



Administrative Rules Review Committee

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

THE RULES DIGEST

August 2007

Scheduled for committee review
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Reference
XXX IAB No. 02 (07/18/07)
XXX IAB No. 03 (08/01/07)

HIGHLIGHTS IN THIS ISSUE:

CARD GAME TOURNAMENTS, Inspections and Appeals.....1
VETERANS TRUST FUND, Veterans Affairs.....1
FRANCHISE CERTIFICATES, Utilities Division3
SHOOT FIGHTING, Labor Division.....4
AIR QUALITY: ETHANOL PLANTS, Environmental Quality Commission4
LANDFILLS, Environmental Quality Commission4
VOTING EQUIPMENT, Secretary of State5

INSPECTIONS AND APPEALS

Tuesday-9:10

Card game tournaments by veterans organizations, IAB Vol. XXX No. 02, ARC 6053B, EMERGENCY.

These rules implement 2007 Iowa Acts, Senate File 414, providing for the licensure, operation and taxation of card game tournaments by veterans organizations. Games are limited to poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, or cribbage. Only the veterans organization may conduct the tournament, which must be held on the premises. Under the Act the total number of members and guests participating in a card game tournament cannot exceed the occupancy limit of the premises. Participants must be at least twenty-one years of age.

If the tournament is limited to one guest for each participating club member, the cost to participate in a card game tournament is limited to one hundred dollars for every participant. Cash or merchandise prizes may not exceed \$1,000 and no participant may win more than a total of \$500.

If the card game tournament is not limited to one guest for each participating member the cost to

participate in a card game tournament is limited to \$25 dollars for every participant. Cash or merchandise prizes cannot exceed \$300 and no participant may win more than a total of \$200.

A veterans organization may hold two card game tournaments per month, but cannot hold a tournament within seven calendar days of another tournament.

VETERANS AFFAIRS DEPARTMENT

Tuesday-9:40

Veterans Trust Fund, IAB XXX No. 3, ARC 6126B, NOTICE.

This proposal implements the requirements of Iowa Code section 35A.13, which established the Veterans Trust Fund, and 2007 Iowa Acts, House File 817, §7. The Veterans Trust Fund allows eligible veterans or their spouses to receive a variety of benefits; these include:

- Travel expenses for wounded veterans directly related to follow-up medical care. Expenses include air fare, lodging, and a per diem of \$25 per day.
• Job training or college tuition assistance for job retraining, which is limited to \$3,000.
• Unemployment assistance related to prolonged physical or mental illness or disability resulting from

THE RULES DIGEST

-2-

military service. This includes subsistence payments of \$500 per month for a three month period and limited to \$1,500 annually.

- Nursing facility or at-home care expenses. The maximum amount that may be paid for any consecutive 12-month period may not exceed \$2,500 for dental care, \$500 for vision care, and \$1,500 per ear for hearing care.
- Benefits provided to children of disabled or deceased veterans. The fund may provide a one-time payment of \$1,000 to minor children of disabled veterans or veterans who were disabled or who die in the line of duty.
- Counseling and family support programs. Payment for any consecutive 12-month period is limited to \$2,500; family support is limited to \$500.
- Honor guard services. The fund may reimburse veterans organizations for providing military funeral honors up to \$50. The maximum amount of aid payable in a 12-month period to a veterans organization is \$500.

Benefits are paid from the interest and earning on the fund. The statute specifies that the fund must contain \$50,000,000 before benefits may be paid. However, for the 2006-2009 fiscal years, the minimum balance of the fund required prior to expenditure of moneys from the trust fund is \$5,000,000.

Threshold requirements limit the applicant's income to 130 percent of the federal poverty guidelines and liquid assets of \$5,000. The fund is a payor of last resort and may be used only after all other sources are exhausted.

The rules outline an application procedure. The county director of veterans affairs will make a recommendation to the Iowa commission of veterans affairs whether to approve or deny an application. The commission will approve or deny all applications at its quarterly meetings. The rules also provide a waiting list procedure in the event all veterans trust fund moneys have been obligated.

VETERANS AFFAIRS DEPARTMENT

Tuesday-9:40

Injured veterans grant program, IAB XXX No. 3, ARC 6094B, EMERGENCY.

This emergency filing amends current chapter 11, "Injured Veterans Grant Program." This program was created in 2006 to provide immediate financial assistance to the veteran so that family members may be with the veteran during recovery

and rehabilitation from an injury or illness received in the line of duty in a combat zone or in a designated hostile fire zone. Eligibility for assistance is retroactive to September 11, 2001. The veteran must be an Iowa resident and the injury or illness must be so severe that the resident was evacuated from the combat zone.

The amendment implements 2007 Iowa Acts, House File 767, which expanded coverage under the program to nonresidents who:

- Are or were members of a national guard unit located in this state prior to alert for mobilization;
- Served on active duty at any time after September 11, 2001;
- Were injured while serving in the national guard unit located in this state; and
- Are not eligible to receive a similar grant from another state for that injury.

These amendments also remove a requirement that the presence or assistance of family members is necessary.

VETERANS AFFAIRS DEPARTMENT

Tuesday-9:40

Vietnam conflict veterans bonus, IAB XXX No. 3, ARC 6093B, EMERGENCY.

This emergency filing creates a new chapter 13 "Vietnam Conflict Veterans Bonus" and implements 2007 Iowa Acts, Senate File 578, §1. The Vietnam conflict veterans bonus provides tax-exempt compensation to specified veterans. The rules establish two levels of compensation. The first level includes persons who:

- Served on active duty for not less than 120 days in the armed forces of the United States at any time between July 1, 1973, and May 31, 1975, both dates inclusive;
- Were legal residents of Iowa for at least six months immediately before entering in to active duty service;
- Were honorably discharged or separated from active duty service, or are still in active service, or are retired;
- Was on active duty service in the Vietnam service area, within the dates specified; and
- If the veteran earned either a Vietnam service medal or an armed forces expeditionary medal in Vietnam.

The bonus consists of \$17.50 for each month that the person was on active duty service in the Vietnam service area, and \$12.50 for each month that the person was on active duty service but not in the Vietnam service area. Compensation is limited to \$500.

THE RULES DIGEST

-3-

The second level includes persons otherwise qualified under the first level, but did not earn either a Vietnam service medal or an armed forces expeditionary medal and did not serve in the Vietnam service area between the specified dates. The bonus consist of \$12.50 for each month that the person was on active duty service, limited to \$300. Compensation is to be paid to surviving relatives if the otherwise eligible veteran is deceased.

NURSING BOARD

Tuesday-10:00

Nursing education, IAB Vol. XXX No. 02, ARC 6040B, NOTICE.

The board proposes a general re-write of its nursing education programs. Code §152.5 specifically requires that all nursing programs must be approved by the board. Approved programs must have adequate physical and clinical facilities, and provide a two academic year course of study for a registered nurse or a one academic year course of for a licensed practical nurse.

An interim program may be approved following an application review and visit by board representatives. If an application is denied the institution may re-apply after one year. Interim approval continues until the board conducts a review of program materials, completes a site visit, and grants approval to the program following graduation of the first class and submission of results of the national examination for licensure or advanced practice certification.

An interim program may be granted full approval status following board review. The criteria for approval are set out in the rules; they include provisions relating to administration, the physical facility, curriculum and faculty.

The program must notify the board when the licensure examination passing percentage is lower than 95 percent of the *national* percentage for two consecutive calendar years. The program must then develop an improvement plan and submit annual reports to the board until the 95 percent level is attained.

IOWA FINANCE AUTHORITY

Tuesday-10:25

State housing trust, IAB Vol. XXX No. 02, ARC 6058B, ADOPTED.

Code §16.181 creates a “Housing Trust Fund” within the Iowa Finance Authority (IFA), for the development and preservation of affordable housing for low-income people. For 2007 IFA proposes minor changes in the program.

Money in the fund does not revert to the general fund. The fund consists of two programs: the local housing trust fund and the project based program. For each program applications are evaluated based on a series of weighted criteria, set out in the program. Both programs include a requirement for a local match, but that match is not limited to cash. CDBG grants can qualify as a match; however, HUD home funds cannot. A local match is broadly interpreted and can include such things as land, buildings, infrastructure, cash, tax increment financing proceeds, tax abatement, Brownfield remediation, private contributions, loans at substantially below market interest rates or with other favorable features. Sixty percent of the fund is to be allocated to the local housing trust and 40 percent of the fund is allocated to project based programs.

These rules were initially reviewed by the committee in June, 2007; no issues were raised at that meeting.

UTILITIES BOARD

Tuesday-10:45

Certificates of franchise authority for cable and video service, IAB Vol. XXX No. 03, ARC 6124B, NOTICE.

2007 Iowa Acts, Senate File 554 allows companies to apply for statewide franchises, issued by the Utilities Board, to provide video service, rather than negotiate franchise agreements with individual cities as current law requires. A franchise is an authorization by the board or a municipality, for the construction and operation of a cable system or video service provider’s network in a public right-of-way. The Act does not impact current franchises issued by municipalities, although an incumbent cable provider may convert its existing municipal franchise to a board-issued franchise.

As provided in the Act the board may issue non-exclusive franchise certificates for designated service areas, as specified in the application. Once a certificate is issued, municipalities in the service area cannot require:

THE RULES DIGEST

-4-

- Any build-out provisions.
- A separate franchise.
- The payment of any additional fees.
- Any additional franchise requirements.

A new competing cable company must pay the same franchise fee, up to 5%, that a municipality requires to be paid by an incumbent cable provider. In addition, a new competing cable company must carry the same number of public, education, or government channels as an incumbent cable provider.

LABOR SERVICES DIVISION

Tuesday-11:00

Professional Shoot-Fighting Events, IAB Vol. XXX. No. 3, ARC 6121B, ARC 6120, ARC 6125, ADOPTED.

These filings were initially reviewed at the Committee's July meeting; they revise existing rules relating to shoot fighting. Shoot fighting, which is also known as extreme fighting, combines boxing, judo, kickboxing and wrestling. The Commissioner of Labor, acting as the Athletic Commissioner, regulates the sport pursuant to the provisions of Iowa Code Chapter 90A.

These revisions will hold the promoter of the event generally responsible for the conduct of the officials and the participants at a shoot-fighting event. Under the previous rules the promoter was responsible "for compliance with the rules" and to ensure that the referee was aware of the rules and enforced them. The revision also eliminates a current provision requiring the Labor Commissioner or a designee to appear at each shoot-fighting event.

The revision requires the promoter to provide life, medical, surgical, and hospital insurance to shoot-fighters. The promoter must obtain \$ 25,000 of health insurance and cover any deductible. The promoter must also provide no less than \$ 20,000 of life insurance coverage. Failure to meet all requirements is grounds for denial of a license for the event.

ENVIRONMENTAL PROTECTION COMMISSION

Tuesday-1:00

Air quality: ethanol plants, IAB Vol. XXX No. 03, ARC 6040B, NOTICE.

This proposal amends current Commission rules, based on changes to the federal air quality

regulations for ethanol production facilities. The federal Environmental Protection Agency (EPA) modified the definition of "chemical process plants" by excluding most ethanol production facilities from the definition. The effect of this exclusion will be to expedite the air quality permitting process for ethanol plant construction. A chemical process plant is one of the listed categories for major sources of emissions in the federal Clean Air Act.

The new air pollutant limit for ethanol production will increase from 100 tons per year to 250 tons per year. Ethanol facilities that also operate fossil-fuel boilers with a cumulative total of more than 250 million Btu's per hour will continue to be subject to the 100 tons threshold. The program will no longer require facilities that use carbohydrate feedstocks in producing ethanol to count fugitive emissions of criteria pollutants when determining if the facilities meet or exceed the thresholds for Title V or the PSD program. Permitted emissions limits and other requirements for existing sources will remain in effect and enforceable.

ENVIRONMENTAL PROTECTION COMMISSION

Tuesday-1:00

Landfills regulation, IAB Vol. XXX, No. 01, ARC 5999B, ADOPTED.

Pursuant to Code §455B.304 the EPC completes a re-write of an existing program regulating the construction, operation and closure of municipal solid waste (MSW) landfills. The rules implement the federal Resource Conservation and Recovery Act (RCRA) and the federal rules promulgated in 1991 pursuant to that Act. Compliance with federal regulation is required for Iowa to obtain approval from the EPA. The rules were initially reviewed by the Committee in January 2007; the final version was reviewed in June and held over for additional review in August.

The most controversial issue in this rulemaking relates to the revised lining requirements for landfill cells. Roughly one third of Iowa's landfill cells are not operating over a complete liner. Instead they use a base liner, as required in the previous rules.

THE RULES DIGEST

-5-

The revision requires a complete liner on landfill cells in order to continue accepting waste. There is a three year grace period for this requirement for cells with a base liner; completely unlined cells must close. EPC representatives contend that the federal rules require that liners be in place for all active cells. Opponents of this requirement state that existing cells were constructed in compliance with 1997 rules, which had been approved by the federal government, and are protected with a base composite liner. The opponents expressed willingness to use full liners on newly constructed cells but state that the requirement will force the premature closing of existing cells. Opponents also dispute that the federal government requires full liners on existing cells, noting that the federal government approved the 1997 Iowa rules which required the base liner.

SECRETARY OF STATE

Wednesday-8:30

Voting equipment, IAB Vol. XXX, No. 3, ARC 6121B, ARC 6129, EMERGENCY.

2007 Acts, Senate file 369 makes a number of changes relating to voting machines and optical scan voting systems. Under the Act, when electronic voting machines are used a supply of paper ballots must be available in case technical problems prevent voters voting on the electronic voting machine. Any documents, including paper records showing the progress of the count must be sealed and stored; in the event of a recount, an electronic voting machine was used, the paper record produced by the machine is the official record in a recount unless that record is "compromised".

The Act also provides that a county whose voting system primarily utilizes direct recording electronic devices, shall, when seeking to replace the voting system, replace the voting system with an optical scan voting system only; and, to assist handicapped voters, use electronic ballot marking devices that are compatible with an optical scan voting system.

HISTORICAL DIVISION

Wednesday-10:00

Historic tax credits, IAB Vol. XXX, No. 02, ARC 6062B, EMERGENCY.

The property tax rehabilitation tax credit was initially created in 2000 for rehabilitation of

eligible commercial property, residential property and barns (1937 or before) located in this state. To be eligible, a property must be listed on the National Register of Historic Places or eligible for listing. The historic tax credit for a project shall equal 25 percent of the qualified rehabilitation costs.

The program was significantly revised in 2007 Acts, Senate File 566. The Act authorizes credits of \$10,000,000 in the fiscal year beginning July 1, 2007, \$15,000,000 in fiscal 2008, and \$20,000,000 in fiscal 2009, and forward. Previous legislation initially provided \$2,400,000, then annually capped available credits at \$6,400,000. Section 3 of the Act provides that 10% of the tax credits are to be allocated for new projects with costs of \$500,000 or less, and 40% are to be allocated new projects located in certified cultural and entertainment districts or identified in Iowa great places agreements. The remaining 50% is available for projects state-wide.

A number of eligibility criteria is set out. For commercial property, rehabilitation costs must equal 50% assessed property value. For residential property or for barns rehabilitation costs must equal at least \$25,000 or 25% percent of the assessed value, whichever is less. For mixed-use property, rehabilitation costs cannot exceed \$100,000 per residential unit plus the qualified rehabilitation costs for the commercial space.

A new provision for this program provides for the recapture of "abandoned" tax credits. If there has been no contact with applicant prior to the estimated project completion date the division will request in writing, a status report that documents actual construction on the project within 30 days and notifies the applicant that the project will be considered abandoned and the division will recapture the tax credits. Actual notification of the recapture will be made by registered mail sent to the applicant's last-known address. This new rule is being applied retroactively.

HUMAN SERVICES DEPARTMENT

Wednesday-10:45

Medicaid reimbursement for non-emergency transportation, IAB Vol. XXX, No. 02, ARC 6045B, NOTICE.

The Department revises the requirements for non-emergency transportation under Medicaid.

THE RULES DIGEST

-6-

This revision extends the time limit on submitting a Medicaid transportation claim. This revision also reduces the exceptions that have had to be made in the past for providers that were not previously able to meet the 90 day requirement. Claims are now eligible for reimbursement up to 365 days.

The revision will allow transportation costs for obtaining prescription drugs as well as general medical services. In order to be eligible, a Medicaid client must seek services in the city in which the member lives unless services are not available in that city or if the client is referred by an attending physician. Non-emergency transportation is available to individuals that are unable to obtain a free alternative for non-emergency transportation. If the individual requires a prescription drug immediately, reimbursement is allowed regardless of whether free delivery services are available. The reimbursement allowance for transportation by car increases from 20 cents to 30 cents per mile, however, public transportation must be used where possible.

HUMAN SERVICES DEPARTMENT

Wednesday-10:45

IowaCare, IAB Vol., XXX. No. 02, ARC 6051B, NOTICE.

The Department revises the premium requirements for the IowaCare Program. Previously, an ascending premium scale was applied to individuals between 20 and 90 percent below the federal poverty line based on income. The amendment removes premiums for individuals whose incomes are below 100 percent of the federal poverty level. Premiums are not assessed during the initial application period. If an individual is deemed economically eligible, premiums for a four month period will be charged at one time. The proposal also extends eligibility, providing catastrophic healthcare coverage.

SOIL CONSERVATION DIVISION

No Rep.

Financial incentives for soil erosion control/water protection practices, IAB Vol. XXX, No. 02, ARC 6059B-6060B, EMERGENCY AFTER NOTICE.

ARC 6060B contains a variety of minor amendments to existing rules relating to the Iowa Financial Incentive Program for Soil Erosion Control. The amendments modify the provisions for maintenance and performance agreements and the allocation process and eligibility requirements and revise the program's reporting requirements, practice standards and specifications.

As a condition for receiving financial incentives funds for implementing temporary conservation practices, the recipient must agree to continue those practices for a minimum of five years, signing a performance agreement setting out the required practices. If those practices are not suitably performed for a minimum of five years, the *entire* incentive payment must be paid back to the division. Permanent practices must be maintained for a period set out in the agreement.

The second proposal relates to the financial incentive program for water protection. Iowa Code §161C.4 creates a water protection fund with two functions. The fund finances water quality protection projects protecting surface and groundwater from point and non-point sources of contamination. The fund also finances water protection practices relating to erosion control.