



Administrative Rules Review Committee

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THE RULES DIGEST

December, 2008

Scheduled for committee review
Tuesday, December 9th, and Wednesday, Dec. 10th, 2008.
Senate Committee Room #116

Reference
XXXI IAB No. 10(11/05/08)
XXXI IAB No. 11(11/19/08)
XXXI IAB No. 12(12/03/08)

HIGHLIGHTS IN THIS ISSUE:

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Tuesday December 9th

IOWA FINANCE AUTHORITY

10:00

Second 2009 Low-income housing tax credit program, IAB XXXI No. 10, ARC 7293B, NOTICE.

Iowa is annually allocated tax credit authority based on a per-capita amount derived from population estimates. In 2008, IFA's per capita authority was almost six million dollars. The initial 2009 plan was published in September; this revision incorporates changes as a result of the Housing and Recovery Act of 2008, and the Heartland Disaster Tax Relief Act of 2008. In addition to regular tax credits, Disaster Relief Tax Credits are available for projects located in federally-designated disaster affected counties.

There are two types of credits: nine percent credits and four percent credits; each has separate qualifications. There are three set-asides for the nine percent credits. Ten percent of the state credit, and the special disaster relief tax credit, is set-aside for qualified nonprofit organizations. Ten

percent of the state credit is set-aside for rural rental development. Fifteen percent of the state credit is set-aside for contingencies. A single developer is eligible to no more than \$7,000,000 in tax credits.

Applications are scored on a point basis considering a large variety of categories; general factors include: resident profile, location, and building characteristics.

Four percent credits are available in conjunction with projects financed with tax-exempt bonds.

ECONOMIC DEVELOPMENT

10:30

Waiver of wage requirements, IAB XXXI No. 10, ARC 7315B, NOTICE, ARC 7316B, FILED EMERGENCY.

The Department adopted amendments updating rules that govern requests for wage waivers under the High Quality Job Creation program (HQJC), the Iowa Values Fund created in 2005, and the Community Economic Betterment Account program (CEBA).

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The amendments allow an applicant, under certain limited conditions, to request that the Iowa Economic Development Board waive wage and nonstatutory CEBA program requirements for businesses that have sustained substantial physical damage as a result of a natural disaster in a presidentially declared disaster area. The amendments also update the HQJC program rules by rescinding references to the Board's ability to waive other eligibility requirements because the statutory section that authorized the waiver of other eligibility requirements, Iowa Code section 15.337, has been repealed.

Department proceeded through emergency rulemaking based on a finding that there is an immediate need to have procedures in effect for processing waiver requests. The Board adopted these amendments on October 16, 2008.

* * *

CDBG contingency fund, IAB XXXI No. 10, ARC 7314B, FILED EMERGENCY.

The Department adopted amendments to portions of the rules that govern the Community Development Block Grant (CDBG) Contingency Fund. The Department recently completed two other rulemaking actions that impact the CDBG Contingency Fund rules, both of which were reviewed by the Committee at its November meeting: (1) An annual update of the CDBG rules that became effective November 26, 2008; and (2) An emergency rulemaking authorizing the transfer of Economic Development Set-Aside funds to the CDBG Contingency Fund for disaster recovery efforts.

During the publication process for the two rule makings described above, the Administrative Code Office identified other rules that apply to the CDBG Contingency Fund which were inconsistent. The changes needed went beyond the normal, routine editing process. This new rulemaking rescinded and replaces certain rules to create consistency. The Iowa Economic Development Board adopted these amendments on October 16, 2008. The Board proceeded with emergency rulemaking because the amendments do not alter the substance of prior amendments; they just synchronize the CDBG rules that apply to

the contingency fund so that the rules are consistent.

HUMAN SERVICES DEPARTMENT

10:45

Iowa disaster aid individual assistance grant program, IAB XXXI No. 10, ARC 7296B, FILED.

The Iowa Disaster Aid Individual Assistance Program was established in Code section 29C.20A to assist with disaster-related expenses or serious needs of individuals or families adversely affected by a disaster which cannot otherwise be met by other means of financial assistance. To be eligible for a grant, an applicant must have an annual household income that is less than one hundred thirty percent of the federal poverty level based on the number of people in the applicant's household.

The Department's amendments make the following changes to the program:

- Raise the reimbursement limit for home repair to \$5,000, commensurate with the higher benefit limit Adopted and Filed Emergency and published as ARC 6878B.
- Add reimbursement for debris removal, including trees, of up to \$1,000.
- Increase the limit for electrical or mechanical repairs from \$300 to \$1,000.
- Require additional documentation from the applicant, including proof of income and identity, proof of vehicle registration and insurance, and a brief statement of how the disaster caused the loss being claimed.
- Clarify how the program covers insurance deductibles. The program will not pay if the claim is higher than the deductible.
- Clarify that the program does not cover repairs on rental property.
- Clarify the roles of various government agencies in administering the program.
- Update terms to reflect those used in the Code.

The Department received no comments on the Notice of Intended Action and the final rules are identical.

* * *

Child care centers, child development homes--staff training, IAB XXXI No. 10, ARC 7303B, FILED.

These amendments relate to the training required for staff of child care centers and child development homes. The amendments were adopted and will become effective on January 1, 2009. The amendments update training topic areas, approved training organizations, requirements for approved training, and the

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process and form for training approval requests. The amendments do not, however, change the amount of training required. Currently, professional development requirements are similar for both child development homes and child care centers. According to the Department, the amendments formalize processes that are currently in practice.

In response to public comments received during the notice period, the Department made several changes to the rules. Head Start agencies and the Head Start technical assistance system were added to the list of preapproved sources of training, specified staff positions were removed from inapplicable rules, limits on the number of hours of training approvable in a single day were raised from six to eight, and the prohibition on using the same training class to meet minimum training requirements was modified to allow a person to repeat a training class after five years.

* * *

State funded family planning, IAB XXXI No. 11, ARC 7296B, NOTICE.

2008 Iowa Acts, Senate File 2425 appropriated \$750,000 for a family planning program for women whose income is under 200 percent of the federal poverty level but who are not eligible for coverage under Medicaid. This does not include abortion services. The program is not an entitlement and benefits will cease when the appropriation is exhausted.

* * *

Periodontal dental services, IAB XXXI No. 12, ARC 7296B, EMERGENCY AFTER NOTICE.

These provisions were informally reviewed at the committees' October meeting. The rules restore Medicaid coverage of periodontal and endodontic dental services for persons 21 years of age or older. This coverage was eliminated in 2002.

Committee members were concerned that the Department was now implementing a program that was specifically considered by the legislature in 2008 but rejected because of cost considerations; estimates predicted a cost of \$402,000 in FY 2009 and \$817,000 in FY 2010. Committee members questioned whether it was appropriate to create a program that later would later require legislative funding.

Department representatives maintain that the program will, over time, save money by avoiding future medical costs. The Department notes there are higher medical costs for patients with chronic medical conditions who have periodontal disease. In state fiscal year 2008, the Department received 208 requests for exceptions to policy for these services and approved 177 of them (85 percent).

PUBLIC SAFETY DEPARTMENT

1:00

Reduced burning cigarettes, IAB XXXI No. 11, ARC 7344B, ADOPTED.

Iowa Code Supplement chapter 101B provides for cigarette fire safety standards that will restrict sales of cigarettes in Iowa to "fire-safe cigarettes." Under the statute cigarette brands must be tested and certified by the manufacturer that no more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns, in forty tests.

Civil fines are imposed on a sliding scale. For a manufacturer, the first offense penalty cannot exceed \$5,000. For each subsequent offense the penalty is not to exceed \$10,000. For a retailer the first offense penalty is not to exceed \$500; and for each subsequent offense the penalty not to exceed \$2,000 for each sale.

* * *

Electrical inspection program, IAB XXXI No. 11 ARC 7346B, ADOPTED. POSTPONED UNTIL JANUARY

2007 Iowa Acts, chapter 197, created the new electrician licensing program, now in effect, and a state electrical inspection program within the fire marshal division, which will become effective January 1, 2009. These detailed rules establish the qualifications for inspectors and establish requirements for a permit and inspection system, including a fee schedule, for commercial, industrial single facility and multi-family structures, and alarm systems. Failure to comply with the inspection requirements may result in a civil penalty of no more than \$750.

PUBLIC HEALTH DEPARTMENT

1:30

Licensure of plumbers and mechanical professionals, IAB XXXI No. 10, ARC 7332B, ADOPTED; ARC 7328B and 7330B NOTICE.

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With the enactment of 2007 Iowa Acts, chapter 198, and 2008 Iowa Acts, House File 2390, Iowa now licenses plumbers and mechanical professionals. A person employed by any unit of state or local government is exempt from licensing requirements if the person only performs routine maintenance on a mechanical system or plumbing system, which serves a government-owned facility, while acting within the scope of the state employee's employment.

This legislation establishes a license for persons who provide plumbing, heating, ventilation, and air conditioning (HVAC) services performed in ducted systems, all gas lines associated with any component of a plumbing or mechanical system, or services performed on refrigeration or hydronic systems. These rules establish a licensing board, as part of the Department of Public Health, to test, license, and discipline persons licensed under the new law.

Licenses come in three categories and vary according to experience: apprentice, journeyman, and master. Master licensees must present proof of liability insurance as a condition of licensure. All applicants must be at least 18 years old; and, effective January 1, 2010, all apprentice applicants must have completed a high school education or attained GED equivalent. Applicants must have no record of felony conviction relating to the profession.

Because of the variety of licenses, the license fee structure is somewhat complicated. The initial examination fee is \$35 and a one month late fee is \$60. Specific licenses, including the initial licensure and renewals are as follows:

An apprentice license \$50.

A journey license is \$100.

A master license is \$250.

A combined license is the sum total of each of the separate license fees.

A medical gas pipe certificate is \$50.

An inactive license is \$50.

* * *

Smoking restrictions, IAB XXXI No. 12, ARC 7393B, ADOPTED.

2008 Iowa Acts, House File 2212 sets out specific restrictions on smoking; §8 of the Act

delegates both enforcement and rulemaking duties to the Department of Public Health. Rules were adopted on an "emergency" basis, effective July 1 and placed under notice at that same time. The Department has held dozens of hearings via five ICN sites. These rules have been before the committee twice before, and a regulatory analysis was also published and reviewed in October

In essence, the Act prohibits smoking in any *enclosed* space including places of employment or places of public use; exceptions include tobacco shops, private residences, personal motor vehicles, certain commercial motor vehicles, and the gaming area of a casino. The prohibition also applies to a variety of outdoor locations; these include outdoor sports and entertainment events; restaurant patios (but not bar patios); school grounds and most public buildings and their surrounding grounds.

The Act has extensive enforcement provisions. All government inspectors, such as hotel, food service, building or other inspectors are required to assess compliance with these requirements and report any violations to the Department. An employee or private citizen may bring a legal action to enforce the restrictions or may file a complaint with the Department.

Note that enforcement of these restrictions, including the imposition of fines, is through the judicial process, not through the contested case process. The Department or any other person aggrieved or adversely affected by a violation of these restrictions may seek injunctive relief in the courts. Violations are designated a public nuisance and the Department may seek a restraining order, injunction, or take other legal action to abate the nuisance, including action to recover the costs of the abatement. Under the rules the Department has delegated authority to local law enforcement agencies to enforce these provisions.

The rules detail the so-called bar exemption, which remains controversial. §3(2)"b" of the Act prohibits outdoor smoking at the: "[o]utdoor seating or serving areas of restaurants." This would allow smoking at the outdoor seating or serving areas of bars. The proposed rules have construed the definition of bar to mean an

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establishment where food preparation: "...is limited to the service of ice, prepackaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, prepackaged sandwiches, or other prepackaged, ready-to-serve products." This definition has been controversial, with bar owners contending that it is too restrictive.

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Water treatment systems, IAB XXXI No. 12, ARC 7390B, ADOPTED.

The Department updates a chapter of existing rules relating to the sale of water treatment systems which claim that the system reduces health-related contaminants in drinking water. The rules are very similar to those currently in place, but provide greater detail. As part of these regulations a water treatment system must be registered in Iowa before being sold and a performance data sheet and a consumer information booklet must be given to the buyer before a sale is finalized. The rule prohibits false or deceptive claims and representations that a water treatment system is approved or endorsed by the state of Iowa.

Wednesday December 10th

INSURANCE DIVISION

8:45

Long-term care insurance: benefit trigger determinations/full and fair disclosure, IAB XXXI No. 11, ARC 7347B, 7348B, ADOPTED.

2008 Iowa Acts, House File 2694 requires long-term care insurers to notify a claimant when the insurer denies the payment of benefits because the claimant's benefit trigger has not been met and to provide an internal review process of that determination. The claimant then has the right to request an independent review of the benefit trigger determination. The independent reviewer will be selected by the insurer from a list compiled by the commissioner; the rules set out detailed standards for these independent review entities.

The Act empowers the commissioner to provide standards for full and fair disclosure by setting forth the manner and content of disclosures

required for the sale of long-term care insurance policies on a variety of issues specified in the statute.

ARC 7348B relates to long-term care policies sold before 2003. As a condition of approval for a premium increase in an existing long-term care policy, the insurer must provide notice to all policyholders that in lieu of the requested premium rate increase, the insured may opt for a reduced benefit, a contingent benefit upon lapse, or any other alternative mechanism filed by the insurer and approved by the commissioner.

ENVIRONMENTAL PROTECTION COMMISSION

9:15

Private sewage systems, IAB XXXI No. 10, ARC 7308B, NOTICE.

2008 Iowa Acts, Senate File 261 requires that the septic system of a home be inspected before the sale of the home is finalized, and requires the establishment of a certified "time of transfer" inspector program. Under this proposal, if a private sewage system does not provide effective wastewater treatment or is otherwise improperly functioning, the private sewage disposal system must be renovated to meet *current* construction standards. If the system is properly treating the wastewater and not creating an unsanitary condition in the environment at the time of inspection, the system is not required to meet current construction standards. An inspection is valid for a period of two years for any ownership transfers during that period. A copy of the inspection report must be provided both to the county and the EPC.

System inspectors must be certified by the EPC. Applicants for certification must take an the inspection course, pass an examination and have two years experience in private sewage systems. As an alternative to the experience requirements, applicants may obtain additional information. The examination fee is \$50 and the certification fee is \$300 for two years. Certified inspectors must obtain 12 contact hours of continuing education each two-year period.

The proposal also establishes standards for new construction. Generally, no private system may be installed *or altered* without a construction permit.

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The installation of the system must comply with these rules. Every building where persons reside, congregate, or work must be provided with an approved private system.

A private system cannot be installed, repaired, or rehabilitated if a publicly owned treatment works is available within 200 feet or if a local ordinance requires connection to a treatment works. If connection to a treatment works later becomes available, any building then served by a private system must be connected within a time frame or under conditions set by the local authority.

The proposal establishes separation distances between the system and specific locations such as dwellings, wells ponds, etc. Except as specified in the rules a private system cannot discharge to the groundwater, or to the surface of the ground or into any ditch, stream, pond, lake, waterway, county drain tile, surface water drain tile, land drain tile, abandoned well, agricultural drainage well or sinkhole.

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Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, IAB XXXI No. 12, ARC 7400B, NOTICE.

This proposal attempts to resolve issues raised in an earlier rulemaking. That rulemaking was considered by the Committee in March, May, July and October. Those rules established procedures relating to detection, prevention and correction of releases from underground storage tanks. The filing impose new requirements relating to testing and monitoring near a "sensitive area", which is essentially an area near a public water supply. A seventy day delay was imposed at the July ARRC meeting and a session delay was imposed on portions of the filing in October. The EPC agreed to the delay for selected portions of the filing and agreed to seek additional rulemaking from the Environmental Protection Commission to resolve the issues.

The rulemaking generally was supported by representatives of public water supplies. Opponents included petroleum marketers and storage tank insurance interests, who contended that cost for the new program was prohibitive.

This issue now appears to be resolved with a new rulemaking which rescinds the controversial portions of the earlier rulemaking. Additionally, the EPC and the UST Fund will to enter into a 28E agreement to jointly develop and implement a study of the risk to public water supply wells from underground storage tank (UST) petroleum releases, funded by public funds under the control of the UST Fund. In the event the study reveals an "unreasonable risk" to a well, with some limitations, the UST Fund will provide funding for corrective action.

DEPARTMENT OF MANAGEMENT

10:00

Customer council, IAB XXXI No. 10, ARC 7249B, NOTICE.

Senate File 2400 transferred the administration of the customer council from the Department of Administrative Services to the Department of Management. The council oversees services provided by the Department of Administrative Services (DAS) when the Department of Management has determined that DAS is the *sole* provider of a service because "a monopoly structure makes sense due to economies of scale." The rules do not detail the process for determining whether a monopoly is more cost-efficient. Iowa Code §8.6, subsection 16 requires the Department of Management to establish the process by which the Department, in consultation with DAS, determines which services provided by DAS shall be funded by an appropriation and which services shall be funded by the governmental entity receiving the service.

Annually the council will review and recommend action on business plans submitted by DAS for performance of these monopoly services. Business plans include levels of service, service options, investment plans, and other information.

Under the statute and the rules the council is a unique hybrid, with members from all three branches of government, serving two-year terms; membership consists of 11 state agency representatives, four members from agencies with more than 700 employees, four members from agencies with 70 to 700 employees, and three members from agencies with less than 70 employees. Membership also includes a judicial

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branch representative overseeing services provided to the judicial branch, 2 legislative branch representatives overseeing DAS services provided to the legislative branch, and nonvoting ex-officio members. The Department selects members from the representatives nominated by the agencies in that group.

in-kind support included in the matching funds cannot exceed 35 percent. The aid awarded cannot be less than \$5,000 or more than \$50,000 during any fiscal year.

PAROLE BOARD

10:40

Certificate of employability, IAB XXXI No. 11, ARC 7344B, NOTICE.

Iowa 2008 Iowa Acts, House File 2660, §24 requires the Board to develop a certificate of employability program which is to provide opportunities for rehabilitation and employability of a criminal offender, provide protection of the community, and consider the needs of potential employers. Offenders will be issued a certificate of employability if the offender obtains a positive recommendation from the Department Of Corrections or Community-based Corrections.

A certificate may be revoked for violation of the conditions of release or new arrest. A formal contested case hearing is not required.

If a person holds a certificate a government licensing agency or board cannot deny a license based on the persons' felony conviction or based on a lack of good moral character, unless the agency or board finds that there is a direct relationship between the offense and the license sought or that the issuance of the license involves unreasonable risk to property or the safety and welfare of specific individuals or the general public.

STATE TREASURER

10:50

Infrastructure program, IAB XXXI No. 12, ARC 7405B, NOTICE.

2008 Iowa Acts, Senate File 2432 creates a special fair infrastructure aid fund within the office of the State Treasurer to provide infrastructure aid necessary for a fair to make improvements to the permanent infrastructure of its fairgrounds, including the construction, major renovation, or major repair of buildings, structures, or utilities. The fair must provide a cost-share with the state fund contributing two dollars for each dollar contributed by the fair. The