



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

September 2007 Scheduled for committee review Reference
September 11th 2007 in Senate Committee Room #22 XXX IAB No. 04(08/15/07)
XXX IAB No. 05 (08/30/07)

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NATURAL RESOURCES DEPARTMENT (DNR)

10:20

Help Us Stop Hunger (HUSH) deer donation program, IAB Vol. XXX, No. 05, ARC 6198B, ADOPTED.

Iowa Code §483A.8(1) requires deer hunters to pay a one dollar fee for the purpose of deer herd population management, including the "Help Us Stop Hunger Program".

The DNR employs a HUSH coordinator to administer the program, which is governed by an unpaid council consisting of:

- The HUSH coordinator, serving as chairperson;
• A designee of the DNR wildlife bureau chief;
• A representative of the Food Bank of Iowa;
• The chief of the department of agriculture and land stewardship's bureau of meat and poultry inspection.

The council will recommend to the DNR a fair market price for an annual per deer processing payment for meat processors, and an administrative fee to the Food Bank of Iowa, which will act as the distributor of the product.

Under the program meat processors will accept the entire field-dressed carcass of a donated deer, without fees or costs to donors. Processors will be reimbursed by the HUSH program. If the processor determines the venison is in acceptable condition

the meat will be processed into pure ground venison with no additives, put into bags provided by the department, and frozen.

NATURAL RESOURCE COMMISSION

10:20

Resource enhancement and protection program, IAB XXX No. 5, ARC 6200B, NOTICE.

The Resource Enhancement and Protection Program (REAP) is a program that invests in the enhancement and protection of the state's natural and cultural resources through grants. Under the program, county grants, city grants, and private cost-sharing program are first reviewed by a county resource enhancement committee. Applications are then examined by the commission.

REAP funds go into eight different programs based upon a percentages that are specified in the law. Those programs include: Conservation education; DNR open space; city parks and open space; soil and water enhancement; county conservation; DNR land management; historical resources; and roadside vegetation.

The proposed amendments seek to clarify the selection criteria that committees shall use to evaluate grant applications. Many of the selection

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criteria remain the same. However, the description of each is more detailed. The revised selection criteria have also been assigned new weights in the scoring system. The amendments outline the revised selection criteria for county grants, city grants, and private grants.

EDUCATION DEPARTMENT

1:20

Anti-bullying, anti-discrimination, IAB Vol. XXX No. 04, ARC 6161B, NOTICE.

Iowa's Civil Rights Act has been amended in 2007 Acts, Senate File 427 by adding sexual orientation and gender identity to the list of protected classes (Iowa Code §216.9(1)), which also includes: race, creed, color, sex, national origin, religion, or disability. Accordingly, education programs are prohibited from discrimination on the basis of these characteristics. These provisions do not extend to a "bona fide religious institution".

This proposed revision will add these protections to department's accreditation standards. Those standards require all schools to provide equal opportunity in programs to students in a protected class. This proposal also creates a protected class which is not set out in the Civil Rights Act: socio-economic status. That particular status is protested against bullying or other harassment in 2007 Acts Senate File 61.

The revised accreditation standards also require each school district to maintain a policy which prohibits harassment and bullying. This provision is closely based on 2007 Acts, Senate File 61. The Act mandates that local districts establish a policy by September 1, 2007 prohibiting harassment and bullying in schools, on school property, and at any school function, or school-sponsored activity regardless of its location. The prohibition applies to employees, students and volunteers. The phrase "harassment and bullying" has a very specific definition. It includes any electronic, written, verbal, or physical action toward a student which is based on any actual or perceived trait or characteristic and which creates an "objectively hostile school environment." That term means either a reasonable fear of harm, a substantial affect on the student's mental health, physical health, academic performance student's ability to

participate in or benefit from the school services, activities, or privileges.

The traits or perceived traits set out in Senate File 61 are far broader than the protected classes under the Iowa Civil Rights Act. The traits or characteristics are not limited to the civil rights protections of age, color, creed, national origin, race, religion, marital status, sex, disability, sexual orientation, gender identity; they also include (but are not limited to) physical attributes, physical or mental ability or, ancestry, political party preference, political belief, socio-economic status, or familial status.

Senate File 61 does not detail the legal or disciplinary consequences of a violation. Instead, the Act calls for the district policy to outline "*[t]he consequences and appropriate remedial action for a person who violates the antiharassment and antibullying policy.*" In evaluating complaints, the Act calls upon the investigator to "consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying...."

EDUCATION DEPARTMENT

1:20

Community colleges—used motor vehicle dealer education program, IAB XXX No. 4, ARC 6155B, NOTICE.

2007 Iowa Acts, Senate File 358, established precicensing and continuing education requirements for used motor vehicle dealers. Applicants for a used motor vehicle license must complete a minimum of eight hours of precicensing education. Licensees seeking a renewal must complete a minimum of five hours of continuing education over a two-year period prior to submitting an application for renewal. Renewal applicants are exempt from the continuing education requirements if they met the precicensing requirements within the preceding twelve months.

The precicensing and continuing education curricula will be developed by the Iowa independent automobile dealers association, in consultation with the department of transportation, the department of education, the attorney general, and the Iowa association of community college trustees. The courses will be provided by community colleges or by the Iowa independent automobile dealers association in conjunction with

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a community college. Senate File 538 directed the department of education to establish reasonable fees to be charged for the prelicensing and continuing education courses. This proposed rule states that the fee for such courses shall not exceed \$50 per contact hour of instruction, which includes course materials and administrative costs.

ENVIRONMENTAL PROTECTION COMMISSION

10:20

Air quality-grain elevators, fee mill equipment, IAB XXX No. 5, ARC 6186B, NOTICE.

These proposed amendments modify requirements for certain types of grain elevators and modify requirements for feed mill equipment located at certain types of grain elevators by adopting new air quality rules and amending existing rules. According to the commission, the proposed rules would create a permitting and regulation program similar to surrounding states.

All grain elevators, regardless of emissions are required to apply best management practices (BMP) and comply with the fugitive dust standard. Owners and operators of grain elevators are also required to comply with emissions controls specified in required construction permits.

The proposed amendments include revisions to a variety of definitions, including "country grain elevator" and "potential to emit" (PTE). They also adopt definitions of "grain processing" and "grain storage elevator," which have been derived from federal New Source Performance Standards contained in the Code of Federal Regulations.

Under the proposed rules, grain elevators are placed into four groups based on each facility's estimated PTE of particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

Group 1 have PTE's less than 15 tons of PM₁₀ per year. Group 1 facilities are exempt from the requirement to obtain a construction permit; however, the facility must still submit a registration and PTE calculations.

Group 2 have PTE's between 15 and 50 tons of PM₁₀ per year. Group 2 facilities may use a use a Group 2 permit application in lieu of obtaining a regular construction permit. The Group 2 permit

will specify that the owner or operator must oil the grain at the facility, or otherwise achieve facility-wide PM₁₀ emissions reductions that are equivalent to reductions achieved through oiling.

Group 3 have PTE's between 50 and 100 tons of PM₁₀ per year. Group 3 facilities are required to apply for an obtain air construction permits. Group 3 construction permits may contain requirements for the installation of emissions controls that may include grain oiling or equivalent measures. Because PTE for particulate matter (PM) may exceed the PTE for PM₁₀, Group 3 facilities may have PTE above 250 tons per year. Such a Group 3 facility would then be considered a major stationary source. Thus, the facility would be required to calculate the PTE for both PM and PM₁₀ to ensure that emissions for both pollutants are less than 250 tons. Emissions inventories must also be submitted to the department by Group 3 facilities.

Group 4 have PTE's in excess of 100 tons of PM₁₀ per year. Group 4 facilities must apply for construction permits, as applicable; apply for an operating permit, as applicable; and submit to the department annual emissions inventories that report all regulated air pollutants. Group 4 construction permits may contain requirements for the installation of emissions controls that may include grain oiling or equivalent measures.

AGRICULTURE AND LAND STEWARDSHIP

No Representative Requested

Dangerous animals, IAB Vol. XXX No. 04, ARC 6158B, NOTICE.

The provisions of 2007 Iowa Acts, Senate Files 564 and 601 impose new restrictions on keeping dangerous wild animals. Senate File 564 defines these animals in great detail: the list includes full-blood wolves (not less than 50% dog excluded) pythons, monkeys and a host of other creatures that are either big-toothed, poisonous, just plain huge or a combination of the three. Under the Act it is unlawful to own, possess or transport a dangerous wild animal in Iowa. There is a "grandfather clause" for persons who currently possess a wild animal. To be eligible the person must register the animals with the department and, if possible, have

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an electronic identification device implanted in the animal.

There are a number of exemptions to these requirements, including a zoo, circus or wildlife sanctuary. A number of persons who keep exotic pets oppose the new law; these include owners "savannah cats". These cats are a cross between servals (an African wild cat which is a dangerous animal under the Act) and domestic cats. The Act specifically defines a dangerous wild animal to include: "an animal which is the offspring of an animal provided in paragraph "a", and ... *any other animal*. It also includes animals which are the offspring of each subsequent generation." For this reason the savannah cat cannot be exempted from the restrictions.

Russian and European boars are specifically defined as dangerous animals by the Act. This inclusion is opposed by some individuals who maintain private hunting preserves.

COLLEGE STUDENT AID COMMISSION

No Representative Requested

Revisions: college assistance programs, IAB XXX No. 4, ARC 6136B and 6135B, EMERGENCY.

The all Iowa opportunity foster care grant program provides financial assistance for postsecondary education or training to persons who have a high school diploma or a high school equivalency diploma, are age eighteen through twenty-three, and are any one of the following:

- In a licensed foster care placement pursuant to a court order on their eighteenth birthday or during the thirty calendar days before or after that date.
- On their eighteenth birthday or during the thirty days before or after that date, they were under a court order to live with a relative or other suitable person.
- In a licensed foster care placement prior to being legally adopted after reaching age sixteen.
- On their eighteenth birthday or during the thirty days before or after that date, they were placed in the state training school or the Iowa juvenile home pursuant to a court order.

Program assistance covers a participant's expenses associated with attending an approved postsecondary education or training program in Iowa. Participants attending on a less than full-time basis receive assistance for tuition, fees,

books, and supplies, but assistance for other supplies will be prorated.

Program assistance may be renewed for programs longer than one year. Renewals must be requested each year and the participant must meet the academic progress standards of the institution. Awards will first be made to returning students. When all funds have been committed, applicants meeting the eligibility requirements will be placed on a waiting list. Eligibility for the program ends at age 24. The college student aid commission will maintain a record for each participant for up to ten years regarding their postsecondary and workforce participation.

This revision amends the recently adopted rules pertaining to this program. Subrule 9.4(2) has been changed by removing grant award priority language for students in state training schools or Iowa juvenile homes. However, preference for those students remains for purposes of placement on a waiting list when applications are received on the same date. Additionally, priority language pertaining to the applicant's expected contribution and the family's expected contribution has been removed from the rules. The amendments also remove the limitation on the number of semesters a student may receive assistance.

The all Iowa opportunity scholarship program was established by 2007 Iowa Acts, Senate File 588. Tuition assistance under this program is based on the financial need of Iowa residents enrolled at eligible Iowa colleges or universities. Financial need will be determined by evaluating the applicant's FAFSA form and any other required submissions. Only applicants with expected family contributions (EFC) at or below the average tuition and fees for a regent university will be considered for awards. Applicants must be:

- An Iowa resident who begins an initial period of postsecondary enrollment within two academic years of graduation from high school;
- An Iowa high school graduate with a 2.5 cumulative grade point average or its equivalent; and
- Enrolled for at least three semester hours in a program leading to an undergraduate degree.

Scholarship recipients must maintain satisfactory academic progress as defined by the college or university. Individuals with military commitments may delay the initial enrollment period by up to

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four academic years. The maximum award for full-time students will be the average tuition and fees for regent university students or the tuition and fees paid by the student, whichever is less.

This revision amends the recently adopted rules establishing this program. Language has been added to the rules stating that if sufficient funding is not available for all eligible students, awards will be made only to those students whose EFC combined with federal Pell grants, Iowa vocational-technical tuition grants, and Iowa tuition grants total less than the designated EFC level. Language was also added giving priority to students who participated in federal TRIO programs or alternative programs in high school and to students who graduated from alternative high schools.

ECONOMIC DEVELOPMENT DEPARTMENT

No Representative Requested

Regional sports authority district, IAB Vol. XXX No. 04, ARC 6158B, NOTICE.

In 2007 Iowa Acts, House File 911, §32 the legislature has created a mechanism for the creation of up to 10 regional sports authority districts. A convention and visitors bureau may apply to the Department to certify a district; districts may include more than one city and more than one convention and visitors bureau. Districts will promote youth sports, high school athletic activities, the special Olympics, and nonprofessional sporting events in the local area. Each district is governed by a seven member board appointed by the convention and visitors bureau; at least three members must be city council members.

The Act appropriates \$500,000 for certified districts with each district receiving \$50,000. Districts are required to provide a 50% match.

ECONOMIC DEVELOPMENT DEPARTMENT

No Representative Requested

Targeted industries, IAB Vol. XXX No. 04, ARC 6138B, NOTICE.

2007 Iowa Acts, House File 911 creates a "targeted industries development fund". The fund will provide financial assistance to encourage research and development activities in advanced manufacturing, bioscience, and information

technology. Financial assistance is limited to \$150,000. The applicant must provide a one-third match.

The information technology joint venture fund was created in 2007 Iowa Acts, House File 829; this new fund provides financial and technical assistance to Iowa information technology (IT) user companies and Iowa software product companies. The fund will provide assistance to joint research and development programs to commercialize specialized IT products and services. Financial assistance is limited to \$100,000. The applicant must provide a one-third match.

The information technology training program provides assistance to businesses providing information technology services in upgrading the high-level technical skills of existing employees. Assistance is limited to \$25,000. The applicant must provide a one-third match.

The development of the targeted industries links Iowa students to internship opportunities in the biosciences, advanced manufacturing and information technology industries. Students must be within two years of graduation and enrolled in an Iowa institution of higher learning. Students may not be related to company managers or board members. Internship assistance is limited to \$3,100 for any single internship or \$9,300 for any single business.

ECONOMIC DEVELOPMENT DEPARTMENT

No Representative Requested

Entrepreneurs with disabilities, IAB XXX No. 4, ARC 6160B, NOTICE.

The entrepreneurs with disabilities program provides technical and financial assistance to qualified individuals with disabilities seeking self-sufficiency by starting or expanding a small business. Clients of Iowa Vocational Rehabilitation Services or Iowa Department for the Blind may apply for the program. Financial assistance grants are awarded in three phases and may not exceed 50% of the financial package. The maximum financial assistance grant award cannot exceed \$10,000 for all phases combined. Technical assistance grants may be awarded up to \$10,000 per applicant.

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The proposed amendments move the program's daily operations from an outside consultant to Iowa Vocational Rehabilitation Services through the use of business planner. The definitions of business planner and consultant are amended. A business planner will now be the designated business developer providing business planning assistance to clients. The business planner will have responsibilities in processing and approving applications and requests for financial and technical assistance grants. The Iowa Finance Authority has the right to monitor Iowa Vocational Rehabilitation Services and Iowa Department for the Blind records related to the program to ensure compliance.

INSPECTIONS AND APPEALS DEPARTMENT

No Representative Requested

Registration of amusement devices, IAB XXX No. 5, ARC 6185B, Emergency.

An electrical and mechanical amusement device is very similar to a slot machine (note: the statute specifically prohibits referring to this device as a slot machine); instead of cash "pay outs" the device awards tickets redeemable for food and merchandise at the business where the device is located; the value of each award is limited to five dollars. Qualified non-profit organizations can have up to four machines (e.g., veterans clubs) while other establishments (e.g., bars or convenience stores) can have two.

Each device must be registered with the Department; registrations are capped in the statute. Because of their limited number, this filing establishes a waiting list for the privilege of registering a device. Applicants can appear on the list once for a single registration and are listed chronologically. Under these rules, if a currently registered device is replaced with a new device having a different game, a new registration is required and that registration request goes on the waiting list.

2007 Iowa Acts, Senate File 310 requires the Department to adopt rules establishing the criteria for approval or denial of a registration application; these criteria are very broad. The rules provide that an application for registration will be evaluated based on the applicant's history of compliance with

Iowa's gambling laws and "*[o]ther factors the department deems appropriate.*" An application *must* be denied if the location does not hold the appropriate beer or liquor permit, if the applicant owes back taxes, if an open registration is not currently available or "*[f]or any other reason, the department deems denial of the registration appropriate.*"

INSURANCE DIVISION

No Representative Requested

Producer training: Long term care insurance, IAB XXX No. 5, ARC 6185B, ADOPTED.

Issues have recently arisen concerning the sale of long term care insurance; these policies offer varying levels of coverage when the policy holder requires placement in a nursing facility. The division currently has rules relating to unfair or deceptive sales or enrollment practices, and now implements additional protections by requiring specific training for producers who wish to sell long term care insurance. The requirement will "*ensure that insurance producers are able to determine whether long-term care insurance products are suitable for consumers and are able to adequately explain to consumers how the long-term care insurance products work.*"

Training includes an initial 8 credit course (a credit consists of 50 minutes), followed by six continuing education credits every three years.

IOWA FINANCE AUTHORITY

No Representative Requested

State housing trust fund, IAB XXX No. 4, ARC 6159B, NOTICE.

The State Housing Trust Fund (Fund) was established for the development and preservation of affordable housing for low-income people in Iowa. Two programs operate under the Fund, the local housing trust fund program and the project-based housing program. Sixty percent of the available moneys in the Fund are allocated to the local housing trust fund program, while forty percent is allocated to the project-based housing program. Approved local housing trust funds are not eligible to apply for the project-based housing program. The maximum application amount for the program is \$90,000. A minimum local match of 10% is required.

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An allocation plan already exists for the local housing trust fund program. These proposed amendments adopt an allocation plan for the project-based housing program. The proposed allocation plan is not set out in the bulletin; it may be viewed at www.iowafinanceauthority.gov. The project-based housing program will be used for the creation of single-family and multifamily units serving low-income people or increased accessibility in existing single family or multifamily units serving extremely low-income people in which at least one household member is an older person or a person with a disability.

Iowa Code §16.181 does not specifically authorize funding based on age or disability. However, the statute authorizes coordination with federal funding received by the department of economic development. One such program is the HOME investment partnership program, which provides home repair services grants for older and disabled homeowners.

IOWA FINANCE AUTHORITY

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The proposed amendments move the program's daily operations from an outside consultant to Iowa Vocational Rehabilitation Services through the use of business planner. The definitions of business planner and consultant are amended. A business planner will now be the designated business developer providing business planning assistance to clients. The business planner will have responsibilities in processing and approving applications and requests for financial and

technical assistance grants. The Iowa Finance Authority has the right to monitor Iowa Vocational Rehabilitation Services and Iowa Department for the Blind records related to the program to ensure compliance.

IOWA FINANCE AUTHORITY

No Representative Requested

2008 Qualified Allocation Plan (low-income housing tax credits), IAB Vol. XXX, No. 05, ARC 6014B, ADOPTED.

Iowa law authorizes the authority to issue tax credits as an incentive to developers for the construction or rehabilitation of low income housing. Each year the authority updates the program for the current fiscal year. This filing was initially reviewed in July.

The most significant changes involved the set-asides---portions of the credit fund earmarked for specific types of projects.. There are five set-asides: service-enriched, affordable assisted living, affordable preservation, underserved area and nonprofit. Four of these are revised.

Under the service-enriched set-aside a portion of the tax credit is reserved for developments that serve people with disabilities; at least 25% of the units must be set-aside and rented to families with a member who has a disability. This set-aside is reduced from 25% to 20%.

The affordable assisted living set-aside requires that no less than 40% of the low-income units must serve families with incomes at or below 40% of area median gross income if the development is located in a metropolitan statistical area. This set-aside is reduced from 10% to 7%.

The affordable preservation set-aside funds the preservation of existing federally assisted housing units. The set-aside is reduced from 20% to 10%.

The underserved area set-aside benefits counties that are not located in an metropolitan statistical area and have not received an allocation of tax credits in the past five years. Sixty counties are eligible for this set-aside; it is raised from 5% to 10%.

IOWA LAW ENFORCEMENT ACADEMY

No Representative Requested

Reserve peace officers, IAB Vol. XXX, No. 05, ARC 6213B, ADOPTED.

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2007 Iowa Acts, Senate File 110, empowers the Academy with authority to establish standardized training and certification for reserve peace officers. These officers are volunteers who have regular police powers while on duty.

This filing was formally reviewed by the Committee in July. The rules were developed in consultation with a variety of stakeholders, including the Iowa Sheriffs and Deputies Association. Any person appointed as a reserve peace officer after July 1, 2007, must complete 80 hours of training and 40 hours of supervised time. Training will be provided by instructors in a community college or other facility approved by the law enforcement agency and the academy. The training consists of six "modules" with each module containing 12 to 16 hours of required training topics. Completion of each module requires passing a test with a score of 70 percent or better.

The 40 hours of supervised time requires direct supervision by a regular certified law enforcement officer while performing activities such as ride-along time, jail time, or other assigned duties. Once the training and supervised time is completed, the applicant will be certified as a reserve peace officer.

Newly appointed reserve peace officers must be certified within 18 months from the date of their appointment. Officers appointed prior to July 1st, 2007 have until 2012 to obtain certification. A certified regular law enforcement officer who leaves the profession may later return as a reserve officer, but must obtain in-service training. The amount of the required training varies with the time spent out of service.

These rules also add a significant amount of detail to current provisions relating to the revocation of a certification. Note that an academy certification is both a diploma, signifying graduation, and a license, authorizing the employment of the holder as a peace officer. Under these rules a certification *must* be revoked if the officer pleads or is found guilty of a felony or an act of domestic abuse or if the officer manufactures, sells, or conspires to manufacture or sell an illegal drug. A newly adopted rule details the

circumstances where the Academy has discretion whether to revoke or suspend a certification. This includes situations where the officer has been discharged or leaves employment in lieu of discharge for "good cause". Other situations include the falsification of records, document or testimony, and de-certification in another state. The rule also sets out a list of criminal offenses, including theft, indecent exposure and assault that may result in revocation or suspension.