



Administrative Rules Review Committee

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THE RULES DIGEST

December 2007

Scheduled for committee review
December 11th 2007 in Senate Committee Room #116

Reference
XXX IAB No. 10(11/07/07)
XXX IAB No. 11 (11/21/07)

HIGHLIGHTS IN THIS ISSUE:

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UTILITIES BOARD

11:10

Certificates of franchise authority for cable and video service, IAB Vol. XXX No. 11, ARC 6418B, ADOPTED.

These rules were initially reviewed in August as a notice of intended action. 2007 Iowa Acts, Senate File 554 allows companies to apply for statewide franchises issued by the Utilities Board to provide cable or video service, rather than negotiate franchise agreements with individual cities as current law provides. 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. The Act does not require municipal utilities providing cable service or video service to obtain a certificate of franchise authority in the municipality in which service was originally approved.

As provided in the Act the board may issue non-exclusive franchise certificates for designated service areas, as specified in the application. A franchise holder may later modify the designated service area by providing 14 days notice to the

board. However, at least 30 days before initiating service in a competitor's certificated service area the franchise holder expanding the service area must notify each affected municipality and any incumbent cable provider in that area.

Once a certificate is issued, municipalities in the service area cannot require:

- 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.

VETERANS AFFAIRS

11:20

County grant program for veterans, IAB XXX No. 10, ARC 6379B, FILED EMERGENCY.

The Department of Veterans Affairs initially implemented these rules in October 2007. The program was established in House File 909, to improve delivery of services by county commissions of veterans affairs. Revisions in the

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rules include updating references to the enacting legislation and the removal of specific dates and appropriation amounts that are no longer accurate.

The department limits grants to \$10,000 and the grant applicant must agree to expend funds equal to the amount of the approved grant. Beginning with the fiscal year 2009 grant program, funding will be awarded only for the provision of increased services to veterans over and above the services provided in the previous fiscal year. Beginning with the fiscal year 2008, distributed funds must be expended in the fiscal year in which they are appropriated.

The rules establish an application time line, a process for emergency applications, and a process for applications received after appropriated funding is expended. Applications must include a summary of the proposed project, signatures of a member of the board of supervisors and a member of the county veteran affairs commission, a narrative addressing how the project addresses the program's assessment factors, a proposed budget, and letters confirming funding from any additional sources.

If an application is rejected, the department is required to explain the reasons for the rejection and make suggestions for improvements in the proposal. Applicants that are dissatisfied with the department's decision have 15 working days to appeal the notice of decision. Grant recipients will be required to enter into an agreement with the department that specifies reporting requirements. The rules provide clarification on reporting requirements and change the final reporting date for counties to 30 days following the end of the fiscal year from the specific date and year previously required.

### PUBLIC HEALTH DEPARTMENT

1:20

Healthy families, IAB Vol. XXX, No. 11, ARC 6426B, NOTICE.

The department updates this program for the first time in fifteen years. Code §135.106 establishes the healthy families Iowa program to provide home visitation services designed to improve the parenting skills of parents with newborns or small children, encourage child health and development, and prevent child abuse and neglect. Basically this is a voluntary program is intended to provide the

parenting skills necessary to ensure child health and proper development, rooted in child abuse prevention. Service is provided by government or private, non-profit agencies through contract with the department. Contracts can run from year-to-year with an annual continuation application.

Standards for this program come from the national Healthy Families America program.

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State Medical Examiner, IAB Vol. XXX, No. 11, ARC 6421B and 6422B, NOTICE.

Two proposals relate to the operation of the office. ARC 6421 sets up an inter-agency coordinating council "to provide a venue for the effective coordination of the functions and operations of the office of the state medical examiner with the needs and interests of the department of public safety and the department of public health, with input and guidance from the governor's office." The council will meet at least quarterly; issues can include such things as proposed legislation and budgetary needs.

ARC 6422 creates an advisory council for the state medical examiner consisting of at least twelve members drawn from the legal, medical, pathology, public safety and mortuary communities. The council was actually established in 1999 in §691.6C "to advise and consult with the state medical examiner on a range of issues affecting the organization and functions of the office of the state medical examiner and the effectiveness of the medical examiner system in the state."

### SECRETARY OF STATE

1:40

Local sales and services tax elections for school infrastructure projects, IAB XXX No. 11, ARC 6420B, NOTICE.

The proposed amendments correct the rule to comply with the current provisions of Code §423E.2. The proposed amendments add a paragraph stating that only one subject may be included on each petition, motion, or ballot question for local option sales and services tax elections. However, the proposed rules will allow more than one ballot question to be presented at the same election. In addition, the proposed rulemaking states that ballot questions may be included with the general election, or at a special election. The proposed rules specify that use

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change elections are held by school districts, and conflict with elections except the school elections. Use change questions may also be included with regular school elections, or at a special election.

Proposed amendments will also allow an election to be held to extend an existing local sales and services tax for school infrastructure projects. The proposed rule provides language which is to be included on each petition for extension of the tax.

The amendment to paragraph 721-21.803(1)“c” includes instructions for collecting the necessary information for a local option sales and services tax for school infrastructure projects when the election is initiated by the board of supervisors. Under §423E.2(3), the Commissioner develops the ballot language using the language from the petition filed with the board of supervisors or from motions from the boards of directors of school districts. On the other hand, the Code is silent about the source of ballot language if the board of supervisors initiates the election. The proposed amendment requires the commissioner to consult with the boards of directors of school districts to determine the ballot language if the board of supervisors initiates the election.

The proposed amendments to paragraphs 21.803(3)“a” to “c” include changes in the form of ballots for school infrastructure elections. The proposed amendments clarify that, although all voters in the county must be presented with the same ballot, if the motions or petitions calling the election specify different uses for the tax in different school districts, those uses must appear on the ballot. This notice also includes editorial changes to the ballot formats. The font has been changed from all uppercase letters to include both uppercase and lowercase letters. The voting targets have been changed to show the current format used on all ballots in the state—an oval printed on the left-hand side of the choice. Some unhelpful explanatory information in the sample ballots has also been deleted.

### ENERGY INDEPENDENCE

2:10

Organization, Iowa power fund, IAB XXX No. 11, ARC 6411B, NOTICE.

Pursuant to 2007 Iowa Acts, House File 918, the Office of Energy Independence proposes rules

establishing the organizational structure and procedures for the Office of Energy Independence, the Iowa Power Fund Board, and the Due Diligence Committee.

The director of the Office is appointed by the Governor subject to confirmation by the Senate. In addition to administering the programs and services of the Office, the director may contract for and utilize assistance from the department of economic development and appoint advisory committees.

The Board is comprised of 11 voting members and 7 nonvoting, ex officio members. Members of the Board are appointed for three-year staggered terms with no limit to the number of terms a member may serve. The Board will receive recommendations from the Due Diligence Committee regarding applications for proposed projects using moneys from the Iowa Power Fund. The Committee is comprised of seven members and reviews applications to determine whether a proposed project is practical, economically feasible, and furthers the goals of the Fund. Meetings of both the Board and the Committee will generally be held monthly. Observers are allowed to attend Board and Committee meetings, except those closed under Iowa's Open Meetings Law. Members of the Board or Committee who have a conflict of interest are not permitted to participate in discussion or vote on issues concerning the interested project.

The proposed rules outline the purpose of the Fund and describe how moneys are to be used. Financial assistance from the fund may consist of loans, forgivable loans, grants, investments, loan guarantees, and such other forms of assistance the Board deems appropriate. Generally, funds awarded may not be used to purchase land or buildings, and no more than 10% may be used for administrative costs.

Applications may be submitted by a single entity or group of entities. Applicants must first submit a preapplication, which will serve as an executive summary. Preapplications will be reviewed by the director and the Committee. Only those preapplications, which appear to meet the eligibility criteria, will have full applications requested. To be eligible, an application must

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include documentation relating to the actual or potential development of:

- Crop utilization that maximizes the value of crops used as feedstock in biomanufacturing products and as coproducts.
- Reduction of greenhouse gas emission and carbon sequestration.
- Commercialization of technology and product development for sale.
- Alternative and renewable energy and increased energy efficiency.
- Private or federal matching funds.

Applications must also detail technical feasibility, the extent the proposal will build on existing research, viability in commercialization, and any potential educational goals associated with the project.

The Board or Committee may require an applicant to obtain a technical scientific or financial review of a proposal at the applicant's expense. The Office may refer proposals to other state agencies for review as appropriate. In addition to considering whether a proposal is consistent with the energy independence plan developed by the director, the committee shall consider which category a proposal falls under (commercialization, research, education, or undesignated) and whether the applicant has available financial resources in addition to Fund moneys.

Under the proposed rules, a recipient of power fund moneys needs to provide the Board with periodic reports on the use and effectiveness of the moneys received. Any substantive changes to a funded project will require a contract amendment approved by the Office and, if required under the rules, approved by the Committee or the Board.

The Office is also proposing to adopt agency procedures for rulemaking, petitions for rulemaking, and declaratory orders as printed in the first volume of the Iowa Administrative Code, with some reference and term changes. The Office's rulemaking would also adopt uniform waiver and variance rules.

### HUMAN SERVICES DEPARTMENT

2:30

Medicaid service providers: documentation, IAB Vol. XXX, No. 10, ARC 6391B, NOTICE.

Documentation is a perennial issue with Medicaid reimbursement; in part this notice adds detail to the documentation requirements, setting out specific requirements for a number of specific types of Medicaid service providers. The proposal sets out as a general principle that the medical record must establish the *reason* for performing the service or activity, substantiate medical necessity, and demonstrate the level of care associated with the service. It then goes on to specify the documentation that must be contained in the medical record. The documentation of Medicaid services has been a major issue; the current rule is updated to clearly state that the complete date and time of the service must be established, along with the name and credentials of the service provider. The revision creates a new form—a checklist that department personnel will use to specify what documents must be provided as part of an audit.

The rules relating to Medicaid provider audits are updated. Any Medicaid provider may be audited or reviewed at any time at the discretion of the department. These audits may occur when:

- The department has correctly paid claims for goods or services.
- The provider has furnished the services to Medicaid members.
- The provider has retained clinical and fiscal records that substantiate claims submitted for payment.
- The goods or services provided were in accordance with Iowa Medicaid policy.

Detailed procedures for these audits are set out, including re-evaluation by the department followed by an appeal procedure.

Service documentation which is not received within the required timeframe will not be considered in the appeal process. This restriction is significant because the rule provides that: "A provider may correct the medical record before submitting a claim for reimbursement." Thus a mistake that is not uncovered until the claim is reviewed, or if the auditor believes the documentation is insufficient, cannot be corrected or supplemented, even though the required documentation may be readily available.

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Annual adjustments to eligibility and payment levels, SPECIAL REVIEW, EMERGENCY.

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Each year the department must increase the payment amounts and income limits for state supplementary assistance categories, based on the cost-of-living increase in federal Social Security and supplemental security income benefits, which is 2.3 percent for calendar year 2008. 2007 Acts, House File 909 authorizes the department to adopt rules on an emergency basis, subject to prior committee review.

### ENVIRONMENTAL PROTECTION COMMISSION

3:00

Landfill regulation, IAB Vol. XXX, No. 01, ARC 5999B,  
ADOPTED-70 day delay.

These rules were initially reviewed by the Committee in January 2007 as a notice of intended action; in September the final version was delayed the effective date of the filing for 70 days beyond the scheduled effective date of October 1, 2007. At the committee's November meeting members requested that department representatives and a small group of stakeholders meet with Senate Majority Leader Michael Gronstal and discuss the issues involved in this rulemaking. Discussions did not resolve the remaining disagreements. The seventy day delay is set to expire on December 10th, 2007.

### EDUCATIONAL EXAMINERS BOARD

No Rep.

Resolution of complaints, IAB XXX No. 10, ARC 6398B,  
NOTICE.

The Educational Examiners Board has a goal of resolving complaints within 180 days; this rulemaking attempts to effectuate that goal. Under the current rules, any adversely affected party may appeal a proposed decision to the board within 60 days after issuance of the proposed decision. The amendment to this rule would reduce that period by half, to 30 days.

Additionally, the current rules allow the board to initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of such a decision. Under the proposed amendment that time period would also be reduced to 30 days.

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Standard license renewal unit for mentoring, IAB XXX No. 10, ARC 6397B, Notice.

The Educational Examiners Board has initiated this rule making as a strategy to reward practicing teachers for mentoring a student teacher or for mentoring practicum students. Teaching licenses may be renewed if, as part of the renewal application, the teacher has earned six units under rule 282-17.5(1). Units may be earned for graduate credit hours toward an advanced degree or toward present or additional endorsements, courses and activities approved by the board, and successful completion of the National Board for Professional Teaching Standards certification.

Proposed amendments to this rule, however, would allow teachers to earn one unit upon successful acquisition of three points from the following activities:

- Mentoring a full-semester student teacher (2 points);
- Mentoring a half-semester student teacher (1 point);
- Mentoring a practicum student or practicum students equivalent to 60 contact hours (1 point);
- Attending a cooperating teachers' workshop in conjunction with mentoring a student teacher or practicum student (1 point); and
- Serving as a multiyear member of a teacher education program's advisory committee (1 point).

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Master educator license renewal unit for mentoring, IAB XXX No. 10, ARC 6396B, NOTICE.

Master educator licenses may be renewed if, as part of the renewal application, the teacher has earned four units under rule 282-17.6(1). Units may be earned for graduate credit hours toward an advanced degree or toward present or additional endorsements, courses and activities approved by the board, and successful completion of the National Board for Professional Teaching Standards certification.

The Educational Examiners Board has initiated this rule making as a strategy to reward practicing teachers with master educator licenses for mentoring a student teacher or for mentoring practicum students. Proposed amendments to this rule, however, would allow teachers to earn one unit upon successful acquisition of three points from the following activities:

- Mentoring a full-semester student teacher (2 points);
- Mentoring a half-semester student teacher (1 point);
- Mentoring a practicum student or practicum students equivalent to 60 contact hours (1 point);

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- Attending a cooperating teachers' workshop in conjunction with mentoring a student teacher or practicum student (1 point); and

Serving as a multiyear member of a teacher education program's advisory committee (1 point).

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Expansion of scope of professional conduct and ethics, IAB XXX No. 10, ARC 6395B, NOTICE.

Licensed teachers are required to abide by the standards of professional conduct contained in rule 282-23.3. Unprofessional and unethical conduct can result in disciplinary action by the board. This proposed amendment to subrule 25.3(6) reflects changes made in legislation to Code section 272.15 as amended by 2007 Acts, Senate File 588, §33, and 2007 Acts, Senate File 588, §35. The §272.15 was amended to expand the scope of professional conduct and ethics.

Under the proposed rules, teachers and administrators are now be required to report when there have been teaching assignments that do not match a teacher's licensure and also when teachers are teaching without the appropriate endorsements. The amendments also make it unethical conduct to falsify, forge, or alter a license issued by the board.

### HISTORICAL DIVISION

No Rep.

Historic tax credits, IAB Vol. XXX, No. 10, ARC 6401B, NOTICE.

These rules were initially implemented on an emergency basis in July, 2007. 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.

2007 Acts, Senate File 566 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. 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 are established. 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.