



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

July, 2005

Scheduled for committee review
Tuesday, July 12th 2005
Senate Room #116

Reference
XXVII IAB No. 25 (06/21/05)
XXVII IAB No. 26 (06/22/05)

HIGHLIGHTS IN THIS ISSUE:

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LABOR DIVISION

9:15

Inspection fees, IAB Vol. XXVII, No. 25, ARC 4219B, NOTICE. IAB Vol. XXVII, No. 26, ARC 4273B, ADOPTED.

In ARC 4219B the division proposes a general increase in fees relating to boiler regulation:

- special inspector certification-\$30 to \$40.
• each one-year certificate-\$15 to \$25.
• each two-year certificate-\$25 to \$50.
• water heater supply boiler-\$20 to \$40.
• Each boiler from 70 pounds per square inch up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour-\$30 to \$80.
• Each boiler 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour-\$100 to 200.

In ARC 4273B the division increases the various fees imposed for elevator inspections. Elevator inspections are set at \$500 for four landings--\$600 for anything over those levels. The prior rule varied the fee according to the value of

the elevator installation; the maximum fee was \$130 plus \$1 for each \$1,000 over \$40,000 of valuation. Consultation services remain at \$100 per hour. For dumbwaiters and wheelchair lifts the fee is set at \$350. Again, the previous rule varied according to the value of the installation; \$90 plus \$1 for each \$1,000 over \$30,000.

Annual inspection fees are also raised: elevator-\$75; escalator, wheelchair lift and moving walk-\$60. The earlier fees include \$50 for elevators and escalators. The special inspector fee is raised from \$30 to \$60.

LABOR DIVISION

9:15

Elevator remodeling, IAB Vol. XXVII, No. 26, ARC 4274B, ADOPTED.

Under the previous rules when any combination of alterations or changes was made to an elevator or hoistway the entire facility must be brought up to code, if those alterations consist of more than 50 percent re-construction. This filing establishes the

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criteria to be used in determining whether this threshold is met.

The rule sets out a table, listing all the components of a hydraulic, geared or gearless elevator and assigning a point value for each component. When the point value of the repair reaches 50 percent of the total available points, the elevator must be brought up to code.

ETHICS AND CAMPAIGN FINANCE DISCLOSURE COMMISSION

9:30

Honorariums, IAB Vol. XXVII, No. 26, ARC 4251B, ADOPTED.

§68B.23, 2005 Code, provides that, a government official or employee shall not accept compensation or anything of value, from a restricted donor, in relation to a speaking engagement. A restricted donor is defined in §68B.2(24) and basically includes any person who has financial or regulatory dealings with the official or employee. The proposed rule clarifies this prohibition, allowing payment of actual expenses for registration, food, beverages, travel, or lodging paid in return for participation on a panel or for a speaking engagement at a meeting. Non-monetary items that are given as an honorarium must be either donated to a charity or other public.

STATE PUBLIC DEFENDER

10:00

Claims relating to Chapter 600A, Iowa Code, IAB Vol. XXVII, No. 26, ARC 4214B, EMERGENCY.

The state public defender is charged with the responsibility of providing legal representation to indigent persons, in a variety of legal settings. Under House File 683 an indigent person is defined as having an income at or below 100% of the federal poverty guideline. The Act provides for the appointment of counsel in termination of parental rights hearings where the indigent person has at least a colorable defense and *"because of lack of skill or education, would have difficulty in presenting the person's version of the facts in dispute..."*. The Act also provides for the appointment of counsel for indigent persons in

parole revocation hearings, using criteria similar to those used for termination of parental rights.

Claims in a termination of parental rights case will be paid at the rate of \$50 per hour, with a fee limitation of \$500. Claims will not be approved for travel time, paralegal time, or out-of-pocket expenses.

IOWA FINANCE AUTHORITY

10:30

2006 Qualified Allocation Plan (low-income housing tax credits), IAB Vol. XXVII, No. 26, ARC 4281B, NOTICE.

Iowa law authorizes the authority to issue tax credits as an incentive to developers for construction or rehabilitation of low income housing. Each year the authority updates the program for the current fiscal year. Generally, by issuing tax credits the program encourages private developers to build or refurbish low income housing. The housing must include affordable units for individuals or families having an income that is at 60 percent or below the area median gross income (AMGI). The units must remain in compliance for a minimum period of 30 years.

The 2006 amendments make minor, technical changes to the current program. No more than 15% of the available tax credits will be awarded to a single developer/consultant who has multiple projects; with a \$600,000 cap for single projects (up from \$500,000 in 2005). This cap may be raised 30% if there are projects located in certain target areas.

The program contains several earmarked projects. Ten percent of the grant ceiling is set-aside for qualified non-profit organizations. 20% of the ceiling is set aside for projects in which at least 60% of low-income units are both rent restricted and occupied by individuals whose income is 40% or less of median gross income, and up to 40% of the low-income units are both rent restricted and occupied by individuals whose income is 60% or less of the median. This is reduced from the current level of 30% of the tax credits. 10% of the credits are set aside for affordable assisted living projects that include low-income units. 20% of the ceiling is set aside for the preservation existing housing.

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Applications are evaluated according to a detailed set of weighted criteria. In *very* abbreviated form the criteria can be summarized as:

- Tenant related categories. (100 points maximum). Projects serving larger families or “special needs” groups receive additional points.
- Compliance period related categories. (20 points maximum). Projects committed to longer than 15 years and projects that can result in tenant ownership receive additional points.
- Location related categories. (55 points maximum). Projects located in certain designated areas or near certain specified services or amenities receive additional points.
- Project characteristics related categories. (130 points maximum). Rehab or restoration projects receive additional points.
- Developer characteristics related categories. (20 points maximum). These points have been drastically reduced with the elimination of 110 points for the leveraging of funding from other sources.

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

11:00

Concentrated animal feeding operations: discharge permits, IAB Vol. XXVII, No. 25, ARC 3736B, NOTICE TERMINATED.

Under the National Pollutant Discharge Elimination System (NPDES), all facilities which discharge pollutants from any point source into waters of the United States are required to obtain a permit.

In October, 2004 the EPC proposed rules to comply with newly adopted federal regulations relating to concentrated animal feeding operations (CAFO). Under federal law a CAFO is considered a point source for pollution, and must obtain a NPDES permit. Under prior federal regulation confinement feeding operations (CFO), which are completely enclosed, were not regulated under the NPDES program, because discharges were not allowed from those operations. Under the new federal regulations, some 1800 larger Iowa CFOs' would have been required to obtain the NPDES permit.

That proposed rulemaking has now been terminated because a federal appeals court has struck down portions of the federal regulations.

The case is *Waterkeeper Alliance v. EPA*, 2nd Cir., No. 03-4470, 2/28/05. In part the decision held that the federal Clean Water Act jurisdiction to regulate and control only *actual* discharges -- not potential discharges and the not point sources of the discharge. Unless there is a “discharge of any pollutant,” there is no violation of the Clean Water Act. The court held that the federal regulation violated the federal Act because it imposed permitting obligations on all CAFOs regardless of whether or not they have added pollutants to the navigable waters.

ENVIRONMENTAL PROTECTION DIVISION

11:00

Solid waste comprehensive planning, IAB Vol. XXVII, No. 25, ARC 4239B, ADOPTED.

Every city and county must provide for an integrated solid waste management system for the waste generated within its jurisdiction; the system must be designed to meet the state’s waste reduction and recycling goals. Perhaps the most important aspect of the solid waste planning requirements is the statutory goal set out in §455D.3 which call for the reduction of the volume of waste entering landfills from a 1988 baseline: the goal is a 25% reduction by 1992 and a 50% reduction by 2000. Systems which fail to meet this goal must pay a fifty cents per ton fee to the department of natural resources; funds raised by this fee are used to fund alternatives to landfills. The system must also conduct a local educational and promotional program on recycling.

§455B.310, 2005 Code, authorizes the department to collect fees for the disposal of solid waste at sanitary landfills. The fees deposited in the solid waste account of the groundwater protection fund. Proposed rule 110.13 sets out a detailed procedure for the calculation of these fees. All sanitary landfills which are subject to the permitting requirements of the department must pay the required fee for each ton of solid waste disposed of in the landfill. The amount of the fee

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varies depending on compliance with the waste diversion requirements.

NATURAL RESOURCES COMMISSION

11:30

Dock regulation, IAB Vol. XXVII, No. 25, ARC 4237B, NOTICE.

The commission regulates the placement and construction of docks adjacent to Iowa's public waterways. The most significant revision of these rules is the addition of a statement of policy setting out the regulatory principles which will guide the commission in making dock-related decisions; some of those principles are contained in the existing rules. Much of the specific location and configuration requirements are eliminated in favor of these general principles. These principles are summarized as follows:

The owner of shoreline property adjacent to public water is entitled to access from that property. This access does not imply the right to multiple bocks or hoists.

Because of a dock's lack of permanence relative to other structures, there should be limitations on duration of authorization to maintain a dock with a particular location, size and configuration if changing conditions reasonably require modification.

Public water bodies include all natural lakes, artificial lakes, all rivers, all streams that are large enough to be navigable by canoe or kayak, and all ponds or pits to which the public has a right of access for recreational boating. The rules do not apply to a water body if its bed and surrounding lands are privately owned and if it is not accessible to the public.

All docks, hoists and related structures shall be located, sized, configured and constructed to limit their adverse impacts on the aquatic ecosystem, public navigation and other public recreational uses.

Single family docks generally do not require a specific individual permit. Hoists or storage structures do require an individual permit unless

authorized as part of a general or individual dock permit. Buoys and rafts require individual permits. Individual 5-year permits cost \$125 (currently: \$25 per year); multi-family residence (apartment) or commercial permits cost \$250.

NATURAL RESOURCES COMMISSION

11:30

Leasing of public land, IAB Vol. XXVII, No. 25, ARC 4237B, NOTICE.

The commission's current rules set out two tables, for non-commercial and commercial uses, which are used to determine the appropriate charge for use of commission controlled property. The tables cross-reference frontage and depth of parcels and establish a rental cost. Lands leased for agricultural purposes, commercial concession agreements, and agreements covering the removal of sand, gravel, and other natural materials are negotiated separately.

This proposal eliminates the tables in favor of three specific formulas, for residential, commercial and agricultural property. The proposal also sets out an application and appeal process; applications must be accompanied by a \$300 administrative fee.

Lease rates will be based on the taxable value of the adjacent property. For land adjacent to privately owned residential property the annual lease fee shall be the assessed land value per square foot of the adjacent privately owned parcel multiplied by 6.5 percent; multiplied by the square feet leased; multiplied by 75 percent.

For land adjacent to privately owned industrial or commercial property the annual lease fee shall be the assessed land value per square foot of the adjacent privately owned parcel multiplied by 8 percent; multiplied by the square feet leased; multiplied by 75 percent.

For land adjacent to privately owned agricultural property the annual lease fee shall be the assessed value of agricultural property in that county, calculated on a square foot basis, multiplied by 4 percent; multiplied by square feet leased.

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NATURAL RESOURCES COMMISSION

11:30

Barge fleeting regulation, IAB Vol. XXVII, No. 25, ARC 4242B, NOTICE.

The commission proposes to revise the fee structure for authorizing areas barge fleeting. Barge fleeting is an area used for temporarily mooring barges and providing some towing services--- primarily on the Mississippi river. The existing rules use a table to determine the appropriate charge for a barge fleeting area. The table cross-reference frontage and depth of fleeting areas to establish a rental cost that will vary from \$125 to \$5,000.

This proposal sets out a \$500 application fee for an initial permit and a \$1000 fee for the renewal of an existing permit. The annual base fee is \$3.18 per each 100 square feet, each subsequent year the fee per 100 square feet will be adjusted on a cumulative basis, by the percentage of the Consumer Price Index.

NATURAL RESOURCES COMMISSION

11:30

Permanently moored vessels (PMV), IAB Vol. XXVII, No. 25, ARC 4214B, ADOPTED.

§99F.7(1), 2005 Code provides that a permanently moored gambling boat, which is operated on inland waters, is under the *exclusive* jurisdiction of the department of natural resources and:

- must meet all of the requirements of chapter 462A;
- is subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued or renewed under this chapter.

A permanently moored vessel (PVM) has been removed from navigation and is no longer regulated by the United States Coast Guard. The rules basically establish an abbreviated licensing procedure for persons wishing to inspect these vessels. Eligibility criteria are set out in the rules, specifying both training and experience

requirements. Each application will be reviewed on an individual basis.

Each PMV will be inspected according to the standards set out in the “State of Iowa Permanently Moored Vessel Inspection Requirements,” 2005 edition. This document is adopted by reference.

DEPARTMENT OF PUBLIC SAFETY

2:00

Retail sales of pseudoephedrine, IAB Vol. XXVII, No. 26, ARC 4227B, EMERGENCY.

2005 Iowa Acts, Senate File 169, has significantly changed the way in which over-the-counter cold remedies containing pseudoephedrine are sold. In part the Act requires retailers which sell pseudoephedrine products to maintain a logbook of sales of these products containing the purchaser’s signature and the purchaser’s printed name and address. The log book is open to inspection by law enforcement officers

The Act also provides that a city or county may assess a civil penalty against any retailer or an employee who violates any of the sales requirements. The city or county imposing a civil penalty must report that penalty to the Department of Public Safety within 30 days.

DEPARTMENT OF PUBLIC SAFETY

2:00

Fire safety in hospitals and care facilities, IAB Vol. XXVII, No. 26, ARC 4125B, ADOPTED.

The department proposes an update to the life safety code for hospitals, hospice facilities and care facilities. Iowa's code must be in compliance with federal requirements if Iowa facilities are to remain eligible for the Medicaid and Medicare programs. The most significant change in policy relates to nursing homes. Each patient or public room must have either a smoke detector or a sprinkler. These rules were published as a notice in April, with initial review in May.

PUBLIC SAFETY DEPARTMENT

2:00

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Minimum training standards for volunteer fire fighters, IAB Vol. XXVII, No. 24, ARC 4230B, ADOPTED

The department has now completed action on rules setting minimum training standards for volunteer firefighters. These adopted rules were previously reviewed by the committee in June, 2005. The department has significantly revised these standards from the initial proposal. Based on these revisions, the committee members took no adverse action on this filing. Members cautioned that the committee would monitor the development of the program and that further review and action was possible if implementation of this program resulted in a decline in the number of volunteer fire fighters.

The revisions limit the training requirements of the fire fighter I program to those persons who enter a hazardous environment which requires the use of self contained breathing apparatus. The revisions also extend the deadline for compliance four more years--to July 1, 2010. To ensure that local departments or volunteers are not burdened by additional costs, further extensions of this deadline will be granted whenever there is not sufficient state money available for the training.

DEPARTMENT ELDER AFFAIRS

No Rep

Medication in assisted living facilities, IAB Vol. XXVII, No. 26, ARC 4054B and 4055B, NOTICE TERMINATED.

An ongoing issue in the regulation of assisted living and in day care programs has been the appropriate role of the assisted living facility in the storage and dispensing of medication. That issue has now been resolved with House File 585 which includes "medication setup" as part of the assistance offered by the program. This service includes:

"routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups."

The Act then codifies storage and dispensing requirements. House File 587 resolves similar

issues with adult day care programs. These two Acts have superseded the department's April proposals, which are now being terminated. Additional rulemaking will be developed to implement the new legislation.

PHARMACY EXAMINERS BOARD

No Rep

Centralized prescription filling, IAB Vol. XXVII, No. 26, ARC 4267B, ADOPTED.

The term "centralized prescription filling center" means any pharmacy that fills or processes prescription drug orders on behalf of other pharmacies. A center must be licensed as a pharmacy. Pharmacies that either have a common owner or a written sharing agreement may establish a center, however, a hospital pharmacy may not service in this capacity. Any prescription that is filled at a prescription filling center must note that fact on the label and patients must be informed prior to the filling of a prescription.