



Administrative Rules Review Committee

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THE RULES DIGEST

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Scheduled for committee review
Tuesday, September 9th, 2008 8:30 A.M.
Senate Committee Room #116

Reference
XXXI IAB No. 04(08/13/08)
XXXI IAB No. 05(08/27/08)

HIGHLIGHTS IN THIS ISSUE:

TARGETED JOBS WITHHOLDING CREDIT, Economic Development Department.....1
COMMUNITY COLLEGE ACCREDITATION, Education Department.....2
HISTORIC SITE PRESERVATION GRANTS, Historical Division .....2
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ECONOMIC DEVELOPMENT DEPARTMENT

8:35

Targeted jobs withholding tax credit program, IAB XXXI No. 4, ARC 7068B, NOTICE.

The Department of Economic Development proposes a number of amendments to the targeted jobs withholding tax credit program. This program, created in 2006 funds a targeted jobs credit in pilot project cities designated by the Department, subject to strict guidelines set out in the statute itself.

The credit equals 3% of the gross wages paid by the business to the employees in the targeted jobs. The credit is paid to the pilot project city for the payment of debts incurred or assistance provided by the city for urban renewal projects related to the business in the urban renewal area.

Code §403.19A mandates that the Department "in consultation" with the Department of Revenue coordinate the pilot project program with the pilot project cities and to adopt, amend, and repeal rules to implement the pilot project program under this section. The Department must also prepare an annual report on the pilot project program, providing detail as set out in the statute. The authority to promulgate rules and the duty to

coordinate the program gives the Department broad discretion in administering the program and establishing program requirements.

The proposal, as set out in the notice of intended action, has two significant changes. Currently the program does not cap the total award amount of tax credits; subrule 71.4(2) limits the total award amount of withholding tax credits to the total amount of capital investment of depreciable assets in the project.

Currently, subrule 71.4(7) is a simple dollar-for-dollar matching requirement, common to many DED programs; the published notice creates a more complex requirement. The notice (item four) would do four things: First, the business would be required to arrange the required match. Second, projects receiving tax credits under the targeted jobs withholding tax credit would have local match requirements determined on a case-by-case basis. Third, projects resulting in an increase in local taxes would require a specific type of local match (either a tax abatement or a local match equal to a tax abatement). Lastly, projects that do not result in a local tax increase would not require a local match.

There is an issue with this proposal; after the publication of the notice on August 13, the

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Department is considering additional changes to the notice of intended action. Those changes would revise the notice as follows:

ITEM 4. Amend subrule 71.4(7) as follows:

71.4(7) Local match requirement. A pilot project city entering into a withholding agreement shall arrange for ~~the business to provide~~ a match of at least one dollar for each withholding dollar received by the ~~city city business~~. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project. ~~For projects receiving tax credits under the targeted jobs withholding tax credit, local match requirements will be determined by the local fiscal impacts of the project. For projects that will result in an increase in local taxes (i.e. new construction, building additions), applicants will be expected to show one of two forms of local match.~~

Additionally, it is a requirement for the pilot project city to provide local financial support to the project in one (1) of the two (2) following forms or their equivalent values:

- a) Tax abatement for the project, provided under Chapter 427B of the Iowa code
- b) An acceptable form of local match that is equal to the value of tax abatement under Chapter 427B, under the established 5-year sliding scale or 10% of the total award amount of withholding tax credits, whichever is less.

If a project will not result in an increase in local taxes (i.e. project includes only the purchase of machinery/equipment), then no local match is required.

This revision strikes from the published notice both the requirement that the business arrange for the required match and the requirement for case-by-case match determinations for projects receiving tax credits under the targeted jobs withholding tax credit.

Under the published notice a pilot project city must provide either a tax abatement or a local match equal to that abatement for projects that will result in an increase in local taxes. The revision makes this a general requirement for all projects.

Lastly, the revision would eliminate the proposed exemption from the match requirements for projects which do not result in a local tax increase.

These revisions significantly alter the initial proposal as published in the 08/13/08 Iowa Administrative Bulletin, presenting the question whether these changes can simply be incorporated into the final adopted rule or whether a new notice is required. The test for re-noticing comes from a

1983 Iowa Supreme Court decision, *Iowa Citizen Labor Energy Coalition v. Iowa State Commerce Commission*, 335 N.W.2d 178 (Iowa, 1983). The test established by the court provides that even substantial changes can be made to a notice of intended action as long as those changes are: 1) within the scope of the original notice, and 2) a logical outgrowth of the comment received on the proposal. This test has been used by the Committee since 1983 to informally resolve these issues.

For two reasons I believe that the revisions to the item four notice do not meet the test standards and should be re-noticed rather than proceed to final adoption. First, the changes from the notice are very substantial, and in at least one instance the revision completely reverses the notice, by eliminating the noticed match exemption for projects which do not result in a local tax increase. Second, the revision also significantly modifies the remainder of the match provisions set out in the notice, with no indication these changes were in response to public comment or indeed subject to any public review.

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Renewable fuels infrastructure, IAB XXXI No. 4, ARC 7074B, NOTICE.

The Department of Economic Development proposes a number of revisions to the renewable fuels infrastructure program. 2008 Iowa Acts, House File 2689 made a number of changes to the infrastructure program. The Act provides program coverage to infrastructure at retail sites and expands coverage to include so-called blender pumps which mix types of motor fuel and may allow individual selection of the percent of either ethanol or biodiesel.

The Act revises cost-sharing, providing for a three-year period under which the infrastructure board awards 50% of the actual cost of making the improvement or \$30,000, whichever is less or a five-year period under which the infrastructure board awards 70% of the actual cost of making the improvement or \$50,000, whichever is less. The proposed rules add provisions for supplemental incentives for retail sites, terminal facilities, and tank vehicles.

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The rules also revise the current repayment waiver provisions, revising the sliding-scale repayment provisions to fit the three or five year cost-share agreements.

### HISTORICAL DIVISION

9:30

Historic site preservation grant program, IAB XXXI No. 5, ARC 7084B, Notice, ARC 7085B, FILED EMERGENCY.

This rulemaking establishes an emergency grant program for projects involving the emergency stabilization of historical sites. Grants may be awarded to a governmental subdivision, individual, or nonprofit organization that is authorized and charged with construction, maintenance, and operation of a historical site in a county for which a gubernatorial disaster proclamation has been issued for disasters between April 1, 2008 and June 30, 2008.

Only applications requesting between \$1,000 and \$50,000 will be considered by the four-person review panel appointed by the division administrator. The applications will be reviewed with a numerical rating system. The rating system's criteria will include:

- Emergency status of the project;
- Historical or cultural significance of the project;
- Quality of the plans to stabilize the historical resource;
- Reasonableness and appropriateness of the project's budget; and
- Degree of the applicant's commitment to future viability of the resource.

### EDUCATION DEPARTMENT

9:40

Community colleges; Community college accreditation, IAB XXXI No. 5, ARC 7090B, NOTICE.

The rules amend Department chapters 21 and 24 as the result of several legislative enactments during the 82nd General Assembly. Items 1 to 5 and 10 to 12 address the Quality Faculty Committee established in Code section 260C.36 and accreditation standards regarding community college faculty. The proposed rules relating to accreditation state that by July 1, 2011 all instructors who are under contract for at least half-time or more teaching career and technical education or arts and sciences shall meet minimum standards set forth in Code section 260C.48(1). The proposed rules specify that the Department shall review a community college's quality faculty

plan during the state accreditation on-site visit, recommend that a quality faculty plan be updated at least annually, and require the plan to include professional development components for all instructional staff, counselors, and media specialists.

The proposed rules also reflect recent legislation that changed the formula by which funds allocated to the Department are distributed to all 15 community colleges to supplement faculty salaries. The former distribution formula was based on the proportional share of each community college's total salary expenditures in the instructional and instructional part-time categories in the education functions of liberal arts and sciences and vocational-technical to the total salary expenditures for all community colleges in such functions. The new legislation states that the distribution formula shall be based on the number of full-time equivalent instructors employed by each community college in proportion to the total number of such instructors employed by all Iowa community colleges.

The proposed rules define "eligible full-time equivalent instructor," as required by legislation. The definition is the total of full-time faculty plus the fractions of part-time faculty who are covered by a collective bargaining agreement.

The proposed rules incorporate the expansion in 2008 Iowa Acts, House File 2651, of the locations at which the course for drinking drivers may be offered to include the state correctional facilities listed in Iowa Code section 904.102. The legislation also mandates that the Department consult with the Departments of Public Health and Corrections for approval of such courses.

A public hearing will be held on September 19, 2008 and will include eight remote ICN sites.

### INSPECTIONS AND APPEALS

10:00

Notification of an occurrence; determination of class of violation, IAB XXXI No. 4, ARC 7075B, ADOPTED.

These rules specify when health care facilities must notify the Department of certain occurrences that threaten the health or safety of a resident. These include an accident causing "major injury", when a facility is damaged by a disaster, when an

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act causes major injury to a resident, when a resident "elopes" from a facility, when a resident attempts suicide, when a fire occurs in the facility that prompts certain responses by the facility, and when a failure occurs in the fire sprinkler or fire alarm system for more than four hours in a 24-hour period.

The rules also address the factors to be used by the Department in determining the class of a violation, including the frequency and length of time of the violation, whether the violation was isolated or widespread, the 24-month history of the facility as it related to the nature of the violation, culpability of facility, the extent of harm to the residents, actions of the facility after the occurrence, and accuracy of the facilities records.

Since these rules were originally filed under notice, the Department has made changes to the rules in response to public comment. The adopted rules include references to the definition of ambulatory, provide clarity on the meaning of "pattern," replace "wanders away" with the defined industry term "elopes," specify the types of fires that must be reported, specify the circumstances constituting a sprinkler or alarm system problem, and limits the past history of a facility to the 24 months preceding the violation.

### INSURANCE DIVISION

10:30

Pharmacy benefit managers, IAB Vol. XXXI, No. 4, ARC 7082B, ADOPTED.

2007 Iowa Acts, Senate File 512 regulates pharmacy benefits managers; these individuals administer or manage prescription drug benefits provided by a insurer, health benefit plan, health maintenance organization, or similar third-party payor program. Managers coordinate the policy benefit between the insured, the pharmacy provider network, and the insurer. Rulemaking initially began in January, 2008; with a re-notice published in May.

The rules relate to recordkeeping, auditing procedures, complaint procedures, and conditions of terminating a pharmacy agreement. Section three of the Act specifically requires rulemaking for timely payment of pharmacy claims and for a process for adjudication of complaints and disputes.

Under the rules, beginning no later than December 31, 2009, a "clean claim" (i.e.: a claim that requires no further information):

"shall be paid as soon as feasible but within 20 days after receipt of a clean claim when the claim is submitted electronically and shall be paid within 30 days after receipt of a clean claim when the claim is submitted in paper format."

If the claim is not timely paid, the manager must pay the pharmacy or pharmacist interest at the annual rate of ten percent annum.

The pharmacy benefits manager must develop a complaint process; all complaints and the ultimate resolution must be submitted to the Division on a quarterly basis.

The rules contain detailed provisions relating to the auditing of the pharmacy network. The pharmacy benefits manager may audit a pharmacist, providing one weeks notice. A pharmacist must be consulted when the audit involves professional or clinical judgment. An audit period may not exceed two years.

A preliminary audit report must be delivered to the pharmacy within 120 days after conclusion of the audit. A pharmacy must be allowed at least 30 days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit. A final written audit report shall be received by the pharmacy within six months of the preliminary audit report or final appeal, whichever is later.

An audit appeal process must be provided, followed by an opportunity for external review by the Insurance Division.

A pharmacy agreement cannot be terminated solely because of filing a complaint, grievance or appeal, or because of any dispute relating to a decision of the pharmacy benefits manager to deny or limit benefits to covered persons, or any assistance provided to covered persons by the pharmacy or pharmacist in obtaining reconsideration of the decision. Prior to any termination the manager must provide written explanation to the pharmacy or pharmacist of the reason for the termination at least 30 days prior to the termination date unless the termination is based on the loss of the pharmacist or pharmacy's license to practice, cancellation of professional

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liability coverage or conviction of fraud. Termination is subject to review by the Division.

### RACING AND GAMING COMMISSION

10:45

Horse racing; licensure; monitoring activities; progressive slot machines, IAB XXXI No. 4, ARC 7060B, NOTICE.

The proposed rules address several aspects of horse racing and gambling activities. Proposed new subrule 5.4(7) sets forth the requirements for the video recording of gambling activities. The proposed subrule would require licensees to conduct continuous surveillance with the capability of recording all gambling activities under rules promulgated by the Department of Public Safety and allow the Commission and DCI to have unrestricted access to both live and recorded views and images. In May, the Committee imposed a session delay on rules filed by the Department of Public Safety relating to closed circuit surveillance systems in gambling facilities (ARC 6591B).

The proposed rules would also require that a facility have an internal control relating to surveillance coverage and submit a description of that internal control to the Commission.

The proposed rules make several changes to the rules governing qualifying agreements to clarify that the term "year" means a calendar year. The proposed rules would also eliminate provisions for temporary licenses for horse owners, require that the horse owner and the trainer be licensed by no later than the first post time of the race card for the day in which the horse is entered, prohibit a horse from being run on two consecutive calendar days, remove the requirements for trustees relating to wide area progressive jackpots and establish a reserve, and require that a facility maintain a log of updates to computer systems connected to each slot machine.

### PUBLIC SAFETY DEPARTMENT

11:20

Certification of alarm system contractors and installers, IAB XXXI No. 5, ARC 7111B, ADOPTED.

2007 Iowa Acts, chapter 197 requires the State Fire Marshal to establish a certification program for alarm system contractors and installers. The adopted rules were recommended to the State Fire

Marshal by the Fire Extinguishing System Contractors and Alarm Systems Advisory Board and will become effective on October 1, 2008. The rules establish categories of certification, and require each contractor or installer to carry one or more endorsement. The endorsements represent variations in the level of work authorized and specify the types of alarm systems on which certificate holders are authorized to work.

Certifications will normally be valid for a period of three years. The rules also establish administrative procedures for the program, definitions of terms used in the rules, criteria for responsible managing employees of certified alarm system contractors, certification requirements for contractors, contractor application procedures and fees, installer certification requirements, installer application processes and fees, complaints and discipline against certificate holders, and civil penalties.

Many comments were received during the comment period and during the public hearings. Certain comments requested exempting classes of alarm system contractors and installers from certification requirements. However, the State Fire Marshal believes such exemptions exceed the authority afforded by statute. Other comments addressing specific aspects of the rules were incorporated into the adopted rules. Certain definitional changes were made to conform with 2008 legislation and a provision was added requiring applicants to undergo a national criminal history check. A provision was also added which waives the fee for a contractor applying for an amended certificate because the business was relocated due to conditions in an area subject to a disaster proclamation.

### PUBLIC HEALTH DEPARTMENT

12:00

Dental home; definition of service providers, IAB XXXI No. 3, ARC 7023B 70 DAY DELAY.

These provisions were reviewed at the Committees' July 2008 meeting. 2007 Iowa Acts, Chapter 159 the position of state public health dental director was established and an oral health bureau was established, to promote dental health. The new unit administers a variety of federal, state, and local initiatives.

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This filing creates a new chapter describing the purpose and responsibilities of the state dental director and the oral health bureau. At issue in this filing is the definition of "dental home":

'Dental home' means a network of dental and nondental public and private health care professionals providing individualized care based on risk assessment. Services include oral health education, dental screenings, preventive services, diagnostic services, treatment services, and emergency services.

Representatives of the dental profession oppose this definition, contending that *nondental* public and private health care professionals have no authority to provide dental care, except as specifically authorized in the dental screening program (Iowa Code §135.17). Department representatives contended that the roles of nondental professionals in the program are determined by their scope of practice and that dental treatment would be conducted by the appropriate person. Committee members imposed a 70 day delay on this filing and requested that the stakeholders meet prior to the September meeting and resolve this issue.

### REAL ESTATE COMMISSION

No Rep

Grant committee, IAB XXXI No. 05, ARC 7086B,  
ADOPTED.

2008 Iowa Acts, Senate File 2250 amends Code §543B.54, revising the makeup of the grant committee that provides funds for real estate educational programs. The Iowa real estate education fund provides for college credit real estate education programs at Iowa community colleges and other Iowa colleges and universities, and to assist the real estate commission in providing an education director. Twenty-five dollars of each licensing fee is deposited in the fund.

Four members of the committee will be directly appointed by the Iowa association of realtors. Rules governing the grant committee must be promulgated in consultation with the association.