



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

STATEHOUSE * ROOM 116 * DES MOINES, IOWA 50319 * (515) 281-3084/3355/4800
FAX (515) 281-5995/4424 * E-MAIL jroyce@legis.state.ia.us; egardyas@legis.state.ia.us

THE RULES DIGEST

December, 2005

Scheduled for committee review
Tuesday, 13th 2005
Senate Room #22

Reference
XXVIII IAB No. 10 (11/09/05)
XXVIII IAB No. 11 (11/23/05)

HIGHLIGHTS IN THIS ISSUE:

SHELTER CARE BEDS, Department of Human Services1
FAMILY CENTERED SERVICES, Department of Human Services1
GROW IOWA VALUES FUND, Economic Development Department.....3-5
NPDES PERMITS, Environmental Protection Commission6
CENTRALIZED RESERVATION SYSTEM, Natural Resources Commission.....7
JAIL STANDARDS, Corrections Department.....8

HUMAN SERVICES DEPARTMENT

9:10

Shelter care, IAB Vol. XXVIII, No. 10, ARC 4618B, ADOPTED.

This filing resolves an issue that has been before the committee since August. The issue relates to the number of shelter care beds paid for by the department. Shelter care is intended to provide temporary placement for children until a permanent program is found. 2005 Acts House File 825, §30 required the department to increase the statewide daily average number of beds covered under contract to 288 beds in order to include 15 unallocated beds statewide for emergency placements. Under the provisions of the initial rule the department would guarantee payment for approximately only 240 beds. The position of the department was that it had actually contracted for the availability of a total of 337 shelter beds, exceeding the required number of 288 beds; department representatives also noted that the Act did not identify any number of beds for which payment should be guaranteed. Committee members were concerned that more shelters,

especially in rural Iowa, could be closed unless 288 beds were actually guaranteed. Committee members opined that 288 was a significant and specific number of beds and was deliberately inserted in House File 825; for that reason members felt it should be treated as a guarantee, regardless of the term used in the Act.

Opponents of this rule contended that a guarantee of only 240 beds would not provide enough revenue to keep all of the current shelter facilities open; they also noted that one facility had already closed over funding issues and stated that more would close unless the guaranteed funding was provided.

In this final rule the department inserts the following language:

"Shelter contracts for the state fiscal year beginning July 1, 2005, shall provide for the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year. For the fiscal year beginning July 1, 2005, state funding for shelter care shall be limited to \$7,452,955, including \$200,000 for unallocated beds."

THE RULES DIGEST

-2-

HUMAN SERVICES DEPARTMENT

9:10

Family centered services, IAB Vol. XXVIII, No. 10, ARC 4631B, ADOPTED.

This filing combines three notices of intended action that were also placed in emergency effect. The most significant portion of this filing re-writes the family centered services program; this program deals with child abuse, neglect, and delinquency; the program also attempts to prevent out-of-home placements of children and to reunite separated families. The program covers a wide variety of services, both for the child and the family. Services can include monitoring individual behavior or monitoring the home environment itself, working with the family team meetings, and arranging rehabilitative and other treatment services as needed. Services for the child are provided without regard to income. All family services are available to children who are the victim of abuse or neglect, or have been adjudicated to be in need of assistance. Some services can be provided while adjudication or other legal determinations are still pending.

Client services are provided by vendors working under contract with the department, according to a fixed-rate schedule set out in the rule. Educational and experience requirements for vendors vary by the service provided and are set out in the rule.

The filing also implements a 3 percent cost-of-living adjustment to reimbursement rates for a variety of services.

HUMAN SERVICES DEPARTMENT

9:10

Juvenile court services-directed programs, IAB Vol. XXVIII, No. 10, ARC 4632B, ADOPTED.

This general revision updates department rules relating to certain youth services provided through the department; however the services themselves are ordered by the juvenile court system pursuant to §232.141, Iowa Code. The services are available for persons who have been adjudicated as delinquent or are at risk of such an adjudication. Persons must be under the age of 18 years but in some cases persons up to 19½ may be covered.

The court and juvenile court officers have primary responsibility for the administration of

court-ordered services and "graduated sanction services" for children, which consist of early intervention and follow-up services or community based delinquency programs. There are four basic services: Life skills teaches the skills needed for day-to-day living; school-based supervision uses juvenile court school liaisons to provide on-site services at middle and high schools; supervised community treatment provides supervised educational support and treatment during the day to children who are experiencing social, behavioral, or emotional problems; and tracking, monitoring, and outreach provides individualized and intensive one-to-one intervention to a child.

ADMINISTRATIVE SERVICES DEPARTMENT

10:00

Information technology management, IAB Vol. XXVIII, No. 11, ARC 4691B, NOTICE.

2005 Iowa Acts, House File 839 establishes the Technology Governance Board, replacing the Information Technology Council. Membership includes: the director of the department of administrative services, the director of the department of management, three representatives from large state agencies, two from medium-sized agencies, one from a small agency and two public members. Essentially the board operates as an advisory group on information technology and budgeting. One major and substantive role of the board is to review and *approve* all requests for proposals for all information technology devices, hardware acquisition, technology services, software development projects, and outsourcing for agencies that exceed the greater of a total cost of \$50,000 or a total involvement of 750 agency staff hours. The board also develops information technology operational and procurement standards applicable to all agencies.

ARTS DIVISION

(Cultural Affairs Department)

10:30

General re-write, IAB Vol. XXVIII, No. 11, ARC 4696B, NOTICE.

The division proposes a general update of its' policies and procedures. The proposal is similar to the current provisions. However, a number of current programs appear to be eliminated, including

THE RULES DIGEST

-3-

the migrant program and the apprenticeship program Programs administered by the division include:

- Traditional arts apprenticeship program. This program fosters cultural traditions of Iowa by offerings apprenticeships with face-to-face instruction from a recognized master traditional artist.
- Project grant programs. These grant programs provide financial incentives to Iowa artists, arts educators and organizations councils to support a wide variety of arts-related activities.
- Operational support partnership program for major arts organizations. This program provides three-year funding support for the general operational expenses for arts organizations with an "exemplary track record of artistic and managerial excellence and community service to the citizens of Iowa." Applicants must provide a cash match.
- Artist directories and rosters. The division maintains rosters and directories of Iowa artists.
- Iowa arts council scholarship for the arts. This scholarship supports the development of outstanding high school seniors who excel in the arts and are enrolled in accredited educational programs leading to careers in the arts.
- Artsafe. The artsafe program provides indemnification against loss or damage during the exchange, transportation, or exhibition of eligible art and artifacts.
- Art in state buildings program. Iowa Law requires state agencies to reserve one-half of 1 percent of the total cost of state construction projects for the acquisition of fine arts in state buildings.

PUBLIC SAFETY DEPARTMENT

10:50

DNA database, IAB Vol. XXVIII, No. 11, ARC 4675B, ADOPTED.

This filing originally appeared as an emergency filing in July. 2005 Iowa Acts, House File 619 significantly revises and broadens requirements for the collection of DNA samples from criminal offenders; the Act establishes a DNA database containing samples from all persons convicted of any felony or convicted of any other offense requiring registration with the Iowa Sex Offender Registry. Under prior law, Iowa Code §13.10 required the attorney general to classify felonies and indictable misdemeanors which require the offender to provide a DNA sample.

The sample is to be collected by the institution assuming custody of the offender and submitted to

the DCI criminalistics laboratory. The sample itself may be destroyed after it has been entered into the database.

PUBLIC SAFETY DEPARTMENT

10:50

Sex offender registry, IAB Vol. XXVIII, No. 11, ARC 4676B, ADOPTED.

2005 Iowa Acts, House File 619 has made a number of changes to the sex offender registry. Current law requires registrants to annually verify their current address; registrants will now be required to be annually photographed by the local sheriff, and the photograph posted on the department's web site. The results of a newly required risk assessment will also be included in the database. If a registrant move to a new school district or within a district or "near" a private school, the sheriff is required to notify the administrator of that school.

Persons requesting information from the database may do so either by telephone, in person, or by mail. There is no fee for this information.

ECONOMIC DEVELOPMENT DEPARTMENT

11:10

Grow Iowa values fund, IAB Vol. XXVIII, No. 10, ARC 4634B, NOTICE.

These Department of Economic Development filings, all related to Grow Iowa, were initially review by the committee in August; At that time they appeared as emergency filings. Two House Files, 868 and 809, together created and funded the "Grow Iowa Values Fund". The fund is the successor to the Vision Iowa Fund. Unlike Vision Iowa, the Grow Iowa Fund is administered by the department, with the board acting as the decision-making entity. The values fund consists of appropriated funds, interest on those funds and any repayments or other reversions; funds do not revert. House File 809 largely earmarks the funds for a variety of purposes. Within that statutory framework the department has established criteria and an application procedure for each earmarked fund.

For each of the next ten fiscal years (2005-2015) there is appropriated to this fund 50,000,000 dollars from the general. 35,000,000 of that amount

THE RULES DIGEST

-4-

is annually appropriated to fund business development type activities.

5,000,000 dollars, subject to a local match, is annually appropriated for Regents institutions for "capacity building infrastructure" in technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure projects and programs for university based research.

1,000,000 dollars is appropriated annually for targeted state parks, state banner parks (multiple use) and destination parks. A similar amount is also appropriated for the Iowa cultural trust.

7,000,000 dollars is appropriated annually for the workforce training and economic development funds of the community colleges.

1,000,000 dollars is appropriated annually for economic development regional assistance.

350,000 dollars is appropriated annually to Iowa state university to provide financial assistance to establish small business development centers.

In order to receive financial assistance from the fund, the average annual wage, including benefits, of new jobs created must be equal to or greater than one hundred thirty percent of the average county wage. That wage requirement may be waived for good cause; generally, the term includes situations of local economic distress, but specifically it includes the situation where:

- The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing; and
- All jobs created as a result of the project will have a starting wage, not including benefits, equal to or greater than 100 percent of the average county wage; and
- The business is headquartered in Iowa or the project has unique aspects which will assist the department in meeting one or more of its strategic objectives.

ECONOMIC DEVELOPMENT DEPARTMENT

11:10

Economic development region activities, IAB Vol. XXVIII, No. 10, ARC 4636B, ADOPTED.

The Grow Iowa Values Fund provides assistance for a variety of new economic initiatives.

For ten years, from July 1, 2005, and ending June 30, 2015, 1,000,000 dollars is annually available for the economic development region initiative. An economic development region consists of at least three counties, unless two contiguous counties have a combined population of at least 300,000.

Funding may be provided for physical infrastructure, such as water, sewer or telecommunications infrastructure related to the development of business and industrial sites. Funding is also available for regional economic development revenue sharing pilot projects, entrepreneurial initiatives and the purchase, rehabilitation, or marketing of a building that has become available due to the closing of an existing business.

The Act also provides up to 75,000 dollars annually to rural economic enterprise areas, with these funds to be used for planning and the development of business sites. These development areas consist of at least one county containing no city with a population of more than 23,500 and shall meet at least *three* of the following criteria:

- per capita income of 80 percent or less than the national average.
- household median income of 80 percent or less than the national average.
- 25% or more of the population with an income of 150 percent or less of the poverty level;
- population density of less than ten people per square mile;
- A loss of population from 1990 to 2000;
- An unemployment rate greater than the national rate;
- More than 20% percent of the population over the age of 65.

The business accelerator program provides funding for entities that are designed to support the growth of new and existing businesses through the provision of technical assistance.. A business accelerator is a non-profit entity that is affiliated with an area chamber of commerce, a community or county organization, or an economic development region. For ten years 350,000 dollars is annually appropriated to Iowa State University to establish small business development centers, subject to a dollar-for-dollar local match. Additionally, up to 50,000 dollars is available each

THE RULES DIGEST

-5-

year to training, materials, and assistance to Iowa business resource centers.

ECONOMIC DEVELOPMENT DEPARTMENT

11:10

Tax credits for economic development region revolving loan fund, IAB Vol. XXVIII, No. 10, ARC 4637B, ADOPTED.

As part of the formation and development of economic development regions the department may authorize up to 2,000,000 dollars annually in tax credits to individuals, nongovernmental entities and nonprofit entities that make qualifying contributions to an economic development region revolving loan fund. A nongovernmental entity may claim a tax credit equal to 20 percent of the amount contributed to the revolving loan fund; unused credits may be carried forward for up to ten years.

ECONOMIC DEVELOPMENT DEPARTMENT

11:10

High quality job creation program, IAB Vol. XXVIII, No. 10, ARC 4642B, ADOPTED.

House File 868 replaced the new jobs and income program with the high quality job creation program. The program offers tax credits for a qualifying investment of at least 10,000,000 dollars in a non-retail business. The Act sets out a long list of criteria in order for an applicant to be approved for the tax credits available under this program. The applicant must meet four (but not all) of these criteria; they include:

- have a pension or profit sharing plan;
- manufacture a high-value added product or be part of certain high-technology industries;
- provide health insurance;
- provide child care;
- invest in research and development;
- maintain a worker safety program;
- occupy a currently vacant building.

The Act also sets out some general standards for the department to follow in selecting applicants for approval. The department is required to place emphasis on quality jobs---jobs that have:

- a higher wage scale;
- have a lower turnover rate;
- are full-time or career-type positions;

- provide comprehensive health benefits, or have other related factors.

A business approved for the program is eligible for a variety of tax incentives. The amount of tax incentives and assistance awarded under this program are based upon the number of new high quality jobs created by the approved business and the amount of qualifying investment.

These tax incentives include a refund of most of the sales and use taxes by on in conjunction with the approved business. The approved business may also claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the start-up, location, expansion, or modernization of the approved business under the program. The approved business may claim a corporate tax credit for the cost of increasing research activities in Iowa.

The local community *may* exempt the approved business from property tax on the actual value added by improvements to real property directly related to new jobs created by the location or expansion of the approved business.

Tax incentives and assistance awarded under this program are based upon the number of new high quality jobs created by the approved business and the amount of qualifying investment. This filing sets out a detailed schedule that varies the allowable credit based on the number of high quality jobs created and the investment made by the approved business.

The department may approve no more than 3,500,000 dollars worth of investment tax credits and insurance premium tax credits for projects with qualifying investments of less than 1,000,000 dollars.

ELDER AFFAIRS DEPARTMENT

1:15

General re-write, IAB Vol. XXVIII, No. 11, ARC 4659B-4669B, NOTICE.

The department proposes a complete update of its administrative rules. Many of the rules deal with the responsibilities and funding of the local area aging agencies; these are largely technical changes. And do not substantively change existing programs or policies.

THE RULES DIGEST

-6-

A significant addition is a new provision relating to elder abuse. Iowa Code §231.56A authorizes state funding of elder abuse initiative, emergency shelter, and support services projects administered by local area aging agencies. Funding is provided by the senior living trust. Another addition is the family caregiver program, an existing program that is funded through a small federal grant; the program provides information services to caregivers.

ENVIRONMENTAL PROTECTION COMMISSION

1:45

Storm water discharge permits, IAB Vol. XXVIII, No. 10, ARC 4652B, NOTICE.

The EPC proposes to restructure the fees imposed under the national pollutant discharge elimination system (NPDES) permitting program. The federal Clean Water Act prohibits the discharge of pollutants through a point source into a water of the United States without an NPDES permit.

The basic storm water discharge permit is unchanged at \$150 per year (with multi-year permits available). Some new fees are created. A discharge permit from mining and processing facilities was, under the existing rules, a no-cost permit; it will now cost \$125 annually (with multi-year permits available). For individual NPDES permits, a long list of fees are added:

For storm water discharge associated with industrial activity or municipal system.....\$1,250.

Application fee for a construction permit.....\$100.

Application fee for a non-storm water\$85.

Annual fee for a major municipal facility.....\$1,500.

Annual fee for a minor municipal facility.....\$250.

Annual fee for a semipublic facility.....\$400.

Annual fee for an operation permit.....\$200.

Annual fee for a major industrial facility.....\$4,000.

Annual fee for a minor industrial facility.....\$350.

Annual fee for an open feedlot.....\$400.

Annual fee for a CAFO.....\$250.

ENVIRONMENTAL PROTECTION COMMISSION

1:45

Solid waste revisions, IAB Vol. XXVIII, No. 10, ARC 4648B, NOTICE.

Iowa Acts, House File 602 changes the funding mechanism for regional waste collection centers

and allows certain *private* agencies that collect household hazardous materials to receive assistance as well. Household hazardous materials includes such things as motor oils and filters, gasoline and diesel additives, degreasers, waxes, polishes, pure solvents, lacquers, thinners, caustic household cleaners, spot and stain remover with petroleum base, petroleum-based fertilizers, and paints with the exception of latex-based paints.

The proposal also re-organizes existing requirements into a single chapter. New chapter 123 consolidates the permitting requirements for two mechanisms which provide for the collection of hazardous waste. Permits are valid for a three year period.

Regional collection center permits are currently in place; these centers collect hazardous materials at a facility. This center is a permanent facility where hazardous materials are collected and sorted prior to transportation to the final disposal site. A collection center has regular hours during which the public may drop off hazardous materials.

The rules create a new permit for a "mobile unit collection and consolidation center" (using the hilarious acronym "MUCCC"); a MUCCC is a program that collects hazardous materials at various temporary locations. Services are provided for at least 16 hours per month, with the collected waste being removed for further processing.

Financial assistance, in the form of grants or cash payments are available for both programs. A collection center may request assistance for construction costs, facility or mobile unit acquisitions and educational programs. Criteria for the award are no longer set out in the rules; instead they will be located in the grant application.

Financial assistance is also available for the actual disposal of hazardous waste; this grant is available both to collection centers and mobile centers.

ENVIRONMENTAL PROTECTION COMMISSION

1:45

Underground storage tanks-compliance inspectors, IAB Vol. XXVIII, No. 10, ARC 4653B, NOTICE.

These proposed rules require that underground storage tank systems be inspected annually. The

THE RULES DIGEST

-7-

proposal also creates a certification program for compliance inspectors; the certification process is similar to a license and sets out minimum qualifications for education and experience, training requirements, and provisions for certification suspension and revocation. Essentially the rules privatize the inspection process. Applicants must complete an internet-based course and attend a course sponsored. The fee for the initial application and each renewal is \$500. A certificate is valid for two years.

ENVIRONMENTAL PROTECTION COMMISSION

1:45

Animal feeding operations: major water source, IAB Vol. XXVIII, No. 10, ARC 4652B, NOTICE.

The EPC proposes to update its list of streams and rivers that constitute a "major water source"; this term is defined in §459.102(33) as: "*a water ... capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding...*" Note this is a broad definition, taking into account the recreational use of the waters; some states retain a narrower view of navigation, limiting it to commercial uses.

Inclusion on this list is significant. §459.310, Iowa Code requires a 1,000 foot separation distance between a confined feeding operation and major water source, while only a 500 foot separation is required for smaller water resources.

For that reason it is important that the resources be accurately designated. Each individual segment of these streams has not been examined. Instead, a formula has been used. A perennial stream, one that has a water flow all year is designated a first order stream. A second-order stream is fed by at least two first-order streams. The joining of two-second order streams forms a third-order stream. Stream ranking continues until the highest-ordered channel is reached. The Amazon is a twelfth order stream.

First and second-order streams typically carry small volumes of water. The EPC believes that a fourth order stream meets the definition of a "major water source" as being able to support a floating vessel. The stream segments added by this

rulemaking were designated because they meet the definition of a fourth order stream; i.e. the confluence of two third order streams.

NATURAL RESOURCES COMMISSION

2:30

Centralized reservation system, IAB Vol. XXVIII, No. 10, ARC 4654B, ADOPTED.

The DNR has created a reservation system to accept and process reservations for camping and rental facilities in state parks, recreation areas and state forest campgrounds. Fifty percent of the total number of campsites in each individual campground will be designated as "reservable" sites; the remaining sites remain on the current first-come-first-served basis. A nonrefundable reservation fee is charged for each reservation. This one-time fee is in addition to the camping fees or rental fees. For camping, reservation made be made up to three months in advance; for rental facilities reservations may be made for up to one year.

The filing also details the various fees for campgrounds, cabins, shelter and other facilities.

REVENUE DEPARTMENT

3:00

Tax credits—historic preservation and cultural and entertainment, IAB Vol. XXVIII, No. 11, ARC 4614B, ADOPTED.

These rules were initially reviewed at the October meeting; they implement 2005 Iowa Acts, House Files 857, 868, and 882 pertaining to various tax credits. Generally, these rules outline the availability of the credits for the rehabilitation of properties that are on the national register of historic places or eligible for such listing, or properties of historic significance to a district listed in the national register of historic places or eligible for such designation, or a local landmark.

Unlike the credit program administered by the Iowa Finance Authority, historic preservation credits are not certified until completion of the rehabilitation project. These credits are usually traded or sold at a discount. 2005 Iowa Acts, House File 868, §25 made an additional \$4 million available for tax credits, with the proviso that any

THE RULES DIGEST

-8-

unused credits would then be made available to future reserved credits. This will benefit those who hold a discounted future tax credit, because they will receive an earlier return on their investment. Committee members expressed concern this change created an additional profit for investors who purchased the credits from developers, with the discounted price of the credit calculated on the number of years required for the return on the investment. The revision may provide that investor with an additional, unanticipated return.

It should be noted the program is actually under the authority of the Historic Preservation Division, with rules appearing in 223 IAC Chapter 37

AGRICULTURE AND LAND STEWARDSHIP

No Rep

Grain warehouse, IAB Vol. XXVIII, No. 11, ARC 4655B, ADOPTED.

Chapter 203C, Iowa Code, empowers the department to inspect and regulate grain warehouses in Iowa; for the first time in 13 years the department proposes a re-write and updating of all grain rules. These provisions were reviewed at the committees October meeting. There was no controversy.

"Ground pile" temporary grain storage is always an important part of the rules. Under the rule and at the discretion of the department a special five-month license is available, commencing August 1st. Other alternatives include the licensure of temporary facilities or the use of plastic storage bags.

CORRECTIONS DEPARTMENT

No Rep

Jail standards and temporary holding facilities, IAB Vol. XXVIII, No. 11 ARC 4692B-4693B, ADOPTED.

These rules were initially reviewed by the committee in October, as a notice of intended action. Periodically the department updates its jail standards to bring them in line with a national standard. In ARC 4516B, the department proposes new physical requirements for new and remodeled facilities; these revisions apply only to construction after the effective date of the rules. ARC 4617B sets out similar provisions for temporary holding facilities; such facilities hold prisoners for roughly

24 hours. Cell size requirements are similar to those mandated for jails; training requirements are less than those mandated at jails.

SECRETARY OF STATE

No Rep

Voting systems, IAB Vol. XXVIII, No. 11 ARC 4679B, ADOPTED.

The commissioner of elections implements a series of revisions relating to the testing and security of voting systems. The rules require that county commissioners test each voting device prior to an election; the type of test varies according to the device; for direct recording equipment; the requirement is met by running some computer testing; however, the testing procedure for optical scan equipment is particularly detailed and requires a number of steps to be taken to test the variety of ballots.

The proposal also requires each county to have a security plan which will protect both election data and equipment from unauthorized access.