



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

September, 2004

Scheduled for committee review
Tuesday, September 14th
Statehouse Room #116

Reference
XXVII IAB No. 04(08/18/04)
XXVII IAB No. 05(09/01/04)

HIGHLIGHTS IN THIS ISSUE:

LOAN DEFAULT, College Student Aid Commission.....1
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ADMINISTRATIVE SERVICES
DEPARTMENT

No representative called

Printing services, IAB Vol. XXVII, No. 04, ARC 3415B, ADOPTED.

The state printing division is no longer the sole provider of government printing services, which is now a marketplace service and agencies can choose to procure printing from the division or they may choose to solicit bids from private vendors, using formal or informal procedures as set out in rule and determined by the dollar value of the order. If agencies choose to procure printing on their own they must follow the guidelines in the rules. Agencies may also purchase their own printing equipment.

The new rules also detail the procurement of information technology devices and services. Under these provisions technology devices and services must meet standards prescribed by the department.

COLLEGE AID COMMISSION

9:45

Loan default debt collection, IAB Vol. XXVII, No. 04 ARC 3584B, NOTICE.

A number of years ago the state obtained authority to revoke the professional licenses of persons who had defaulted on student loans. That process is now supplemented by an additional tool—garnishment of wages. House File 2559 specifically calls for a garnishment proceeding when a defaulter who is financially capable of paying fails to voluntarily enter into a reasonable payment agreement.

The rules establish an administrative garnishment procedure allowing the commission, following 30 days notice and a due process hearing before an administrative law judge, to issue a garnishment order to the debtors employer.

Normally in Iowa garnishment is a judicial proceeding regulated by Iowa Code Chapter 642. House File 2559 authorize the state use of federal procedures set out in 20 USC §1095A; that federal law states in part:

"Notwithstanding any provision of State law, a guaranty agency...may garnish the disposable pay of an individual to collect the amount owed by the individual, if

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he or she is not currently making required repayment under a repayment agreement..." [emphasis added]

Under the federal mandate garnishment is limited to 10% of the debtors disposable income (income minus required deductions). Employers are prohibited from discharging an employee based on the garnishment.

EDUCATION DEPARTMENT

10:00

Extended school program, IAB Vol. XXVII, No. 05, ARC 3612B, NOTICE.

Iowa Code §281.1A allows districts to establish an extended school program for persons over the age of 21, subject to approval by the department. The program must be tuition-free. To be eligible a student must:

- Be 21 or older;
- Be a bona fide resident of the district;
- Be currently enrolled in the district;
- Not have a high school diploma.

Extended program students are to be largely treated like regularly enrolled students except that they cannot participate in extracurricular activities offered by the district, and may be excused from the physical education requirements.

EDUCATION DEPARTMENT

10:00

Student teaching, IAB Vol. XXVII, No. 05, ARC 3611B, ADOPTED.

These adopted rules add detail to current provisions relating to student teaching requirements. The prior rules simply required 12 weeks of student teaching. §272.25(4), 2003 supplement, specifies a higher level of detail, which is now added to the rule. The rules require:

- interaction between the student, the college or university faculty, the supervising teacher and the school administration;
- detailing expectations and responsibilities of the student teacher, the cooperating teacher and the institutions;
- exposing the student teacher to the Iowa teaching standards and providing a mock evaluation using those standards.

ENVIRONMENTAL PROTECTION COMMISSION

1:45

Animal feeding operations: hydrogen sulfide, IAB Vol. XXVII, No. 04 ARC 3588B, ADOPTED.

Iowa Code §459.207(3), enacted in 2002, states in part:

a. After the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of airborne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect. [emphasis added]

In April of 2003, the commission proposed outdoor air quality standards for both hydrogen sulfide and ammonia. Although the concern for these emissions generally involved livestock feeding operations, the proposed limitations were not limited to the immediate area of a concentrated animal feeding operation; instead they were state-wide standards applied to all outdoor air in Iowa (ARC 2465B, 5/14/03 IAB). This effort was deemed too broad by the legislature and when those rules were adopted in final form they were nullified (SJR 5). In January 2004 the commission began a second rulemaking which proposed an animal feeding operations "health effects value" (HEV) and a "health effects standard" (HES), applying to hydrogen sulfide only, and limited to the area surrounding a concentrated animal feeding operation.

The initial proposal set a standard for hydrogen sulfide at 15 ppb (8 ppb is the odor threshold) for animal feeding operations. This measure was a daily maximum one-hour average as measured *near* (not necessarily at) a separated location. The standard, measured in one hour increments, could not be violated more than seven times per year.

This proposed rulemaking sparked a legislative response---House File 2523, which would have established a limit of 70 ppb. That legislation was passed by both houses of the legislature and would have superceded any regulation setting a hydrogen

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sulfide standard; however, that bill was vetoed by the governor.

The last opportunity for oral presentation on the proposed rule was held on April 1, 2004, meaning the commission had 180 days from that date to adopt the rulemaking in final form. The commission received almost 3,000 written and oral comments. A summary of those comments, and the agency response, is available at the DNR internet website.

The commission then evaluated and summarized those comments, making several changes in the final version. The final rules, adopted at the commissions' July, 2004 meeting, raises both the health effects value and the standard the to 30 ppb at a separated location; this level was based on information from the Iowa Department of Public Health and the state of California. There is no actual penalty if that standard is exceeded more than seven times per year; in that situation the commission must develop management practices to reduce or control the hydrogen sulfide emissions at that site.

The monitoring device must be with 100 meters of the separated location (the statute provides "*at a separated location*") and be beyond the required separation distance. The 100 meter provision was put in place due to concerns that the presence of nearby structures could affect accuracy and due to objections by homeowners.

ENVIRONMENTAL QUALITY DIVISION

1:45

Electronic recycling, IAB Vol. XXVII, No. 04, ARC 3578B, ADOPTED.

§455D.6(7), 2003 supplement, requires the division to develop "*...a strategy for the recycling of electronic goods and the disassembling and removing of toxic parts from electronic goods.*" This new filing establishes an electronics recycling program. Electronic recycling programs fall into three categories: short-term events, collection facilities or recycling facilities. A short term event is simply a collection event where the items are later transported to a recycling facility. The events

are subject to minimal regulation; event sponsors must transport all discarded electronics to a properly permitted electronics recycler. Any glass from a monitor or a damaged or leaking monitor must be placed in enclosed containers which are kept separate from other discarded electronics; damaged or leaking monitors must also protected from rain. All litter must be contained.

Both a collection and recycling facility must obtain a permit, unless it is part of an otherwise permitted recycling or composting facility or a sanitary disposal project. Permits are valid for up to three years. A collection facility must minimize hazardous conditions and have the equipment and emergency procedures necessary to deal with any hazardous condition that occurs. For both collection and recycling facilities, materials cannot be "speculatively accumulated". At least 75 per cent of the materials entering the facility must be removed within 12 months

A recycling facility must be enclosed by walls, a roof, and a floor; it cannot be located in a 100 year flood plain. A recycling facility must store materials in a manner designed to minimize risk; materials must be transported in clearly marked containers. Special handling standards are set out for PCB capacitors, CRT tubes, batteries, circuit boards and mercury-containing materials. All employees must be trained in the proper handling of electronic materials and at least one employee must have completed a department training course.

Each recycling facility must prepare a detailed emergency response and remedial action plan (ERRAP) which detail the facilities response to a variety of disasters or emergency conditions that might arise.

HUMAN SERVICES DEPARTMENT

9:00

Refugee services foundation, IAB Vol. XXVII, No. 05, ARC 3606B, EMERGENCY.

Senate File 2298 requires the department to create a non-profit refugee services foundation; its' role is to assist in funding refugee resettlement activities which would promote the welfare and self-sufficiency of non-citizen refugees who live in

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Iowa. The foundation must be organized so that donations and bequests qualify as tax deductible under federal and state income tax laws. The foundation is not a state agency and the state is not liable for any of its' debts. Under this concept federal funds for the re-settlement of refugees will be supplemented by fund-raising efforts of the foundation.

HUMAN SERVICES DEPARTMENT

9:00

Child care eligibility, IAB Vol. XXVII, No. 05, ARC 3610B, ADOPTED.

These provisions were initially placed into emergency effect in July; they contain a variety of changes to the child care assistance program. Eligibility has long been tied to the federal poverty guidelines; now, instead of actually listing the various income levels in the rules and updating them each time the amount changes, the rules will simply refer to the federal guidelines; the actual dollar amount will be set out in the department manual. Generally income cannot exceed either:

- 140 percent of the federal poverty level applicable to the family size for children needing basic care;
- 175 percent of the federal poverty level applicable to the family size for children needing special needs care; or
- 85 percent of Iowa's median family income, if that figure is lower than the other standards.

The rule also lists some 27 exemptions from income, ranging from tax refunds, adoption subsidies to gifts. The rule also establishes a chart to determine the fee, on a sliding scale, that the client must pay for child care services; the half-day fee ranges from fifty cents to a maximum of \$6.00. The care provider is responsible for the collection of the fee. Family monthly income varies from \$737 for a single member family up to \$5756 for a family of ten.

The prior rule established a priority list, because the need for day care services exceeds the department's ability to fund those services. This filing sets out a number of exceptions to the priority list. Exceptions include families that have protective child-care needs, FIP families or families that receive a adoption subsidy.

Another significant change in this filing is the elimination of any residence requirement to obtain child care services. Under this rule the applicant for child care services "living in the state of Iowa"; this includes persons living in Iowa for a temporary period, other than for the purpose of vacation.

HUMAN SERVICES DEPARTMENT

9:00

Dental care in maternal health centers, IAB Vol. XXVII, No. 05, ARC 3608B, ADOPTED.

This filing will extend Medicaid coverage to dental hygiene services provided in a maternal health center. At the initial review in July department representatives stated the projected cost would be approximately \$4600 for these services. At that review it was noted that the actual text of the proposal was far broader than maternal health centers, using the generic term "public health setting". Committee members suggested that the department narrow the scope of coverage to the maternal centers. The adopted rule now specifically limits dental hygiene services to these centers.

IOWA FINANCE AUTHORITY

11:20

Multifamily housing program, IAB Vol. XXVII, No. 05, ARC 3620B, NOTICE.

In 2002 the old Iowa Homestead Program was replaced by a Multifamily Preservation Loan Program designed to preserve existing affordable rental units which are either at risk of physical deterioration or in financial trouble. The program is expanded under this proposal from a loan preservation program to a program for both preservation of existing units and construction of new affordable developments.

The program provides three types of loans. The first continues the existing program---loans to preserve existing housing. Eligible projects must have at least five units; they must affordable to tenants with incomes at or below 50 to 80 percent of area median income (AMI). The maximum loan amount is \$2 million.

The multifamily loan program for low-income housing tax credits provides loans for projects that have been allocated tax credits and have not yet

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started construction or have not obtained permanent financing. These projects must include either 20 percent of the units at or below 50 percent of AMI or 40 percent of the units at or below 60 percent of AMI.

The program for substantial rehabilitation of nonrestricted projects provides loans for projects that have no affordability restrictions, but at least 40 percent of the units will have rents at or below the area fair market rents. Projects must have at least five units.

This proposal also creates a gap financing fund, offering low-cost gap loans where traditional financing arrangements are not readily available. Gap financing can be used for a variety of construction and rehabilitation purposes. It cannot exceed 25% of the total mortgage, with a maximum term of 30 years.

NATURAL RESOURCES COMMISSION

1:15

Aquatic invasive species, IAB Vol. XXVII, No. 05, ARC 3627B, NOTICE.

House File 2357 completely re-wrote Iowa law relating to invasive aquatic species. That provision related only to a specific aquatic plant; the 2004 legislation calls for the identification and control of "*aquatic invasive species*": which are specifically defined as Eurasian water milfoil (from the current law), purple loosestrife, and zebra mussels. However, §4 of the Act empowers the commission to temporarily define additional species by rule, "*subject to enactment of the definition by the general assembly*". If the assembly does not act at the next regular session, the definition is automatically nullified. This process is similar to one currently in place for the identification of certain unlawful controlled substances.

The commission proposes a list of invasive species that contains six plants, seven fish and six invertebrates. In addition, the rule adopts by reference the federal noxious weed list, listing hundreds of plants. It also adopts a federal list of injurious wildlife species, which lists a variety of mammals, birds, fish, reptiles and invertebrates. Except under very narrow exceptions no person

may possess, introduce, import, purchase, sell, barter, propagate, or transport aquatic invasive species in any form in this state.

House File 2357 also requires the commission to identify and post infested bodies of water and empowers the commission to prohibit boating, fishing, swimming, and trapping in those waters. When the commission is evaluation the need for such an action it will consider:

- The extent of a species' distribution within the state;
- The likely means of spread for a new species; and
- Whether restrictions specific to infested waters containing a specific species will effectively reduce that species' spread.

PUBLIC SAFETY DEPARTMENT

11:00

Temporary incapacity payments, XXVII IAB No. 04, ARC 3586B, NOTICE.

As part of a rulemaking to transfer and update the Peace Officers' Retirement, Accident, and Disability System the System's Board of Trustees proposes rules to implement 2003 Iowa Acts, chapter 20; this provision relates to active members of the system who are temporarily incapacitated as a result of an injury or illness which occurs or is aggravated at a definite time or place while in the actual performance of duty. (Active members of this system are currently employed peace officers of the Iowa Department of Public Safety.)

Previously, a peace officer of the Department of Public Safety who was temporarily incapacitated by injury or illness which resulted from injury or exposure on duty utilized accumulated sick leave for the first five work days of incapacity and then was on paid administrative leave for the next 60 work days of incapacity, after which sick leave or vacation was used for any additional work days of incapacity. This was pursuant to the collective bargaining agreement between the State Peace Officers Council and the State of Iowa. Now, that same officer would have any sick leave which had been charged restored once a determination of temporary incapacity was made and would then not be charged sick leave for the remainder of the period of temporary incapacity. Note the three factors which limit this benefit:

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- * the illness or injury must occur at a specific time or place--the gradual onset of a condition like carpal tunnel syndrome would not qualify;
- * the illness, injury or exposure must also occur in the actual performance of duty---a heart attack at home would not qualify;
- * lastly, the injury, disease, or exposure must be the natural and proximate cause of the temporary disability.

UTILITIES DIVISION

1:00

Utility payment plans, IAB Vol. XXVII, No. 04, ARC 3411B, ADOPTED.

The board revises the limitations relating to the shutoff of residential utility service. Persons eligible for low-income energy assistance service cannot be disconnected from November 1 through April 1. Service may be disconnected only between the hours of 6 a.m. and 2 p.m., Monday through Friday; service cannot be disconnected if the temperature is forecasted to be 20 degrees Fahrenheit or less during the following 24-hour period.

The mandatory offering of a payment plan has always been part of the utility shutoff limitation. Previous rules required utilities to offer a customer an opportunity to enter into a reasonable payment agreement as an alternative to utility shut-off. This filing requires utilities to offer a second agreement to a customer who is currently in default on a first agreement if: the customer has made at least two payments under the first payment agreement, and has paid at least 33 percent of the balance owed under the first payment agreement. The customer is required to pay for current service usage plus the monthly payments under the second payment agreement.