



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

THE RULES DIGEST

June 2013

Scheduled for Committee review**Tuesday, June 11th 2013****Room #116**

Reference

XXXV IAB No. 23(05/15/13)

XXXV IAB No 24(05/29/13)

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ATTORNEY GENERAL

9:45

Forfeited property, 05/29/13 IAB, ARC 0751C, ADOPTED.

Property forfeited as part of a criminal action may be used by the Attorney General in the enforcement of the criminal law or given to any other law enforcement agency within the state if, in the opinion of the Attorney General, it will enhance law enforcement.

This rulemaking decreases the amount of forfeited funds retained by the Attorney General from 20 percent to 10 percent and increases the amount of forfeited funds given to local law enforcement agencies from 80 percent to 90 percent. The rulemaking also decreases from 20 percent to 10 percent the amount of proceeds from the sale of forfeited real estate retained by Attorney General.

RACING AND GAMING COMMISSION

10:20

Licensing appeals, 05/15/13 IAB, ARC 0734C, ADOPTED.

The Commission revises its appeal procedure for administrative rulings by track officials to deny or suspend a license. Under the unique licensing provisions of the Racing Commission, track stewards have the authority to discipline, for violation of the rules, any person subject to their control and to impose fines or suspensions or both for infractions.

In this filing, the standard of review used in any appeal involving a steward's disqualification decision is limited to "abuse of discretion". This standard was also in the previous rule. This provision was controversial when it appeared under notice, because the general standard of review requires a determination that the agency action was "arbitrary, capricious, or unreasonable." This standard is broader than "abuse of discretion" and provides additional grounds to contest the agency action.

IOWA PUBLIC INFORMATION BOARD

1:15

Organization and operation, 05/15/13 IAB, ARC 0741C, ADOPTED.

The Iowa Public Information Board begins operations by drafting "boilerplate" rules of organization and operation; a standard set of rules largely common to all agencies. The Board was created under 2012 Iowa Acts, Senate File 430, to provide an alternative means to "secure compliance with and enforcement of the requirements of chapters 21 and 22"—the laws governing open meetings and public records.

The board is empowered to issue advisory opinions concerning specific issues with the open meetings law and public records law. The board may issue declaratory orders with the force of law pursuant to Iowa Code section 17A.9. Such opinions would be binding on all parties to the issue at hand. Advice contained in a board opinion constitutes defense to a subsequent complaint that is based on the same facts and circumstances.

The board's most significant power is to hear complaints concerning violations of the open meetings law and public records law, seek resolution through informal assistance or through mediation and settlement, investigate complaints, and determine whether there is probable cause to believe a violation has occurred. If probable cause has been found the board may conduct a contested case proceeding. A board member who participates in discussions to attempt to reach an informal resolution shall not participate in subsequent contested case proceedings or any appeal from a proposed decision to the full board. If the board determines that a violation has occurred, the board may:

- Require the respondent to pay damages as provided for in section 21.6 or 22.10.
- Void any action taken in violation of chapter 21 if a court would be authorized to do so.

- Require the respondent to take any remedial action deemed appropriate by the board.

REVENUE DEPARTMENT

10:45

Ag. land valuation, 05/29/13 IAB, ARC 0770C, ADOPTED.

The corn suitability rating is an important factor in the property tax evaluation of agricultural parcels. The corn suitability rating (CSR) system was developed by Iowa State University; it measures potential soil productivity based on soil profile, slope characteristics and weather conditions. It is an index ranging from 0 to 100 with CSR values of 100 being the most productive.

The rule provides for a standardized adjustment method for non-cropland that has a high corn suitability rating (CSR) so that non-cropland is not taxed the same as cropland. This amendment requires that the local the assessor adjust non-cropland in distributing agricultural valuation to each parcel. The adjustment is applied to non-cropland with a CSR greater than 50 percent of the average CSR for cropland for the county. It is calculated as the five-year average difference in cash rent between non-irrigated cropland and pastureland.

The rule allows a taxpayer to apply to the county for an interim adjustment to non-cropland beginning with the 2014 assessment and until the county's full implementation of the rule. The rule allows a deadline for implementation for the 2017 assessment year and provides a hardship waiver to extend the implementation deadline to the 2019 assessment year. The department has stated that sources to assist in funding the process are available.

This rulemaking utilized the negotiated rulemaking proceedings established in Executive Order #80. The Department formed a stakeholder group to review this proposal. The group was made up of impacted stakeholders that included members from: Iowa Association of Assessors, Iowa Cattlemen's Association, Iowa Corn Growers Association, Farm Bureau, Iowa Natural Heritage Foundation, Iowa Soybean Association, and a farmer representative.

These provisions were reviewed by the Committee in April. At that meeting county auditors expressed concern over the use of interim adjustments, contending that until a county can implement the adjustment in its entirety, granting of interim adjustments to some but not all taxpayers is unfair. Auditors stated that during the interim process, an assessor does not have the technical ability to adjust non-cropland and at the same time maintain uniformity throughout the county.

Supporters of the change stated that the current system, in which only about half of the counties make adjustments for non-cropland, is unfair and that the rule will give all taxpayers access to a fair system.

PUBLIC HEALTH DEPARTMENT

1:25

AIDS Drug Assistance Program, 05/29/13 IAB, ARC 0755C, ADOPTED.

The AIDS drug assistance program (ADAP) is administered by the bureau of HIV, STD, and hepatitis and includes two components, the Medication Assistance Program and the Health Insurance Assistance Program. The program provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV or AIDS if adequate funding is available for administration of the program. If sufficient funds are not available to provide services to the applicant, the department shall place the applicant's name on the ADAP waiting list.

HUMAN SERVICES DEPARTMENT

2:00

"Emergency" rulemaking, Special Review, ADOPTED.

The Department has drafted 13 proposed emergency rule amendments for ARRC review at the June meeting. This is an annual standard allowing the Department broad "emergency" rulemaking authority, subject to prior review by the Committee; it is specifically authorized by Senate File 446, §30. The filings implement various provider rate increases pursuant Senate File 446, §29 and Medicaid cost containment strategies pursuant to §12. Senate File 446 has not been signed into law by the Governor; for that reason the rules will not be adopted by the Human Services Council until the Act is signed into law.

HUMAN SERVICES DEPARTMENT

2:00

Exemption of Counties from Joining into Regions to Administer Mental Health and Disability Services, 05/15/13 IAB, ARC 0735C, ADOPTED.

This rulemaking establishes criteria for exempting counties from joining into regions to administer mental health and disability services. The department is charged with implementing redesign of the mental health and disability services system into a regionally administered, locally delivered service system. The authority to accept applications for an exemption is repealed effective July 1, 2013. This rulemaking was also adopted and filed emergency on January 8, 2013. Counties had to voluntarily form regions by April 1, 2013, or submit a letter of intent by May 1, 2013, to apply for an exemption from forming into a region of at least three contiguous counties. The department has received public comments from county representatives asserting the criteria are unworkable, too restrictive, and beyond the scope of the underlying legislation, 2012 Iowa Acts, Chapter 10 (SF 2315). The department contends these comments are based on confusion regarding SF 2315, and that it is acting within its statutory authority.

EDUCATION DEPARTMENT

3:00

Bus inspection fee, 05/29/13 IAB, ARC 0762C, ADOPTED.

This amendment increases the fee for a bus inspection from \$28 to \$42. The increase is to pay for a third bus inspector. The fee is paid by the school districts. At the committee's April meeting, members expressed concern about this amendment, questioning the necessity of the fee increase, and whether bus inspections could not be conducted in a more efficient and cost effective manner.