



Administrative Rules Review Committee

THE RULES DIGEST

December
2012**Scheduled for Committee review**
Tuesday December 11th, 2012
Room #116Reference
XXXV IAB No. 10(11/14/12)
XXXV IAB No. 11(11/28/12)**HIGHLIGHTS IN THIS ISSUE:**

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UTILITIES BOARD

9:10

Pole attachments, 11/14/12 IAB, ARC 0455C, NOTICE.

This rulemaking establishes requirements for pole attachments by communications, data, and similar companies to poles owned by electric and telecommunications utilities. The purpose of the proposed rules is to assert jurisdiction over pole attachments now under the jurisdiction of the FCC. FCC regulations provide that a state can certify that it has asserted jurisdiction over these pole attachments. To assert such jurisdiction, the state must have adopted rules that establish jurisdiction over the rates, terms, and conditions of the pole attachments. The proposed rules are designed to meet the FCC requirements for state certification. The Board retains safety jurisdiction over pole attachments for electric cooperatives and municipal utilities.

ECONOMIC DEVELOPMENT

9:45

Regional Sports Authority Districts, 11/14/22 IAB, ARC 0440C, ADOPTED.

This filing 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.

EDUCATION DEPARTMENT

10:00

Preprofessional skills test for admission to teacher preparation programs; subject assessments for teacher candidates, 11/28/12 IAB, ARC 0476C, ADOPTED.

This rulemaking implements 2012 Iowa Acts, SF 2284, section 39, relating to pretesting of candidates for admission to teacher preparation programs. Whereas, presently teacher preparation programs are required to administer a “basic skills test” to admission candidates, the new legislation requires that the test be “a preprofessional skills test offered by a nationally recognized testing service,” which essentially means the Praxis II tests. The new legislation also imposes a new requirement that, prior to completion of the program, each student in a teacher preparation program achieve scores above the 25th percentile nationally on an assessment that measures pedagogy and knowledge of at least one subject area. The rulemaking is effective January 2, 2013.

At the Committee’s September meeting, Committee members expressed concern that the January 2 effective date for the rule will unfairly impact students who will be undergoing testing soon, but after that date, and who have not had adequate time or training to prepare for the new standard. The department director replied that the immediate effective date of the underlying legislation required him not to delay its implementation. Public comment has been received echoing the concerns raised at the September meeting.

ADMINISTRATIVE SERVICES

11:35

Confidential employees-exempt from Merit system, 11/14/12 IAB, ARC 0460C, ADOPTED.

In 2011 the Department proposed to revise and expand the definition of the term “confidential employee”. Code §8A.412 provides that a confidential employee is exempt from the merit employment system; it is one of 24 legislatively created exceptions to the application of the merit system.

That exemption made a confidential employee an “at will” employee. That proposal related specifically to public employees who work in personnel offices, and was not adopted.

This filing is significantly different than last year’s proposal; it defines a confidential employee as an employee who is in a confidential relationship with a director, chief deputy administrative officer, a division administrator, or a similar position, and is a part of the management or legal team of that top-level administrator. Under this rule a confidential relationship means a relationship in which one person has a duty to the other not to disclose information.

This rulemaking was initially reviewed at the Committees’ October 2012 meeting. Several stakeholders questioned this expanded definition, contending that it was vague and an improper expansion of the statutory exemption. Opponents of the rule also contended that restrictions on merit system coverage should come from the legislature.

ENGINEERING EXAMINERS

12:45

Conflict of interest, 11/28/22 IAB, ARC 0470C, ADOPTED.

This filing was initially reviewed by the Committee in September. Current board rules prohibit a licensee from soliciting or accepting an engineering or land surveying contract from a governmental body when a principal or officer of the licensee’s organization serves as an elected, appointed, voting or nonvoting member of that governmental body. The filing adds detail to this existing prohibition. At the September meeting Committee members were concerned that the language was overbroad and could be interpreted to preclude a licensee from providing services to any governmental entity. The final rule has been clarified to apply only to the specific body where the licensee serves.

SECRETARY OF STATE

1:15

Mechanics' notice and lien registry, 11/28/12 IAB, ARC 0464C, ADOPTED.

2012 Iowa Acts, House File 675, as amended by 2012 Iowa Acts, House File 2465, creates a central state registry for mechanics liens. The mechanics' notice and lien registry provides a listing of all persons or companies furnishing labor or materials who have posted a lien or who may post a lien upon the improved property. A general contractor for residential construction who fails to post a notice of commencement of work on the registry within ten days following commencement of work is not entitled to a lien or other remedies.

A general contractor or owner-builder who contracts with a subcontractor for labor or materials for residential construction must post a notice on the registry. The program administrator must the mail a written owner notice to the owner's address, informing the owner that contractors furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner.