



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

THE RULES DIGEST

September 2013

Scheduled for Committee review Tuesday, September 10 & Wednesday, September 11 2013 Room #116

Reference XXXVI IAB No. 03(08/07/13) XXXVI IAB No 04(07/21/13)

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REAL ESTATE COMMISSION

Tuesday-9:45

EMERGENCY FILING REVIEW, Operations of grant committee, rule rescinded, ch.22.

Pursuant to House File 586 this "emergency" filing must be reviewed and approved by the Committee before it can be effective. This amendment rescinds the rules which provided for the establishment of a Real Estate Education Grant Committee and the processes to be used in awarding grants to Iowa colleges and universities. These rules are no longer necessary due to a legislative change of 2013 Iowa Acts, Senate File 438, section 3, which repealed Iowa Code section 543B.54, eliminating the real estate college education credit program.

PUBLIC RECORDS BOARD

Tuesday-9:55

EMERGENCY FILING REVIEW, Operations of grant committee, rule rescinded, ch.22.

Pursuant to House File 586 this "emergency" filing must be reviewed and approved by the Committee before it can be effective. This non-substantive filing adds a telephone number, address, email address and website address.

ECONOMIC DEVELOPMENT AUTHORITY

Tuesday-10:30

Innovation fund tax credit program, 08/07/13 IAB, ARC 0940C, NOTICE.

The Innovation Fund Tax Credit Program provides a tax credit for a portion of an equity investment in a certified innovation fund. A qualified fund is a private, early-stage capital fund certified by the board. This notice of intended action proposes a variety of amendments to the program; most important are additional criteria for the issuance of tax credits. In order to maintain certification, an innovation fund must demonstrate compliance with the eligibility criteria at all times during participation in the program. A failure to comply with the eligibility criteria on an ongoing basis may result in revocation of certification.

These new criteria include:

- multiple rounds of funding and early-stage private sector funding to innovative businesses with a high growth potential, and proposes to focus such funding on innovative businesses that show a potential to produce commercially viable products or services within a reasonable period of time.
- evaluation of all prospective innovative businesses using a rigorous approach and proposes to collaborate and coordinate with the authority and other state and local entities in an effort to achieve policy consistency.
- collaboration between the innovation fund and the regents institutions of this state and to leverage relationships with such institutions in order to potentially commercialize research developed at those institutions.
- acquisition of at least \$15 million in binding investment commitments and to invest a minimum of \$15 million in companies that have a principal place of business in Iowa.

An eligible business must have at least 50 percent of all of its employees in the state, pay at least 50 percent of the business's total payroll to employees residing in the state, or the headquarters of the business is in the state.

Tax credit certificates issued pursuant to this program may be transferred, in whole or in part, to any person or entity. A tax credit certificate shall only be transferred once. The board will not issue a tax credit certificate prior to September 1, 2014.

## **HISTORICAL DIVISION**

Tuesday-10:45

Entertainment District Tax Credits. 08/07/13 IAB, ARC 0940C, EMERGENCY.

Pursuant to House File 586 this "emergency" filing was reviewed and approved by the Committee at its July meeting. This filing implements 2013 Iowa Acts, Senate File 436, and defines commercial and non-commercial properties. The filing also changes the threshold for commercial projects; raises the cap for small projects to \$750,000; and allows for a 12 month extension for a project that reaches 60 months and is not

complete but has already expended at least 50% of their qualified rehabilitation expenses.

## **HOMELAND SECURITY**

Tuesday-10:55

Flood mitigation. 08/21/13 IAB, ARC 0956C, NOTICE.

These proposed rules establish the Flood Mitigation Program. The rules establish the Flood Mitigation Board which will implement and administer the program, and provide eligibility criteria, an application and approval process, the creation of a flood mitigation fund and flood project funds, and reporting requirements. The program is established in Iowa Code chapter 418; the statute creates a sales tax increment fund consisting of the amount of the increased state sales and services tax revenues collected by the department of revenue within each participating areas.

Mitigation projects will be evaluated by a board, following a variety of criteria set out in §418.9. Two key criteria are whether the project mitigates future flooding of property that has sustained significant flood damage and is likely to sustain significant flood damage in the future, and whether the benefited area is sufficiently valuable to the economic viability of the state or is of sufficient historic value to the state to justify the cost of the project. Eligible project types include construction and reconstruction of levees, embankments, impounding reservoirs, conduits, or other means that are necessary for the protection of property from the effects of floodwaters. A project must have received federal financial assistance under the Water Resources Development Act (WRDA), the Environmental Protection Agency (EPA), or other federal programs providing assistance specifically for hazard mitigation. Financial assistance may be provided in the form of grants, loans and forgivable loans.

The federal share of the total project cost shall be a minimum of 20% of the total project cost or \$30 million, whichever is less. The local match, combined with the federal share, shall fund a minimum of 50% of the total project cost. The nonpublic investment must equal to 50% of the total cost of the project.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Tuesday-11:05

Care facilities-independent reviewer. 08/07/13 IAB, ARC 0922C and 0941C, NOTICE.

Iowa Code §135C.42 provides a process for the informal conference on a contested citation issued to a care facility or assisted living program. 2013 Acts, Senate File 394 revises this process to require that an independent reviewer hold the informal conference rather than a representative of DIA. The reviewer must be an Iowa-licensed attorney that has not employed by DIA or appeared in front of DIA on behalf of a health care facility in the past eight years in the last eight years. At the completion of the informal conference, the independent reviewer may affirm, modify, or dismiss the regulatory insufficiency.

## **INSPECTIONS AND APPEALS**

Tuesday-11:05

Intermediate care facilities for the intellectually disabled--interpretive guidelines, 08/07/13 IAB, ARC 0940C, FILED WITHOUT NOTICE.

Code § 135C.2(3)"d" provides that the department shall "consider" the federal interpretive guidelines issued by the federal CMMS when interpreting the department's rules for intermediate care facilities for persons with an intellectual disability. This use of the guidelines is not subject to the rulemaking provisions, but the guidelines are required to be published in the Iowa administrative bulletin and the Iowa administrative code. These guidelines have not been updated in 23 years.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Tuesday-11:05

Nurse delegation in elder group homes, assisted living programs and adult day services, 06/26/13 IAB, ARC 0809C, ADOPTED.

The department completes action on rules detailing the delegation of nursing responsibilities by a registered nurse. The registered nurse (R.N.) at each facility is responsible to ensure that all facility staff are competent to meet the individual needs of tenants. The R.N. must document a staff review to document that staff is sufficiently trained and competent in all tasks that are assigned or delegated. Staff must be appropriately trained within 30 days of employment. Noncertified staff training shall include, at a minimum, the provision of daily self-care activities and instrumental activities of daily living. All staff must receive training regarding service plan tasks such as wound care, pain management, rehabilitation needs and hospice care) in accordance with medical or nursing directives and the acuity of the tenants' health, cognitive or functional status.

The R.N. must provide direct or indirect supervision of all staff as necessary in the professional judgment of the R.N. and in accordance with the needs of the tenants and the staff. The staff shall provide services in accordance with their level of training.

The facility shall have in place a system by which the staff communicates in writing occurrences that differ from the tenant's normal health, functional and cognitive status. The R.N. or designee shall train staff on reporting and documenting these occurrences. The written communication shall be retained for not less than three years, and shall be accessible to the department.

A staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the person is related to the tenant by blood, marriage, or adoption.

This filing was initially reviewed by the Committee in July

## **INSPECTIONS AND APPEALS DEPARTMENT**

Tuesday-11:05

Criminal background checks, 06/26/13 IAB, ARC 0963C, ADOPTED.

2013 Iowa Acts, Senate File 347 requires elder group homes, assisted living programs and adult day services programs to conduct criminal history record checks and child abuse and dependent adult abuse record checks of prospective employees. Prior to employment in an elder group home, assisted living program and adult day services program the facility must request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed unless an evaluation has been performed by the department of human services to determine whether the crime warrants prohibition of the person's employment.

If an employee is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment, the person shall inform the employer of such information within 48 hours. The facility shall act to verify the information within 48 hours of notification. If the information is verified, the facility may continue to employ the person pending the performance of an evaluation by the Department of Human Services.

## **INSURANCE DIVISION**

Tuesday-11:30

Regulation of Navigators, 08/21/13 IAB, ARC 0981C, ADOPTED.

The federal “Affordable Care Act” (ACA) requires state health insurance marketplaces to establish a “navigator” program that will help individuals who are eligible to purchase coverage through a health insurance marketplace to learn about their new coverage options and enroll. This rule making provides the licensing, training, application, and other minimum practice standards for entities and individuals acting as navigators.

No person may act as a navigator until issued a 3 year Iowa navigator license by the Division. Applicants must:

- Be at least 18 years of age;
- Comply with the initial training and certification requirements. Individual navigators shall complete a minimum of 32 credits of initial training in courses approved by the commissioner. Initial training must include a minimum of 2 credits of Iowa-specific training on Medicaid and healthy and well kids in Iowa program training, as well as a minimum of credit in the subject of ethics;
- Have not committed any act that is grounds for license denial, suspension or revocation;
- Submit a completed uniform application;
- Pass an examination with a score of 70 percent or higher;
- Pay the nonrefundable navigator license fee of \$20;
- Pass a background check or security screening.

Licenses must demonstrate financial responsibility and maintain evidence of financial responsibility in the form of a surety bond or other alternative financial responsibility instrument that protects individuals and entities against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator, or other violation of insurance law. The minimum coverage for financial responsibility shall be \$50,000.

Prior to license renewal individual navigators must complete a minimum of 36 continuing education credits for each continuing education term in courses approved by the commissioner on subjects relevant to navigators, including health insurance, tax credits, tax penalties, Medicaid, the healthy and well kids in Iowa program, health care-related public assistance programs, or ACA-related topics.

In response to public comments, the division has eliminated references to “non-navigators” and provided for a waiver provision regarding initial training hours due to concerns regarding access to free training from the U.S. Department of Health and Human Services.

## **IOWA FINANCE AUTHORITY**

Tuesday-1:30

*Qualified allocation plan, 08/07/12 IAB, ARC 0929C, NOTICE.*

The federal government established the Low-Income Housing Tax Credit program in 1986. IFA is the state agency which allocates these housing tax credits in Iowa. Each year the program is revised; the IRS annually allocates housing tax credits on a per capita basis to each state based on population. Returned tax credits from previous tax credit years may also be available for allocation.

These tax credits provide a dollar-for-dollar reduction to an investor’s tax liability on ordinary income. Developers of affordable housing sell the housing tax credits to investors as a way to finance the projects and keep rents low for eventual tenants. The IRS oversees the program on the federal level and provides general guidelines for it.

IFA also sets its own rules that are included in a Qualified Allocation Plan (QAP), which is annually updated. A portion of the credits are reserved for five set-asides: Nonprofit (10%), Community Housing Development Organization (5%), Preservation (10%), Rural (10%), and Rural Development Preservation Demonstration (returned credits).

## **HUMAN SERVICES DEPARTMENT**

Tuesday-1:45

*Iowa Health and Wellness Plan, 08/21/13 IAB, ARC 0972C, NOTICE.*

These proposed rules establish the Iowa Health and Wellness Plan, which will provide medical assistance to low-income Iowans, aged 19 to 64, whose countable income does not exceed 133 percent of the federal poverty level for their family size, who are not eligible for any other full Medicaid group or Medicare, who are not pregnant, and whose dependent children are covered by minimum essential coverage. Beginning on October 1, 2013, low-income adults will be able to enroll in a new Medicaid coverage group for benefits that will begin January 1, 2014. The proposed rules include eligibility factors, benefits and service delivery, and claims and reimbursement methodologies. The

proposed rules do not include matters still awaiting approval by the Centers for Medicare and Medicaid Services, including required contributions or premiums, or the specific delivery for dental services, medical homes, or accountable care organizations.

## **HUMAN SERVICES DEPARTMENT**

Tuesday-1:45

Child abuse allegations: differential response system. 08/07/13 IAB, ARC 091C, NOTICE.

This proposal establishes a new assessment process (a differential response system) for reports that constitute child abuse allegations. This is an assessment system in which there are two responses to accepted reports of child abuse, a child abuse assessment and a family assessment. A child abuse assessment is required in 24 hours if the alleged abuse involves “imminent danger, death, or injury to a child”. The rules specifies 12 criteria to determine if this standard has been met. A family assessment is required within 72 hours when the imminent danger standard does not apply. It does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the central abuse registry are met.

The notice also requires a current determination of abuse to be founded if a previous incident of abuse was confirmed within the past five years. The notice also provides for the removal of a person’s name from the central abuse registry after five years so long as the abuse did not result in the child’s death or serious injury and there was not further confirmed abuse within that five-year time period. The notice defines and structure community care services and family-centered child welfare services as they relate to differential response.

## **HUMAN SERVICES DEPARTMENT**

Tuesday-1:45

Elimination of individual CDAC providers. 07/24/13 IAB, ARC 0888C, NOTICE TERMINATED, HELD OVER FROM AUGUST.

Consumer-Directed Attendant Care (CDAC) services are designed to help people do things that they normally would for themselves if they were able. This proposal would have eliminated consumer-directed attendant care individual providers from the list of enrolled Medicaid providers effective July 1, 2014.

This proposal was initially reviewed at the Committees’ August meeting and was held over for additional review. A number of attendant care individual providers are AFSME



members and stakeholders expressed concern this new rule would eliminate their employment. The department has terminated this rule making.

## **SOIL CONSERVATION**

Wednesday-9:00

Water quality initiative. 08/21/13 IAB, ARC 0979C, ADOPTED.

2013 Acts, Senate File 435 created a water quality initiative, including an earmarked fund, in order to assess and reduce nutrients in Iowa's watersheds. The soil conservation division shall establish and administer projects to reduce nutrients in surface waters from nonpoint sources in a scientific, reasonable, and cost-effective manner. The division is mandated to utilize a pragmatic, strategic, and coordinated approach with the goal of accomplishing gradual reductions. Conservation practices which improve water quality on agricultural crop and pasture land are eligible for funds. The practices are identified in the "nutrient reduction strategy" or by the division. Permanent practices eligible for funding include but are not limited to wetlands, bioreactors, and buffers. Management practices eligible for funding include cover crops and living mulches.

## **PUBLIC HEALTH DEPARTMENT**

Wednesday-10:30

*Establishing parentage on birth certificates; vital records modifications, 08/07/13 IAB, ARC 0925C, NOTICE.*

These proposed amendments institute a process for establishing parentage on the birth certificate for married lesbian couples when one of the parties to the marriage delivers a child. The amendments also clarify who an entitled person is for purposes of requesting corrections of a minor error or amending a birth certificate; clarify how intended parents are established on a record following a birth by gestational surrogate arrangement; and clarify terminology changing "father" to "parent" and "husband" to "spouse." These changes are necessary to comply with the Iowa Supreme Court's decision in *Gartner v. Iowa Department of Public Health*.

## **AGRICULTURE AND LAND STEWARDSHIP**

No Representative called

Savannah cats, 08/21/13 IAB, ARC 0946C, ADOPTED.

An issue that has lasted for six years is now resolved. In 2007 the legislature enacted a wild animal law imposing new restrictions on keeping dangerous wild animals. The Act defined these animals in great detail. Under the Act it is unlawful to own, possess or transport a dangerous wild animal in Iowa. A number of persons who keep exotic pets opposed the new law; these include owners of "savannah cats". These cats are a cross

between servals (an African wild cat which is a dangerous animal under the 2007 Act) and domestic cats. The statute has now been revised to allow a cross between a domestic cat and a bengal or savannah as long as the bengal or savannah is the fourth or later filial generation of offspring.

This filing was initially reviewed by the Committee in July.

### **PHARMACY BOARD**

No Representative called

Listing of schedule 1 substances. 08/07/13 IAB, ARC 0893C, EMERGENCY

Pursuant to House File 586 this “emergency” filing was reviewed and approved by the Committee at its July meeting, prior to publication. This filing temporarily classifies three synthetic cannabinoids as Schedule I controlled substances in conformance with recent designations by the federal government. The substances have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision.

Under the statutory scheme, this designation by rule is temporary unless made permanent by legislative action in 2014.

### **LAW ENFORCEMENT ACADEMY**

No Representative called

Mental health training, 06/12/13 IAB, ARC 0782C, ADOPTED.

The Academy both trains and licenses Iowa’s law enforcement officers; part of that responsibility includes mandating in-service training. The Academy proposes a new mental health component. Within one year each regular and reserve law enforcement officer shall complete a minimum of 4 hours of mental health training from a course of study approved by the academy. Each officer must also complete a minimum of 1 hour per year, or 4 hours every 4 years, of mental health training from an approved course of study. This annual in-service training is separate from and in addition to any other in-service training requirements.

This filing was initially reviewed by the Committee in July.