Opinion by Chief Justice Roberts.** Chief Justice Roberts' plurality opinion, joined by Justices Scalia, Kennedy, and Alito, Justice Thomas concurring in the result, analyzed current federal aggregate limits under the Bipartisan Campaign Reform Act of 2002 (BCRA) through the lens of the Court's earlier decision in *Buckley v. Valeo*, 421 U.S. 1, (1976), which upheld an earlier aggregate contribution limit of \$25,000 per federal election cycle. In considering First Amendment protections of speech and association, the *Buckley* Court applied a "closely drawn" test to uphold base limits on campaign contributions by finding that such limits worked to promote the compelling governmental interest in prohibiting quid pro quo corruption or the appearance of corruption through means narrowly tailored to advance that interest. The Court in *Buckley* also upheld the aggregate limit in a brief analysis of the function of the aggregate limit, describing it as "no more than a corollary" to the base limits in preventing individuals from circumventing the base limits.

The plurality found that the *Buckley* Court's analysis of aggregate limitations was not controlling because the parties in *Buckley* had not fully addressed it as a separate issue and the *Buckley* Court, consequently, did not consider an overbreadth challenge with respect to the aggregate limit. The plurality then engaged in an independent analysis of whether the BCRA aggregate limits could pass the "closely drawn" test as laid out in *Buckley*. The plurality held that the aggregate limits in BCRA failed such a test as they restricted First Amendment rights disproportionately to the government's interest in preventing individuals from circumventing base contribution limitations. The plurality further stated that preventing circumvention of base limits is not a plausible governmental interest under the current federal statutory and regulatory scheme that severely restricts the opportunity or desire to circumvent base contribution limits. The plurality stated that statutory or regulatory schemes are possible that are less burdensome than aggregate limits, especially those related to public disclosure and that would allow individuals to contribute to as many candidates or committees as they wish while also preserving the base limits as a means of preventing quid pro quo corruption. The plurality opined that prohibiting an individual from contributing fully to a candidate would be analogous to limiting how many candidates a newspaper may endorse.

The plurality rejected the Government's argument that the aggregate limits also prohibit corruption in a manner independent of preventing circumvention of base limits. The Government argued that aggregate limits that restrict the total contributions of an individual to a candidate or party committee prevent corruption that may result from undue influence or access. The plurality, however, refused to expand the anticorruption rationale beyond the quid pro quo corruption rationale established in *Buckley*, stating that the government may not seek to limit "the appearance of mere influence or access." Under this analysis, the plurality held that the aggregate limits on contributions do not further a governmental interest in prohibiting quid pro quo corruption and that the aggregate limits "intrude without justification" on citizens' exercise of their most fundamental First Amendment rights.

The plurality repeatedly stated that preventing quid pro quo corruption remains the only compelling governmental interest in regulating campaign contributions and that the base contribution limits remain the primary means of such regulation.

**Concurrence by Justice Thomas.** Justice Thomas filed a concurring opinion agreeing only in the result reached by the plurality: the BCRA's aggregate limits should be struck down. Justice Thomas opined that the Court should move further and overturn the holding that established a contribution and expenditure distinction in *Buckley*. The *Buckley* Court applied a strict scrutiny standard of review to its analysis of independent expenditure limitations, but applied the less stringent "closely drawn" test to contribution limitations. Justice Thomas opined that the Court should apply a strict scrutiny review to both expenditure and contribution limitations and should therefore strike down both the aggregate and base limitations. Justice Thomas stated that the *Buckley* decision denigrated core First Amendment speech rights. He further noted that the plurality conclusion that aggregate limits imposed a special burden on those seeking to contribute fully to multiple candidates should be applied more broadly to recognize that the base limits also apply a special burden on individuals seeking to robustly support an individual candidate or committee beyond current base limits.

**Dissent by Justice Breyer.** Justice Breyer filed a dissent, joined by Justices Ginsburg, Sotomayor, and Kagan, in which he criticized the plurality for relying upon its own view of the facts rather than one based on the evidentiary record established in this case, previous cases before the Court, and Federal Election Commission cases. Justice Breyer also criticized the plurality for failing to recognize a governmental interest in upholding aggregate limits aside from the anticircumvention effects of the law and for utilizing a narrow definition of corruption that encompasses only the direct exchange of an official act for money.

Justice Breyer stated that, even without a broader interpretation of corruption, the anticircumvention rationale in pre-

*(Legal Update—Aggregate Political Contribution Limitations continued from Page 5)*

venting actual corruption or its appearance is an important enough interest that the plurality erred in striking down BRCA's aggregate limits on campaign contributions. Justice Breyer further criticized the plurality for offering alternative statutory and regulatory regimes, which displayed a lack of judicial deference to the political branches. Justice Breyer found no substantial mismatch between Congress' objective of mitigating corruption or the appearance of corruption and the means that Congress used to meet that objective. The Court should therefore hold that the aggregate limitations are constitutional.

*LSA Contact:* Andrew Ward, Legal Services, (515) 725-2251.