



Administrative Rules Review Committee

THE RULES DIGEST

September
2012

Scheduled for Committee review
Tuesday September 11th, 2012
Room #116

Reference
XXXV IAB No. 03(08/08/12)
XXXV IAB No. 04(08/22/12)

HIGHLIGHTS IN THIS ISSUE:

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TRANSPORTATION DEPARTMENT

9:20

Rest Area Sponsorship Program, Highway Helper Sponsorship Program, 07/11/12 IAB, ARC 1087C, HELD OVER FROM AUGUST.

The rest area sponsorship program allows a person, a firm, or an entity to sponsor a rest area by providing a monetary contribution, in exchange for an acknowledgment sign on the main-traveled way of an interstate highway and an interior sign within the primary rest area building. The sponsors will provide the sign, which must measure 24 inches high and 48 inches wide. The department shall review the acknowledgment sign proposed by the sponsor; the acknowledgment will not contain an advertisement or a partisan endorsement. The highway helper sponsorship program allows a person, a firm, or an entity to provide a monetary contribution to assisting in the funding of that service, in exchange for an acknowledgment sign on the main-traveled way of an interstate highway patrolled by the highway helper vehicles.

At its August meeting the Committee imposed a 70 day delay on this filing. Committee members expressed concern about the state granting more naming rights to state resources than it already has, and wondered how far such a trend might go. Members

also expressed concern about whether sponsors inappropriate for such a setting might win a bid, and whether there might be free speech implications in denying such bids.

A representative of the Department explained the purpose of this rulemaking, which adopts these two programs for highways and rest stops in accordance with federal requirements. The representative explained that these programs will help defray the Department's operating costs in this area. The sponsorships will be allotted through the RFP process.

CAPITAL INVESTMENT BOARD

9:45

Verification of tax credits for investment in fund of funds, 08/22/12 IAB, ARC 0290C, ADOPTED.

These amendments provide for the information needed by the board to verify the amount of tax credits to be issued related to investments in a Fund of Funds organized by the Iowa Capital Investment Corporation. The amendments also extend the time from 10 days to 30 days for the board to verify the tax credit, provide additional clarification on the maturity date to be used when verifying the credits, and provide clarification of certain definitions. These amendments were previously adopted and filed emergency. These amendments have been the subject of litigation between the board and an out-of-state-financial institution. The litigation and the underlying dispute was discussed extensively at the Committee's May meeting. In response to the dispute, the board has added new language which provides that where these rules conflict with certain issued tax certificates, the language in the tax certificates shall govern instead.

COLLEGE STUDENT AID COMMISSION

9:55

Skilled workforce shortage tuition grant program, 08/08/12 IAB, ARC 0248C, NOTICE.

2012 Acts, Senate File 2321 provides grants to any resident who is admitted as a full-time or part-time student in a career-technical or career option program to pursue an associate's degree or other training at a community college in Iowa, and who establishes financial need. Grants are awarded for study in industry identified as having a shortage of skilled workers by a community college, based on a regional skills gap analysis or identified by the department of workforce development in the department's most recent quarterly.

The amount of a tuition grant shall not exceed the lesser of one-half of a student's tuition and fees for an approved career-technical or career option program or the amount of the student's established financial need. A student may receive skilled workforce shortage tuition grants for not more than four semesters or the trimester or quarter equivalent of two full years of study. Partial grants are available for a part-time student. A student shall not receive a grant if the maximum grant for which the student is eligible is less than 200 dollars per semester or the equivalent.

Grants are awarded on an annual basis and the recipient must re-apply each year.

EDUCATION DEPARTMENT

10:05

Online learning, 08/22/12 IAB, ARC 0302C, NOTICE.

2012 Acts, Senate File 2284 provides for the regulation of on-line education, which is defined as educational instruction and content which are delivered primarily over the internet. The Act specifically prohibits the open enrollment of publicly enrolled elementary and secondary students whose educational instruction and course content are delivered primarily over the internet, limits statewide enrollment in educational instruction and course content that are delivered primarily over the internet to not more than 00.18% of the statewide enrollment of all pupils, and limits the number of pupils participating in open enrollment for purposes of receiving educational instruction that are delivered primarily over the internet to no more than one percent of a sending district's enrollment.

Priority for the statewide cap is apportioned to:

- students already open enrolled to Cumberland-Anita-Massena (CAM) and Clayton Ridge school districts and students with a sibling already open enrolled to these districts.
- students who have been the documented victims of harassment or bullying at school.
- students suffering from a serious health condition, or are medically fragile.

Once these priorities have been considered, approval of any remaining student requests for open enrollment shall be determined by lottery.

The rules also establish general standards for on-line learning. The rules prohibit the use of on-line learning as a long term substitute for courses required under the school accreditation standards; a one year waiver is available.

The department will annually evaluate the quality of courses offered on line to ensure that coursework is rigorous and of high quality and is aligned with Iowa's core

curriculum and core content requirements and standards as well as with national standards of quality for online courses.

ECONOMIC DEVELOPMENT

10:40

Regional Sports Authority Districts, 08/08/22 IAB, ARC 0280C, NOTICE.

This proposal updates the Regional Sports Authority Districts program. Iowa Code §15E.321 provides that a convention and visitors bureau may apply to the Economic Development Authority for certification of a regional sports authority district which may include more than one city and more than one convention and visitors bureau within the district.

Each fiscal year the Economic Development Authority will certify up to ten districts on a competitive basis. Each district will be awarded an equal amount of grant funds. Funds will be awarded as reimbursement for expenditures that are directly related to the active promotion of one or more nonprofessional sporting events; a 50% local match is required. Ineligible expenses include staff travel costs solicitation efforts, lobbying fees, meals or dining on occasions other than the dates of the nonprofessional sporting events described in the application, items that are purchased for resale, prizes given to participants, and alcoholic beverages.

Applications are evaluated on a point system that considers: the economic impact of the project, the leveraging of funds, novelty and quality, size of the event, local need, geographic diversity.

HISTORICAL DIVISION

11:10

Historic preservation, 08/08/12 IAB, ARC 0276, ADOPTED.

The State Historic Preservation Office receives an annual federal grant which requires compliance with the federal Historic Preservation Fund Grants Manual. The rules provide a definition for “*historic property*” which includes both the property and artifacts, records, and remains that are related and located within such properties. The term also includes includes properties of traditional religions and cultural importance to an Indian tribe and that meet the National Register criteria.

The rules add detail to the role of the state historic preservation office (SHPO). This state official will review all federal projects; the recommendations and decisions of the

SHPO are subject to the review and approval of the director. This review may be initiated by the director for any reason, or on request by an affected person.

A new rule defines the level of effort required to identify historic properties. The division or any entity receiving federal funds must make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Code §303.18, newly enacted in 2011 modifies this requirement for rural electric cooperatives and municipalities. That section states:

1. The state historic preservation officer shall only recommend that a rural electric cooperative or a municipal utility constructing electric distribution and transmission facilities for which it is receiving federal funding conduct an archeological site survey of its proposed route when, based upon a review of existing information on historic properties within the area of potential effects of the construction, the state historic preservation officer has determined that a historic property, as defined by the federal National Historic Preservation Act of 1966, as amended, is likely to exist within the proposed route.
2. The state historic preservation officer shall not require a level of archeological identification effort which is greater than the reasonable and good faith effort required by the federal agency. Such effort shall reflect the public interest and shall take into account the likelihood and magnitude of potential impacts to historic properties and project costs.

SECRETARY OF STATE

1:00

Ineligible voters, 08/18/12 IAB, ARC 0272C, EMERGENCY.

This filing has been placed into effect on an emergency basis and has also been published as a notice of intended action. The Secretary states that over 3500 non-US citizens are registered to vote in Iowa. Under this new program the Secretary will obtain lists of foreign nationals who are residing in Iowa and match the lists against the voter registration records. A federal immigration database will be use to verify citizenship status. The program does have a review process; a registered voter who may not be a citizen of the United States and may be illegally registered to vote will be notified of the voters right to dispute and respond to the information received by the Secretary's office within 14 days of the date of the notice. The procedure to actually challenge a registration is set out in Iowa Code §48A.16. That section provides for a hearing before the county commissioner of elections; this is not a Chapter 17A contested case, but the

same due process protections do apply. The commissioner's decision may be appealed into district court.

This filing appears to be controversial; comments question the lack of specific statutory authority for this process; other comments protest the use of the "emergency" rulemaking process. The filing is currently the subject of a judicial challenge by the ACLU.

HUMAN SERVICES DEPARTMENT

2:40

Child care centers and child development homes--exemption from reevaluation of employees' record checks, 08/08/12 IAB, ARC 0258C, NOTICE.

Pursuant to 2012 Acts, House File 2164, these amendments eliminate the requirement for the department to conduct repeat record check evaluations of transgressions already evaluated on individuals as they move from employer to employer. As employees move from employer to employer, they will still be required to undergo the record check process; however, transgressions that have already been evaluated will not need to be evaluated again as long as certain conditions are met. These conditions are:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.
3. The person subject to the record check or the person's previous employer with the person's authorization provides to the subsequent employer a physical copy of the previous evaluation.
4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

PHARMACY BOARD

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Pharmacy pilot or demonstration research projects, 08/08/12 IAB, ARC 0256C, NOTICE.

Pursuant to 2011 Acts, House File 467, this rulemaking establishes the procedures to be followed for a pharmacy to apply for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy relating to the authority

of prescription verification and the ability of a pharmacist to provide enhanced patient care. The proposed rule defines the scope and duration of a proposed pilot or demonstration research project, application requirements, board review and approval or denial processes, and project reporting requirements. The proposed rule establishes a waiver process for board rules for the purpose of implementing a proposed pilot or demonstration research project.