



THE RULES DIGEST

December
2010

Scheduled for committee review
Tuesday, December 14th, 2010.
Senate Committee Room #116

Reference
XXXIII IAB No. 10(11/17/10)
XXXIII IAB No. 11(12/01/10)

HIGHLIGHTS IN THIS ISSUE:

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ECONOMIC DEVELOPMENT

9:40

Site development program, IAB Vol. XXXIII, No. 11 ARC 9255B, NOTICE.

This rulemaking proposes adoption of a new Chapter 77, “Site Development Program” in response to 2010 Iowa Acts, SF 2389, section 36. The program’s purpose is to establish an inventory of sites in Iowa that may be suitable for development or redevelopment and to provide consultation with local government officials regarding site development techniques.

Under the program, local governments and local economic development officials are authorized to apply for a certificate of readiness for sites consisting of 50 acres or more. The rules specify the information to be included with each application and allow the department to approve, deny, or defer any application. The rules also include the criteria for evaluating site certificate applications. The criteria include the thoroughness of the site development plan, the development plan’s regard for applicable regulations, the presence of transportation and utility infrastructure, the presence of viable vertical infrastructure, geologic and natural characteristics of the site, ownership and control of the site, and demonstrated local and financial support for the site development plan. The proposed rules also require the department to consider criteria relating the

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utilization of the Iowa smart planning principles and the proposed utilization of sustainable design and practices. Certificates of readiness issued by the department must specify a term for validity, not to exceed ten years.

The proposed rules also require the department to consult with local governments and local economic development officials regarding site development techniques and authorize the department to contract with third parties to provide consultations. The rules allow the department to charge a reasonable fee for consultations and outline a procedure for providing fee estimates to local governments and officials. Consultation under the program is not required to submit an application for a certificate of readiness.

DEPARTMENT OF MANAGEMENT

9:50

Fiscal oversight of the early childhood Iowa initiative, IAB Vol. XXXIII, No. 10, ARC 9222B, ADOPTED.

2010 Iowa Acts, Senate File 2088, §282 provides for fiscal oversight of early childhood Iowa area boards by the Department of Management. this oversight includes:

- Reporting and other requirements to address the financial activities employed by area boards.
- Regular audits and other requirements of fiscal agents for area boards.
- Requirements for area boards to undertake and report on fiscal and performance reviews of the programs, contracts, services, and other functions funded by the area boards.

The Act creates both a state board and local area boards which implement the state policy. Each area must encompass not more than four counties; have contiguous borders; and have a minimum population, of children zero through age five, in excess of five thousand. the area boards are responsible for administering “school ready children” grant funds made available though the state.

ENVIRONMENTAL PROTECTION COMMISSION

10:00

Greenhouse gasses, IAB Vol. XXXIII, No. 10, ARC 9224, ADOPTED.

The United States. Supreme Court has determined that greenhouse gases, including carbon dioxide, are air pollutants covered by the Clean Air Act. This decision has prompted a number of actions by the federal Environmental Protection Agency (EPA). Most recently the EPA issued a rule that establishes EPA’s approach to addressing greenhouse gas (GHG) emissions from stationary sources, setting thresholds that specify when GHG permit requirements are required for new and existing facilities. The federal agency estimates that nearly 70 percent of the national GHG emissions from stationary sources will be subject to these requirements.

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This filing is the so-called “tailoring rule”. The permitting requirements will be gradually introduced, for new construction by 2011, and by 2013 Title V operating permit requirements will, for the first time, apply to sources based on GHG emissions of 100,000 tons of carbon dioxide “equivalent emissions”, even if the requirements would not apply based on emissions of any other pollutant.

Beginning January 2, 2011, power plants, industrial facilities, ethanol plants, state universities, municipal utilities, and other facilities in Iowa that are already considered major sources under the Title V program will be affected under the proposed amendments, as the renew or modify their existing permits. Beginning on July 1, 2011, additional sources of GHG emissions, such as ethanol plants, municipal utilities, some hospitals, and some larger landfills, will be classified as major sources under Title V.

This rulemaking was first reviewed in September, as a notice of intended action. Stakeholders expressed general support for the rulemaking, while also expressing concerns about specific provisions within the proposal. Several requests were made to include automatic repeal provisions in the rules to address adverse court decisions arising from pending litigation. The EPC has not included an automatic repeal in the filing.

These amendments will become effective on December 22, 2010.

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Stream designations, IAB XXXII No. 10 ARC 9223B, ADOPTED.

In 2006, the Department of Natural Resources implemented rules which assigned Iowa’s perennial streams and rivers the highest level of protection against additional degradation. Part of that rulemaking was a commitment by the Department to conduct actual studies on these streams and rivers, and re-classify them, over time, based on actual data. This rulemaking is the latest installment in the re-classification process and sets out designations for almost 500 stream segments.

This filing originally was published in March as a notice of intended action, and was re-noticed in July. There has been an extensive opportunity for public comment; the EPC held seven public hearings on this rulemaking, and some designations have been modified in response to this comment.

INSURANCE DIVISION

11:00.

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Companies in hazardous financial condition, IAB Vol. XXXIII, No. 10 ARC 9231B, ADOPTED.

The Commissioner of Insurance has broad authority under Code §505.8 to regulate the insurance industry. This proposal sets out the standards the Commissioner will use to assess the financial condition of Iowa's insurance companies.

The rules set out 21 specific standards that the Commissioner will use to assess the financial situation of the company; the standards relate to the financial position of the company, its' management, its' income and expenses, and its recent history.

If the Commissioner finds that a company is in hazardous condition, the Commissioner may order the company to:

- Obtain reinsurance;
- Reduce, suspend, or limit the volume of business being accepted or renewed;
- Reduce general expenses by specified methods;
- Increase capital and surplus;
- Suspend or limit the declaration and payment of a dividend;
- File reports concerning the market value of the insurer's assets;
- Limit or withdraw from certain investments or investment practices;
- Document the adequacy of premium rates in relation to the risks insured;
- File interim financial reports;
- Correct corporate governance practice deficiencies;
- Provide a business plan;
- Adjust rates for any non-life insurance product.

A company may contest any order by demanding a contested case hearing, which will not be open to the public; the company could then seek judicial review of the Commissioner order and decision.

No negative comment has been received on this filing. These rules will become effective December 22, 2010.

DENTAL BOARD

11:30

Licensure examination, IAB Vol. XXXIII, No. 11 ARC 9243B, NOTICE.

This proposed rule change, published for only two weeks, has already drawn comment. The proposal identifies the proprietary examination that it will use for license testing for dentists and hygienists. The proposal removes two current testing providers from the list. Opponents of this change state that the existing examinations are as valid a testing measure as the proposed examination. They also contend that restricting examinations will cause a hardship on senior dental students who are already preparing

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for a particular type of examination and will discourage out-of-state graduates from locating in Iowa.

The Board will hold a public hearing on December 21, 2010.

PUBLIC HEALTH DEPARTMENT

11:30

Iowa needs nurses now infrastructure account, IAB Vol. XXXIII, No. 11 ARC 9247B, ADOPTED.

2010 Iowa Acts, Senate File 2384, §5 creates the “*Iowa needs nurses now infrastructure account*” to award grants for infrastructure to improve the education of nurses and educators, and to enhance the clinical experience for nurses. This includes clinical simulators, laboratory facilities, health information technology and other infrastructure items. The program is open to educational institutions with nursing preparation programs approved by the Nursing Board. Grant recipients must provide clinical experiences that:

- Expand the capacity of its nursing program in terms of opportunities for increased learning by the students completing the program.
- Offer educational opportunities in geographic areas where there is limited access to clinical facilities due to geographic location or limited patient census to support eligible students.
- Enhance learning opportunities for the students in the nursing program.

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Governmental public health advisory bodies, IAB Vol. XXXIII, No. 11 ARC 9246B, ADOPTED.

2009 Iowa Acts, chapter 182 created the governmental public health advisory council and the governmental public health evaluation committee to advise the department regarding the coordination and implementation of the voluntary accreditation of local public health agencies and of the department and the evaluation of the accreditation program and governmental public health system. The advisory council consists of between 15 and 23 members appointed by the director. It will meet at least quarterly and will make recommendations to the department regarding the governmental public health system and propose public health standards that should be utilized for voluntary accreditation.

The public health evaluation committee consists of between 11 and 13 members appointed by the director. It will meet at least quarterly and will develop, implement, and evaluate the governmental public health system and voluntary accreditation program.

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This proposal is part of the Iowa Public Health Modernization Act, enacted in 2009, and relating to the organization and operation of the governmental public health system. The system functions to prevent epidemics and spread of disease, protect against environmental hazards, prevent injuries, promote healthy behavior, and deal with public emergencies.

HUMAN SERVICES DEPARTMENT

11:45

Child care quality rating system, IAB Vol. XXXIII, No. 11 ARC 9257B, FILED.

The department's amendments to chapter 118 update the Child Care Quality Rating System. The changes are the result of evaluation and suggestions occurring during the system's first three years of existence. In addition to providing a six-month transition period during which providers may apply under either the new or the old requirements, the adopted amendments include the following changes:

- Clarification of differences in application forms for each types of facility.
- A limit on applications for a Level 1 rating.
- Removal of requirements for the child care business-partnership agreement and the director/owner survey for a Level 2 rating.
- More points required for Levels 3 - 5 to allow inclusion of additional variables in each category and to provide more weight to certain criteria.
- The addition of points for parent meetings and parent satisfaction surveys.
- Minimum 5 point score on the environmental rating scale for a Level 5 rating.

The Department received comments on the noticed rules from 53 persons. In response to those comments the Department has made the following changes to the rules prior to adoption:

- Increased the number of points required for a rating levels 3, 4, or 5 for centers, preschools, and other specified programs.
- Increased the number of points required for a rating levels 3 or 5 for child development homes.
- Included provisions relating to the Aim4Excellence credential for early childhood administrators.
- Clarified certain scoring criteria for staff and facilities.
- Increased the number of potential points and criteria relating to health and safety.
- Amended provisions relating to the number of points and requirements for completion of a health and safety training session.
- Adjustments relating to the number of points and requirements for certain professional development criteria, specified training programs, and educational criteria.

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The amendments were adopted on November 10, 2010 and become effective on February 1, 2011.

PUBLIC SAFETY DEPARTMENT

12:00

Concealed weapons permits, IAB Vol. XXXIII, No. 10 ARC 9238B, ADOPTED.

2010 Iowa Acts, Senate File 2379 and Senate File 2357 related to the process for obtaining concealed weapons permits; prior law provided that even if certain criteria were met, the issuing officer had discretion to decide whether a permit should be issued to the applicant. Senate File 2379 provides that an applicant who is not disqualified as provided in Code Chapter 724, and who has completed the required training *shall* be issued a permit to carry weapons for a five-year period. A background check is required. Code §724.8 provides that a permit shall not be issued to a person who:

- Is less than eighteen years of age for a professional permit or less than twenty-one years of age for a nonprofessional permit.
- Is addicted to the use of alcohol.
- Is likely to use a weapon unlawfully or in such other manner as would endanger the person's self or others, based upon documented specific actions of the person, where at least one of the actions occurred within two immediately preceding years.
- Is subject to a protective order or has been convicted of a misdemeanor crime of domestic violence.
- Has, within the previous three years, been convicted of any serious or aggravated misdemeanor not involving the use of a firearm or explosive.
- Is prohibited by federal law from shipping, transporting, possessing, or receiving a firearm.

In addition to Code Chapter 724, federal law prohibits the possession of firearms by a person who:

- Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
- Who is a fugitive from justice.
- Who is an unlawful user of or addicted to any controlled substance.
- Who has been adjudicated as a mental defective or who has been committed to a mental institution.
- Who is an illegal alien.
- Who has been discharged from the armed forces under dishonorable conditions.
- Who has renounced the United States citizenship.
- Who is subject to a restraining order or a domestic violence order.
- Who has been convicted of a misdemeanor crime of domestic violence.
- Who is under indictment for a crime punishable by imprisonment for a term exceeding one year.

The denial, suspension, or revocation of a permit, either by the department or a sheriff may be appealed to an administrative law judge in the department of inspections

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and appeals within thirty days; the decision of the judge is final agency action and may be immediately appealed to district court.

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Residential electricians, residential master electricians, and residential electrical contractors, IAB Vol. XXXIII, No. 10 ARC 9234B, ADOPTED.

This proposal establishes separate license categories for residential electricians, residential master electricians, and residential electrical contractors. The current program provides for a “residential electrician” endorsements to a special license. The rules set out specific experience and testing requirements for each license. Three year licenses cost \$375 for a contractor or a master, \$75 for a residential electrician.